WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
Committee Substitute
HOUSE BILL No. 687

(By Mr. Speaker, Mr. McManus
and Mr. Seibert)

PASSED [March 10] 1972

In Effect [July 1, 1972]

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, II
SECRETARY OF STATE
THIS DATE 3-29-72
ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 687
(By Mr. Speaker, Mr. McManus, and Mr. Seibert)

(Originating in the House Committee on Finance)

[Passed March 10, 1972; in effect July 1, 1972.]

AN ACT to amend and reenact sections one and three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, removing credit unions from the definition of the term “banking business” or “financial organization,” and providing an exemption therefor.

Be it enacted by the Legislature of West Virginia:

That sections one and three, 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.

1 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 sin-
gular 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, other than a banking or financial business, 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, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever. "Gross income" of a banking or financial business is specified in section two-k of this article.

"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;
(4) excise taxes imposed by this state; or (5) money or
other property received or held by a professional person
for the sole use and benefit of a client or another person
or money received by the taxpayer on behalf of a bank
or other financial institution for the repayment of a debt
of another.

"Business" shall include all activities engaged in or
carried on as a business, 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 in-
volved in such casual sale. "Business" shall include the
production of natural resources or manufactured products
which are used or consumed by the producer or manu-
facturer and shall include the activities of a banking
business or financial organization.

The term "banking business" or "financial organiza-
tion" shall mean any bank, banking association, trust
company, industrial loan company, small loan company
or licensee, building and loan association, savings and
loan association, finance company, investment company,
investment broker or dealer, and any other similar busi-
ness organization at least ninety per centum of the assets
of which consists of intangible personal property and at
least ninety per centum of the gross receipts of which
consists of dividends, interest and other charges derived
from the use of money or credit.

"Service business or calling" shall include all activities
engaged in by a person for other persons for a considera-
tion, which involve the rendering of a service as dis-
tinguished from the sale of tangible property, but shall
not include the services rendered by an employee to his
employer. This term shall include, but not be limited to:
(a) Persons engaged in manufacturing, compounding
or preparing for sale, profit or commercial use, articles,
substances or commodities which are owned by another
or others;
(b) Persons engaged as independent contractors in producing natural resource products which are owned by another or others, as personal property, immediately after the same are severed, extracted, reduced to possession and produced;

(c) The repetitive carrying of accounts, in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or service, except as to persons taxed pursuant to the provisions of section two-k 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; and (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.


There shall be an exemption in every case of fifty dollars in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to fifty dollars that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

The provisions of the article shall not apply to: (a) Insurance companies which pay the state of West Virginia a tax upon premiums: Provided, That said exemption
shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this state, whether such income be in the form of rentals or royalties; (b) non-profit cemetery companies organized and operated for the exclusive benefit of their members; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: Provided, however, That said exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) production credit association, organized under the provisions of the federal “Farm Credit Act of 1933”; (f) any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: Provided, further, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

In effect July 1, 1972.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within  approved this the 27th day of March, 1972.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/20/72
Time 10:17 a.m.

MAR 29 9 23 AM '72

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA