

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

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ENROLLED

SENATE BILL NO. 414

(By Mr. Hylton and Mr Bowling)

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PASSED March 9, ..... 1967

In Effect April 1, 1967 ~~Passage~~



FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-17-67

414 #

**ENROLLED**

**Senate Bill No. 414**

(By Mr. Hylton and Mr. Bowling)

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[Passed March 8, 1967; in effect April 1, 1967.]

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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  
2 "company", herein used interchangeably, includes any in-

3 individual, firm, copartnership, joint adventure, association,  
4 corporation, trust, or any other group or combination act-  
5 ing as a unit, and the plural as well as the singular num-  
6 ber, unless the intention to give a more limited meaning  
7 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 ob-  
10 tained from the tax commissioner to use same as the tax  
11 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,  
20 business, commerce or sales and the value proceeding or  
21 accruing 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 paid  
28 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 al-  
35 lowed 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; (3)  
38 the amount allowed as "trade-in value" for any article  
39 accepted as part payment for any article sold; or (4) ex-  
40 cise taxes imposed by this state; or (5) money or other  
41 property received or held by the taxpayer for the use  
42 and benefit of another person.

43 "Business" shall include all activities engaged in or  
44 caused to be engaged in with the object of gain or eco-

45 nomic benefit, either direct or indirect. "Business" shall  
46 not include a casual sale by a person who is not engaged in  
47 the business of selling the type of property involved in  
48 such casual sale. "Business" shall include the production  
49 of natural resources or manufactured products which are  
50 used or consumed by the producer or manufacturer.

51 "Service business or calling" shall include all activities  
52 engaged in by a person for other persons for a considera-  
53 tion, which involve the rendering of a service as dis-  
54 tinguished from the sale of tangible property, but shall  
55 not include the services rendered by an employee to his  
56 employer. This term shall include persons engaged in  
57 manufacturing, compounding or preparing for sale, profit,  
58 or commercial use, articles, substances, or commodities  
59 which are owned by another or others, as well as persons  
60 engaged as independent contractors in producing natural  
61 resource products for persons required to pay the tax  
62 imposed by section two-a of this article.

63 "Selling at wholesale" or "wholesale sales" shall mean  
64 and include: (1) Sales of any tangible personal property  
65 for the purpose of resale in the form of tangible personal

66 property; (2) sales of machinery, supplies or materials  
67 which are to be directly consumed or used by the pur-  
68 chaser in the conduct of any business or activity which  
69 is subject to the tax imposed by this article or by article  
70 twelve-a of this chapter; (3) sales of any tangible per-  
71 sonal property to the United States of America, its agen-  
72 cies and instrumentalities or to the state of West Virginia,  
73 its institutions or political subdivisions.

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

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

80 Upon every person engaging or continuing within this  
81 state in the business of manufacturing, compounding or  
82 preparing for sale, profit, or commercial use, either di-  
83 rectly or through the activity of others in whole or part,  
84 any article or articles, substance or substances, com-

6 modity or commodities, or electric power not produced  
7 by public utilities taxable under other provisions of this  
8 article, the amount of the tax to be equal to the value of  
9 the article, substance, commodity or electric power man-  
10 ufactured, compounded or prepared for sale, as shown by  
11 the gross proceeds derived from the sale thereof by the  
12 manufacturer or person compounding or preparing the  
13 same, except as otherwise provided, multiplied by a rate  
14 of eight tenths of one per cent. The measure of this tax is  
15 the value of the entire product manufactured, compound-  
16 ed or prepared in this state for sale, profit or commercial  
17 use, regardless of the place of sale or the fact that de-  
18 liveries may be made to points outside the state. How-  
19 ever, the dressing and processing of poultry and turkeys  
20 by a person, firm or corporation, which poultry and tur-  
21 keys are to be sold on a wholesale basis by such person,  
22 firm or corporation shall not be considered as manufac-  
23 turing or compounding, but the sale of these products on  
24 a wholesale basis shall be subject to the same tax as is  
25 imposed on the business of selling at wholesale as pro-  
26 vided in section two-c.

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



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

William Tompos  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1967.

Howard Meyers  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

Howard W. Carson  
President of the Senate

H. Raban W. Siste  
Speaker House of Delegates

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

Huett C. Smith  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/17/67

Time 9:30 am