

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1959

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ENROLLED

SENATE BILL NO. 157

(By Mr. Boan, Mr. President...)

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PASSED March 14 1959

In Effect July 1, 1959 ~~Passage~~

Filed in Office of the Secretary of State  
of West Virginia

**MAR 20 1959**

JOE F. BURDETT  
SECRETARY OF STATE

157

**ENROLLED**

**Senate Bill No. 157**

(By MR. BEAN, MR. PRESIDENT)

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[Passed March 14, 1959; in effect ~~from passage~~ July 13, 1959]

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AN ACT to amend and reenact sections one, two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i, two-j and three-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article thirteen, chapter eleven by adding thereto two new sections designated sections, sixteen-a, and twenty-five and that said article thirteen, chapter eleven be further amended by repealing section three-a, all relating to business and occupation tax.

*Be it enacted by the Legislature of West Virginia:*

That section three-a, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, be repealed, that sections one, two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i, two-j and three-b, of said article, be amended and reenacted, and that said article be further amended by adding thereto two new sections, designated sections sixteen-a and twenty-five, all to read as follows:

Section 1. *Definitions.*—When used in this article, the

2 term “person” or the term “company”, herein used inter-  
3 changeably, includes any individual, firm, copartnership,  
4 joint adventure, association, corporation, trust or any  
5 other group or combination acting as a unit, and the plural  
6 as well as the singular number, unless the intention to give  
7 a more limited meaning is disclosed by the context.

8 “Tax year” or “taxable year” means either the calendar  
9 year, or the taxpayer’s fiscal year when permission is  
10 obtained from the tax commissioner to use same as the  
11 tax period in lieu of the calendar year.

12 “Sale”, “sales” or “selling” includes any transfer of the  
13 ownership of, or title to, property, whether for money or  
14 in exchange for other property.

15 “Taxpayer” means any person liable for any tax here-  
16 under.

17 “Gross income” means the gross receipts of the taxpayer  
18 received as compensation for personal services and the  
19 gross receipts of the taxpayer derived from trade, busi-  
20 ness, commerce or sales and the value proceeding or ac-  
21 cruing from the sale of tangible property (real or per-  
22 sonal), or service, or both, and all receipts by reason of  
23 the investment of the capital of the business engaged in,  
24 including rentals, royalties, fees or other emoluments  
25 however designated and without any deductions on ac-  
26 count of the cost of property sold, the cost of materials  
27 used, labor costs, taxes, royalties, interest or discount  
28 paid or any other expense whatsoever.

29 “Gross proceeds of sales” means the value, whether in  
30 money or other property, actually proceeding from the  
31 sale of tangible property without any deduction on ac-  
32 count of the cost of property sold or expenses of any kind.

33 The terms “gross income” and “gross proceeds of sales”  
34 shall not be construed to include (1) cash discounts  
35 allowed and taken on sales; (2) the proceeds of sale of  
36 goods, wares or merchandise returned by customers when  
37 the sale price is refunded either in cash or by credit;

38 (3) the amount allowed as "trade-in value" for any article  
39 accepted as part payment for any article sold; or (4) the  
40 amount of consumer or excise taxes imposed by this state.

41 "Business" shall include all activities engaged in or  
42 caused to be engaged in with the object of gain or eco-  
43 nomic benefit, either direct or indirect. "Business" shall  
44 not include a casual sale by a person who is not engaged  
45 in the business of selling the type of property involved in  
46 such casual sale. "Business" shall include the production  
47 of natural resources or manufactured products which are  
48 used or consumed by the producer or manufacturer.

49 "Service business or calling" shall include all non-  
50 professional activities engaged in for other persons for a  
51 consideration, which involve the rendering of a service as  
52 distinguished from the sale of tangible property, but shall  
53 not include the services rendered by an employee to his  
54 employer. This term shall include persons engaged in  
55 manufacturing, compounding or preparing for sale, profit,  
56 or commercial use, articles, substances, or commodities  
57 which are owned by another or others, as well as persons  
58 engaged as independent contractors in producing natural

59 resource products for persons required to pay the tax  
60 imposed by section two-a of this article.

61 “Selling at wholesale” or “wholesale sales” shall mean  
62 and include: (1) sales of any tangible personal property  
63 for the purpose of resale in the form of tangible personal  
64 property; (2) sales of machinery, supplies or materials  
65 which are to be directly consumed or used by the pur-  
66 chaser in the conduct of any business or activity which is  
67 subject to the tax imposed by this article or by article  
68 twelve-a of this chapter; (3) sales of any tangible personal  
69 property to the United States of America, its agencies and  
70 instrumentalities or to the state of West Virginia, its in-  
71 stitutions or political subdivisions.

72 “Contracting” shall include the furnishing of work, or  
73 both materials and work, in the fulfillment of a contract  
74 for the construction, alteration, repair, decoration or im-  
75 provement of a new or existing building or structure, or  
76 any part thereof, or for the alteration, improvement or  
77 development of real property.

