

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972



ENROLLED

*Committee Substitute  
for*

HOUSE BILL No. 687

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



PASSED March 10 1972

In Effect July 1, 1972 Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 3-29-72

687

**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  
2 term "company," herein used interchangeably, includes  
3 any individual, firm, copartnership, joint adventure, associ-  
4 ation, corporation, trust or any other group or combina-  
5 tion acting as a unit, and the plural as well as the sin-

6 gular number, unless the intention to give a more limited  
7 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  
14 or 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 tax-  
18 payer, other than a banking or financial business, re-  
19 ceived as compensation for personal services and the  
20 gross receipts of the taxpayer derived from trade, busi-  
21 ness, commerce or sales and the value proceeding or  
22 accruing from the sale of tangible property (real or per-  
23 sonal), or service, or both, and all receipts by reason of  
24 the investment of the capital of the business engaged in,  
25 including rentals, royalties, fees, reimbursed costs or  
26 expenses or other emoluments however designated and  
27 including all interest, carrying charges, fees or other like  
28 income, however denominated, derived by the taxpayer  
29 from repetitive carrying of accounts, in the regular course  
30 and conduct of his business, and extension of credit in  
31 connection with the sale of any tangible personal property  
32 or service, and without any deductions on account of the  
33 cost of property sold, the cost of materials used, labor  
34 costs, taxes, royalties paid in cash or in kind or other-  
35 wise, interest or discount paid or any other expenses  
36 whatsoever. "Gross income" of a banking or financial  
37 business is specified in section two-k of this article.

38 "Gross proceeds of sales" means the value, whether in  
39 money or other property, actually proceeding from the  
40 sale of tangible property without any deduction on ac-  
41 count of the cost of property sold or expenses of any  
42 kind.

43 The terms "gross income" and "gross proceeds of sales"  
44 shall not be construed to include (1) cash discounts al-  
45 lowed and taken on sales; (2) the proceeds of sale of  
46 goods, wares or merchandise returned by customers when

47 the sale price is refunded either in cash or by credit;  
48 (3) the amount allowed as "trade-in value" for any  
49 article accepted as part payment for any article sold;  
50 (4) excise taxes imposed by this state; or (5) money or  
51 other property received or held by a professional person  
52 for the sole use and benefit of a client or another person  
53 or money received by the taxpayer on behalf of a bank  
54 or other financial institution for the repayment of a debt  
55 of another.

56 "Business" shall include all activities engaged in or  
57 caused to be engaged in with the object of gain or eco-  
58 nomic benefit, either direct or indirect. "Business" shall  
59 not include a casual sale by a person who is not en-  
60 gaged in the business of selling the type of property in-  
61 volved in such casual sale. "Business" shall include the  
62 production of natural resources or manufactured products  
63 which are used or consumed by the producer or manu-  
64 facturer and shall include the activities of a banking  
65 business or financial organization.

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

77 "Service business or calling" shall include all activities  
78 engaged in by a person for other persons for a considera-  
79 tion, which involve the rendering of a service as dis-  
80 tinguished from the sale of tangible property, but shall  
81 not include the services rendered by an employee to his  
82 employer. This term shall include, but not be limited to:

83 (a) Persons engaged in manufacturing, compounding  
84 or preparing for sale, profit or commercial use, articles,  
85 substances or commodities which are owned by another  
86 or others;

87 (b) Persons engaged as independent contractors in  
88 producing natural resource products which are owned  
89 by another or others, as personal property, immediately  
90 after the same are severed, extracted, reduced to posses-  
91 sion and produced;

92 (c) The repetitive carrying of accounts, in the regular  
93 course and conduct of business, and extension of credit  
94 in connection with the sale of any tangible personal prop-  
95 erty or service, except as to persons taxed pursuant to  
96 the provisions of section two-k of this article.

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

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

**§11-13-3. Exemptions.**

1 There shall be an exemption in every case of fifty dol-  
2 lars in amount of tax computed under the provisions of  
3 this article. A person exercising a privilege taxable here-  
4 under for a fractional part of a tax year shall be entitled  
5 to an exemption of the sum bearing the proportion to  
6 fifty dollars that the period of time the privilege is exer-  
7 cised bears to a whole year. Only one exemption shall be  
8 allowed to any one person, whether he exercises one or  
9 more privileges taxable hereunder.

10 The provisions of the article shall not apply to: (a) In-  
11 surance companies which pay the state of West Virginia  
12 a tax upon premiums: *Provided*, That said exemption

13 shall not extend to that part of the gross income of in-  
14 surance companies which is received for the use of real  
15 property, other than property in which any such company  
16 maintains its office or offices, in this state, whether such  
17 income be in the form of rentals or royalties; (b) non-  
18 profit cemetery companies organized and operated for  
19 the exclusive benefit of their members; (c) fraternal so-  
20 cieties, organizations and associations organized and oper-  
21 ated for the exclusive benefit of their members and not  
22 for profit: *Provided, however,* That said exemption shall  
23 not extend to that part of the gross income arising from  
24 the sale of alcoholic liquor, food and related services, of  
25 such fraternal societies, organizations and associations  
26 which are licensed as private clubs under the provisions  
27 of article seven, chapter sixty of this code; (d) corpora-  
28 tions, associations and societies organized and operated  
29 exclusively for religious or charitable purposes; (e) pro-  
30 duction credit association, organized under the provisions  
31 of the federal "Farm Credit Act of 1933"; (f) any credit  
32 union organized under the provisions of chapter thirty-  
33 one, or any other chapter of this code: *Provided, further,*  
34 that the exemptions of this section shall not apply to  
35 corporations or cooperative associations organized under  
36 the provisions of article four, chapter nineteen of this  
37 code.

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

Russell A. Ball  
Chairman Senate Committee

Stephen J. Rutledge  
Chairman House Committee

Originated in the House.

In effect July 1, 1972.

Howard Wilson  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

E. H. McCurt  
President of the Senate

Louis A. McMane  
Speaker House of Delegates

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

Richard S. Shafer, Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

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

MAR 29 9 28 AM '72  
OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA