WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 414

(By Mr. Hylton and Mr. Bowshy)

PASSED March 9, 1967

In Effect April 1, 1967

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-17-67
AN ACT to amend and reenact sections one and two-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax and the various rates thereof.

Be it enacted by the Legislature of West Virginia:

That sections one and two-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

When used in this article, the term “person” or the term “company”, herein used interchangeably, includes any in-
dividual, firm, copartnership, joint adventure, association,
corporation, trust, or any other group or combination act-
ing as a unit, and the plural as well as the singular num-
ber, 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 ob-
tained 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 here-
der.
"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 per-
sonal), 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 dedications 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) excise taxes imposed by this state; or (5) money or other property received or held by the taxpayer for the use and benefit of another person.

“Business” shall include all activities engaged in or caused to be engaged in with the object of gain or eco-
monic 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 activities engaged in by a person 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 resource products for persons required to pay the tax imposed by section two-a of this article.

"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 purchaser 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 institutions or political subdivisions.

“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 improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

§11-13-2b. Manufacturing, compounding or preparing products; processing of poultry and turkeys excepted.

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, com-
modity 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 man-
ufactured, 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 eight tenths of one per cent. The measure of this tax is
the value of the entire product manufactured, compound-
ed or prepared in this state for sale, profit or commercial
use, regardless of the place of sale or the fact that de-
liveries may be made to points outside the state. How-
ever, the dressing and processing of poultry and turkeys
by a person, firm or corporation, which poultry and tur-
keys are to be sold on a wholesale basis by such person,
firm or corporation shall not be considered as manufac-
turing 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 pro-
vided 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 manufacturing 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 operations in West Virginia bears to the full cost of manufacture of the articles.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1967.

Howard McGeary
Clerk of the Senate

A.B. Blankenship
Clerk of the House of Delegates

Howard B. Carson
President of the Senate

A.H. Ladd, Jr., Speaker House of Delegates

The within approved this the 17th day of March, 1967.

Helen C. Smith
Governor
PRESENTED TO THE GOVERNOR

Date  3/17/67
Time  9:30 a.m.