Sec. 2-a. *Production of Coal and Other Natural Re-*  
2 *source Products.*--Upon every person engaging or con-

3 tinuing within this state in the business of producing for  
4 sale, profit or commercial use any natural resource prod-  
5 ucts, the amount of such tax to be equal to the value of  
6 the articles produced as shown by the gross proceeds de-  
7 rived from the sale thereof by the producer, except as  
8 otherwise provided, multiples by the respective rates as  
9 follows: Coal, one and thirty-five one-hundredths per  
10 cent; limestone or sandstone, quarried or mined, two per  
11 cent; oil, three and ninety-five one-hundredths per cent;  
12 natural gas, in excess of the value of five thousand dollars,  
13 seven and eighty-five one-hundredths per cent; blast  
14 furnace slag, three and ninety-five one-hundredths per  
15 cent; sand, gravel, or other mineral product not quarried  
16 or mined, three and ninety-five one-hundredths per cent;  
17 timber, two per cent; other natural resource products, two  
18 and six-tenths per cent. The measure of this tax is the  
19 value of the entire production in this state, regardless of  
20 the place of sale or the fact that the delivery may be made  
21 to points outside the state.

Sec. 2-b. *Manufactured, Compounded or Prepared Prod-*  
2 *ucts; Processing of Poultry and Turkeys Not Considered as*

3 *Manufacturing or Compounding.*—Upon every person  
4 engaging or continuing within this state in the business of  
5 manufacturing, compounding or preparing for sale, profit,  
6 or commercial use, either directly or through the activity  
7 of others in whole or part, any article or articles, sub-  
8 stance or substances, commodity or commodities, or elec-  
9 tric power not produced by public utilities taxable under  
10 other provisions of this article, the amount of the tax to be  
11 equal to the value of the article, substance, commodity or  
12 electric power manufacturer, compounded or prepared for  
13 sale, as shown by the gross proceeds derived from the sale  
14 thereof by the manufacturer or person compounding or  
15 preparing the same, except as otherwise provided, multi-  
16 plied by a rate of four-tenths of one per cent. The meas-  
17 ure of this tax is the value of the entire product manufac-  
18 tured, compounded or prepared in this state for sale,  
19 profit or commercial use, regardless of the place of sale  
20 or the fact that deliveries may be made to points outside  
21 the state. However, the dressing and processing of poul-  
22 try and turkeys by a person, firm or corporation, which  
23 poultry and turkeys are to be sold on a wholesale basis



24 by such persons, firm or corporation shall not be con-  
25 sidered as manufacturing or compounding but the sale of  
26 these products on a wholesale basis shall be subject to  
27 the same tax as is imposed on the business of selling at  
28 wholesale as provided in section two-c.

29 It is further provided, however, that in those instances  
30 in which the same person partially manufactures products  
31 within this state and partially manufactures such products  
32 outside of this state the measure of his tax under this  
33 section shall be that proportion of the sale price of the  
34 manufactured product that the payroll cost of manufac-  
35 turing within this state bears to the entire payroll cost  
36 of manufacturing the product; or, at the option of the  
37 taxpayer, the measure of his tax under this section shall  
38 be the proportion of the sales value of the articles that the  
39 cost of operation in West Virginia bears to the full cost  
40 of manufacture of the articles.

*Sec. 2-c. Business of Selling Tangible Property; Sales*

2 *Exempt.*—Upon every person engaging or continuing  
3 within this state in the business of selling any tangible  
4 property whatsoever, real or personal, including the sale

5 of food, and the services incident to the sale of food in  
6 hotels, restaurants, cafeterias, confectioneries, and other  
7 public eating houses, except sales by any person engaging  
8 or continuing in the business of horticulture, agriculture  
9 or grazing, or of selling stocks, bonds or other evidences  
10 of indebtedness, there is likewise hereby levied, and shall  
11 be collected, a tax equivalent to one-half of one per cent  
12 of the gross income of the business, except that in the  
13 business of selling at wholesale the tax shall be equal to  
14 twenty-five one-hundredths of one per cent of the gross  
15 income of the business.

Sec. 2-d. *Public Service or Utility Business.*—Upon any  
2 person engaging or continuing within this state in any  
3 public service or utility business, except railroad, railroad  
4 car, express, pipe line, telephone and telegraph companies,  
5 water carriers by steamboat or steamship and motor car-  
6 riers, there is likewise hereby levied and shall be col-  
7 lected taxes on account of the business engaged in equal  
8 to the gross income of the business multiplied by the re-  
9 spective rates as follows: street and interurban and elec-  
10 tric railways, one and three-tenths per cent; water com-

11 panies, four per cent except as to income received by  
12 municipally owned water plants; electric light and power  
13 companies, five and two-tenths per cent on sales and de-  
14 mand charges for domestic purposes and commercial  
15 lighting and three and nine-tenths per cent on sales and  
16 demand charges for all other purposes, except as to in-  
17 come received by municipally owned plants producing  
18 or purchasing electricity and distributing same; natural  
19 gas companies, three and nine-tenths per cent on the  
20 gross income, said gross income for this purpose to be  
21 determined by deducting from gross income from all sales  
22 of gas to consumers the amount of the tax paid by the tax-  
23 payer under section two-a of this article on the produc-  
24 tion of the same gas; toll bridge companies, three and  
25 nine-tenths per cent; and upon all other public service  
26 or utility business, two and six-tenths per cent. The  
27 measure of this tax shall not include gross income derived  
28 from commerce between this state and other states of  
29 the United States or between this state and foreign coun-  
30 tries. The measure of the tax under this section shall  
31 include only gross income received from the supplying

32 of public services. The gross income of the taxpayer  
33 from any other activity shall be included in the measure  
34 of the tax imposed upon the appropriate section or sec-  
35 tions of this article.

