

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

SENATE BILL No. 283

(By Mr. Hedges)



PASSED March 9 1935

In Effect from Passage

283

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Senate Bill No. 283

(BY MR. HODGES, MR. PRESIDENT) (by request)

[Passed March 9, 1935; in effect from passage.]

AN ACT to amend section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by section two, article thirteen, chapter thirty-three, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and to amend said article thirteen by adding thereto sections two-(a) and two-(i) inclusive, relating to business, occupation and privilege taxes.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended

by section two, article thirteen, chapter thirty-three of the acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted and that said article thirteen be amended by the addition thereto of sections two-(a) to two-(i) inclusive, to read as follows:

Section 2. There is hereby levied and shall be collected 2 annual privilege taxes against the persons, on account of the 3 business and other activities, and in the amounts to be determined by the application of rates against values or gross income 4 mined by the application of rates against values or gross income 5 as set forth in sections two-(a) to two-(i) inclusive, of this 6 article.

7 If any person liable for any tax under sections two-(a) or 8 two-(b) shall ship or transport his products or any part thereof 9 out of the state without making sale of such products, the 10 value of the products in the condition or form in which they 11 exist immediately before transportation out of the state shall 12 be the basis for the assessment of the tax imposed in said sections. The tax commissioner shall prescribe equitable and 13 uniform rules for ascertaining such value. 14

15 In determining value, however, as regards sales from one 16 to another of affiliated companies or persons, or under other

17 circumstances where the relation between the buyer and seller
18 is such that the gross proceeds from the sale are not indicative
19 of the true value of the subject matter of the sale, the tax
20 commissioner shall prescribe uniform and equitable rules for
21 determining the value upon which such privilege tax shall be
22 levied, corresponding as nearly as possible to the gross proceeds
23 from the sale of similar products of like quality or character
24 where no common interest exists between the buyer and seller
25 but the circumstances and conditions are otherwise similar.

26 Gross income included in the measure of the tax under sec-
27 tions two-(a) and two-(b) of this article, except in the case
28 of production of natural gas, shall neither be added nor de-
29 ducted in computing the tax levied under the other sections of
30 this article.

31 A person exercising any privilege taxable under sections
32 two-(a) or two-(b) of this article and engaging in the business
33 of selling his natural resources or manufactured products at
34 retail in this state shall be required to make returns of the
35 gross proceeds of such retail sales and pay the tax imposed in
36 section two-(c) of this article for the privilege of engaging
37 in the business of selling such natural resources or manu-

38 factured products at retail in this state. But any person
39 exercising any privilege taxable under sections two-(a) or
40 two-(b) of this article and engaging in the business of selling
41 his natural resources or manufactured products to manufac-
42 turers, wholesalers or jobbers, and in the case of limestone,
43 sand, gravel or other mineral product, to commercial con-
44 sumers, shall not be required to pay the tax imposed in section
45 two-(c) of this article for the privilege of selling such natural
46 resource products or manufactured products at wholesale.

47 Manufacturers exercising any privilege taxable under section
48 two-(b) of this article shall not be required to pay the tax
49 imposed in section two-(c) of this article for the privilege of
50 selling their manufactured products for delivery outside of this
51 state, but the gross income derived from the sale of such manu-
52 factured products outside of this state shall be included in
53 determining the measure of the tax imposed on such manu-
54 facturer in section two-(b).

55 A person exercising privileges taxable under the other sec-
56 tions of this article, producing coal, oil, natural gas, minerals,
57 timber or other natural resource products the production of
58 which is taxable under section two-(a), and using or consuming

59 the same in his business, shall be deemed to be engaged in the
60 business of mining and producing coal, oil, natural gas, minerals,
61 timber or other natural resource products for sale, profit or
62 commercial use, and shall be required to make returns on
63 account of the production of the business showing the gross
64 proceeds or equivalent in accordance with uniform and
65 equitable rules for determining the value upon which such
66 privilege tax shall be levied, corresponding as nearly as pos-
67 sible to the gross proceeds from the sale of similar products of
68 like quality or character by other taxpayers, which rules the
69 tax commissioner shall prescribe.

Sec. 2-(a). Upon every person engaging or continuing within
2 this state in the business of producing for sale, profit, or com-
3 mercial use any natural resource products, the amount of such
4 tax to be equal to the value of the articles produced as shown
5 by the gross proceeds derived from the sale thereof by the
6 producer, except as hereinafter provided, multiplied by the
7 respective rates as follows: Coal, one per cent; limestone or
8 sandstone, quarried or mined, one and one-half per cent; oil,
9 three per cent; natural gas, in excess of the value of five thou-
10 sand dollars, six per cent; blast furnace slag, three per cent;

11 sand, gravel or other mineral product, not quarried or mined,
12 three per cent; timber, one and one-half per cent; other natural
13 resource products, two per cent. The measure of this tax is
14 the value of the entire production in this state, regardless of
15 the place of sale or the fact that delivery may be made to
16 points outside the state.

Sec. 2-(b). Upon every person engaging or continuing within
2 this state in the business of manufacturing, compounding, or
3 preparing for sale, profit, or commercial use, either directly or
4 through the activity of others in whole or part, any article
5 or articles, substance or substances, commodity or commodities,
6 or electric power not produced by public utilities taxable
7 under other provisions of this article, the amount of the tax
8 to be equal to the value of the article, substance, commodities
9 or electric power manufactured, compounded or prepared for
10 sale, as shown by the gross proceeds derived from the sale
11 thereof by the manufacturer or person compounding or pre-
12 paring the same except as hereinafter provided, multiplied by
13 a rate of three-tenths of one per cent. The measure of this tax
14 is the value of the entire product manufactured, compounded,
15 or prepared in this state for sale, profit or commercial use,

16 regardless of the place of sale or the fact that deliveries may
17 be made to points outside the state.

Sec. 2-(c). Upon every person engaging or continuing within
2 this state in the business of selling any tangible property what-
3 soever, real or personal, except sales by any person engaging
4 or continuing in the business of horticulture, agriculture or
5 grazing, or if selling stocks, bonds or other evidences of in-
6 debtedness, there is likewise hereby levied, and shall be col-
7 lected, a tax equivalent to one-half of one per cent of the gross
8 income of the business, except that in the case of a wholesaler
9 or jobber, the tax shall be equal to fifteen one-hundredths of
10 one per cent of the gross income of the business.

Sec. 2-(d). Upon any person engaging or continuing within
2 this state in any public service or utility business, except rail-
3 road, railroad car, express, pipe line, telephone and telegraph
4 companies, water carriers by steamboat or steamship and motor
5 vehicle carriers, there is likewise hereby levied and shall be
6 collected taxes on account of the business engaged in equal to
7 the gross income of the business multiplied by the respective
8 rates as follows: Street and interurban and electric railways,
9 one per cent; water companies, four per cent, except as to in-

10 come from municipally owned water plants; electric light and
11 power companies, four per cent on sales and demand charges
12 for domestic purposes and commercial lighting and three per
13 cent on sales and demand charges for all other purposes, except
14 as to income from municipally owned plants producing or pur-
15 chasing electricity and distributing same; natural gas com-
16 panies, three per cent on the gross income, said gross income
17 for this purpose to be determined by deducting from gross
18 income from all sales to consumers the amount of the tax paid
19 by the taxpayers under section two-(a) of this article; toll
20 bridge companies, three per cent; and upon all other public
21 service or utility business, two per cent. The measure of this
22 tax shall not include gross income derived from commerce
23 between this state and other states of the United States or
24 between this state and foreign countries.

Sec. 2-(e). Upon every person engaging or continuing within
2 this state in the business of contracting, the tax shall be equal
3 to two per cent of the gross income of the business.

Sec. 2-(f). Upon every person engaging or continuing within
2 this state in the business of banking, the tax shall be equal to
3 five-tenths of one per cent of the gross income of the business.

Sec. 2-(g). Upon every person engaging or continuing within
2 this state in the business of operating a theatre, opera house,
3 moving picture show, vaudeville, amusement park, dance hall,
4 skating rink, race track, radio broadcasting station or any
5 other place at which amusements are offered to the public, the
6 tax shall be equal to one half of one per cent of the gross income
7 of the business.

Sec. 2-(h). Upon every person engaging or continuing within
2 this state in any service business or calling not otherwise specifi-
3 cally taxed under this act, there is likewise hereby levied and
4 shall be collected a tax equal to one per cent of the gross income
5 of any such business.

Sec. 2-(i). Upon every person engaging or continuing within
2 this state in the business of collecting incomes from the use of
3 real or personal property or of any interest therein, whether
4 by lease, conveyance or otherwise, and whether the return be
5 in the form of rentals, royalties, fees, interest or otherwise, the
6 tax shall be one per cent of the gross income of any such
7 activity: *Provided*, That any person who shall make return of
8 and pay a personal net income tax on the incomes covered by
9 this section two-(i) shall not be required to pay the tax herein

10 imposed upon said incomes.

11 This act shall take effect as of January first, one thousand
12 nine hundred thirty-five and the first tax assessed under it
13 shall be upon the calendar year one thousand nine hundred
14 thirty-five.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clinton L. Howard

Chairman Senate Committee

Arnold M. Vickers

Chairman House Committee

Originated in the

Senate

Takes effect

from

passage.

Almond

Clerk of the Senate

Wm. S. Hall

Clerk of the House of Delegates

Chas. E. Hoyle

President of the Senate

Henry Rutter

Speaker House of Delegates

The within

is approved this the *15th*

day of

March

, 1935.

H.S. Kemp

Governor

Filed in the office of the Secretary of State of West Virginia.

MAR 15 1935

Wm. S. O'BRIEN,
Secretary of State