WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 157

(By Mr. )

PASSED March 14, 1959

In Effect January 1, 1959

Filed in Office of the Secretary of State of West Virginia
MAR 20 1959
JOE F. BURDETT
SECRETARY OF STATE
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as amended, be repealed, that sections one, two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i, two-j and three-b, of said article, be amended and reenacted, and that said article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 term "person" or the term "company", herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the tax commissioner to use same as the tax period in lieu of the calendar year.

"Sale", "sales" or "selling" includes any transfer of the ownership of, or title to, property, whether for money or in exchange for other property.

"Taxpayer" means any person liable for any tax hereunder.
“Gross income” means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.

“Gross proceeds of sales” means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

The terms “gross income” and “gross proceeds of sales” shall not be construed to include (1) cash discounts allowed and taken on sales; (2) the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit;
(3) the amount allowed as "trade-in value" for any article accepted as part payment for any article sold; or (4) the amount of consumer or excise taxes imposed by this state. "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. "Business" shall include the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer. "Service business or calling" shall include all non-professional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible property, but shall not include the services rendered by an employee to his employer. This term shall include persons engaged in manufacturing, compounding or preparing for sale, profit, or commercial use, articles, substances, or commodities which are owned by another or others, as well as persons engaged as independent contractors in producing natural
59 resource products for persons required to pay the tax
imposed by section two-a of this article.

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

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

Sec. 2-a. Production of Coal and Other Natural Re-
source Products.—Upon every person engaging or con-
 continues within this state in the business of producing for
sale, profit or commercial use any natural resource prod-
ucts, the amount of such tax to be equal to the value of
the articles produced as shown by the gross proceeds de-
erved from the sale thereof by the producer, except as
otherwise provided, multiples by the respective rates as
follows: Coal, one and thirty-five one-hundredths per
cent; limestone or sandstone, quarried or mined, two per
cent; oil, three and ninety-five one-hundredths per cent;
natural gas, in excess of the value of five thousand dollars,
seven and eighty-five one-hundredths per cent; blast
furnace slag, three and ninety-five one-hundredths per
cent; sand, gravel, or other mineral product not quarried
or mined, three and ninety-five one-hundredths per cent;
timber, two per cent; other natural resource products, two
and six-tenths per cent. The measure of this tax is the
value of the entire production in this state, regardless of
the place of sale or the fact that the delivery may be made
to points outside the state.

Sec. 2-b. Manufactured, Compounded or Prepared Prod-
ucts; Processing of Poultry and Turkeys Not Considered as
Manufacturing or Compounding.—Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or electric power not produced by public utilities taxable under other provisions of this article, the amount of the tax to be equal to the value of the article, substance, commodity or electric power manufacturer, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of four-tenths of one per cent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state. However, the dressing and processing of poultry and turkeys by a person, firm or corporation, which poultry and turkeys are to be sold on a wholesale basis
by such persons, firm or corporation shall not be con-
sidered as manufacturing or compounding but the sale of
these products on a wholesale basis shall be subject to
the same tax as is imposed on the business of selling at
wholesale as provided in section two-c.

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

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

Exempt.—Upon every person engaging or continuing
within this state in the business of selling any tangible
property whatsoever, real or personal, including the sale
of food, and the services incident to the sale of food in
hotels, restaurants, cafeterias, confectioneries, and other
public eating houses, except sales by any person engaging
or continuing in the business of horticulture, agriculture
or grazing, or of selling stocks, bonds or other evidences
of indebtedness, there is likewise hereby levied, and shall
be collected, a tax equivalent to one-half of one per cent
of the gross income of the business, except that in the
business of selling at wholesale the tax shall be equal to
twenty-five one-hundredths of one per cent of the gross
income of the business.

Sec. 2-d. Public Service or Utility Business.—Upon any
person engaging or continuing within this state in any
public service or utility business, except railroad, railroad
car, express, pipe line, telephone and telegraph companies,
water carriers by steamboat or steamship and motor car-
riers, there is likewise hereby levied and shall be col-
lected taxes on account of the business engaged in equal
to the gross income of the business multiplied by the re-
spective rates as follows: street and interurban and elec-
tric railways, one and three-tenths per cent; water com-
panies, four per cent except as to income received by municipally owned water plants; electric light and power companies, five and two-tenths per cent on sales and demand charges for domestic purposes and commercial lighting and three and nine-tenths per cent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same; natural gas companies, three and nine-tenths per cent on the gross income, said gross income for this purpose to be determined by deducting from gross income from all sales of gas to consumers the amount of the tax paid by the taxpayer under section two-a of this article on the production of the same gas; toll bridge companies, three and nine-tenths per cent; and upon all other public service or utility business, two and six-tenths per cent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying
of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

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

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

Sec. 2-h. Service Business or Calling Not Otherwise Specifically Taxed.—Upon every person engaging or continuing within this state in any service business or calling not otherwise specifically taxed under this law, there is likewise hereby levied and shall be collected a tax equal
to one and five one-hundredths per cent of the gross income of any such business.

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

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

9 The term “tangible personal property”, as used herein, 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 state in the business of making loans of money, credit goods, or things in action, who because of such activity is required under the provisions of article seven-a, chapter forty-seven, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to obtain a license from the commissioner of banking of the state of West Virginia, and upon each and every industrial loan com-
pany, the tax shall be one and five one-hundredths per cent of the gross income of any activity, notwithstanding any other provisions of this article.

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

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

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

Sec. 16-a. *Prerequisite to Final Settlement with Non-Residence Contractor; User Personally Liable.*—Any person, firm or corporation contracting with a non-resident
person, firm or corporation engaged in a business or service taxed under this article shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the tax commissioner to the effect that all taxes levied and accrued under this article against the contractor have been paid.

If any person, firm or corporation shall fail to withhold as provided herein he shall be personally liable for the payment of all such taxes, and the same shall be recoverable by the tax commissioner by appropriate legal proceedings.

Sec. 25. Cities, Towns or Villages Restricted from Imposing Additional Tax.—Notwithstanding the provisions of section thirteen-b, article four, chapter eight, and the provisions of article five, chapter eight-a of this code, no city, town, or village shall impose a business and occupation tax or privilege tax upon occupations or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, 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.

威瑟斯庞
Chairman Senate Committee

尤多拉·安德鲁斯
Chairman House Committee

Originated in the Senate.

Takes effect 随众 1, 1959 — passage

海默森·赫塞
Clerk of the Senate

C. A. 莱因德斯
Clerk of the House of Delegates

拉尔夫·贝恩
President of the Senate

J. R. 巴克利
Speaker House of Delegates

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

[Signature]
Governor