Sec. 2-e. *Business of Contracting.*—Upon every person  
2 engaging or continuing within this state in the business  
3 of contracting; the tax shall be equal to two and six-tenths  
4 per cent of the gross income of the business.

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

Sec. 2-h. *Service Business or Calling Not Otherwise*  
2 *Specifically Taxed.*—Upon every person engaging or con-  
3 tinuing within this state in any service business or calling  
4 not otherwise specifically taxed under this law, there is  
5 likewise hereby levied and shall be collected a tax equal

6 to one and five one-hundredths per cent of the gross in-  
7 come of any such business.

Sec. 2-i. *Business of Furnishing Property for Hire.*—

2 Upon every person engaging or continuing within this  
3 state in the business of furnishing any real or tangible  
4 personal property, which has a tax situs in this state, or  
5 any interest therein for hire, loan, lease or otherwise,  
6 whether the return be in the form of rentals, royalties,  
7 fees or otherwise, the tax shall be one and five one-hun-  
8 dredths per cent of the gross income of any such activity.

9 The term “tangible personal property”, as used herein,  
10 shall not include money or public securities.

Sec. 2-j. *Small Loan and Industrial Loan Businesses.*—

2 Upon every person engaging or continuing within this  
3 state in the business of making loans of money, credit  
4 goods, or things in action, who because of such activity is  
5 required under the provisions of article seven-a, chapter  
6 forty-seven, of the code of West Virginia, one thousand  
7 nine hundred thirty-one, as amended, to obtain a license  
8 from the commissioner of banking of the state of West  
9 Virginia, and upon each and every industrial loan com-

10 pany, the tax shall be one and five one-hundredths per  
11 cent of the gross income of any activity, notwithstanding  
12 any other provisions of this article.

Sec. 3-a. *Repeal of Section Three-a, Article Thirteen,  
2 Chapter Eleven of Code.*—Section three-a, article thirteen,  
3 chapter eleven of the code of West Virginia, one thousand  
4 nine hundred thirty-one, as amended, is hereby repealed.

Sec. 3-b. *Definitions; Reduction Allowed in Tax Due;  
2 How Computed.*—When used in this section the phrase  
3 “normal tax” shall mean the tax computed by the appli-  
4 cation of rates against values or gross income as set forth  
5 in sections two-a to two-j inclusive, of this article, less  
6 exemption at the rate of fifty dollars annually or at the  
7 rate of four dollars and sixteen cents per month for the  
8 period actually engaged in business.

9 The normal tax shall be computed by the application of  
10 rates against values or gross income as set forth in sec-  
11 tions two-a to two-j inclusive, of this article.

Sec. 16-a. *Prerequisite to Final Settlement with Non-  
2 Residence Contractor; User Personally Liable.*—Any per-  
3 son, firm or corporation contracting with a non-resident

4 person, firm or corporation engaged in a business or serv-  
5 ices taxed under this article shall withhold payment in suf-  
6 ficient amount to cover taxes assessed by this article in the  
7 final settlement of such contracts until the receipt of a  
8 certificate from the tax commissioner to the effect that  
9 all taxes levied and accrued under this article against the  
10 contractor have been paid.

11 If any person, firm or corporation shall fail to withhold  
12 as provided herein he shall be personally liable for the  
13 payment of all such taxes, and the same shall be recover-  
14 able by the tax commissioner by appropriate legal pro-  
15 ceedings.

Sec. 25. *Cities, Towns or Villages Restricted from Im-*  
2 *posing Additional Tax.*—Notwithstanding the provisions  
3 of section thirteen-b, article four, chapter eight, and the  
4 provisions of article five, chapter eight-a of this code, no  
5 city, town, or village shall impose a business and occupa-  
6 tion tax or privilege tax upon occupations or privileges  
7 taxed under sections two-a, two-b, two-c, two-d, two-e,  
8 two-g, two-h, two-i, and two-j of this article, in excess of

9 rates in effect under this article on January one, one thou-  
10 sand nine hundred fifty-nine.



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

*W. J. Jasper Jr*  
Chairman Senate Committee

*Eudora Andrews*  
Chairman House Committee

Originated in the Senate.

Takes effect *July 1, 1959* ~~passage.~~

*Howard H. Hays*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Ralph J. Bean*  
President of the Senate

*H. R. Pauley*  
Speaker House of Delegates

The within *approved* this the *20th*  
day of *March*, 1959.

*John H. Underwood*  
Governor

