WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

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ENROLLED
Committee For Substitute
SENATE BILL NO. 285

(By Mr. McGraw, original sponsor)

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PASSED March 8, 1975

In Effect July 1, 1975
AN ACT to amend and reenact sections two, two-k, three-b and twenty-five, 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 by adding thereto a new section, designated section two-l, all relating to business and occupation or privilege taxes; relating to the imposition, levying and collection of such taxes; relating to determination of value of products or part thereof shipped out of state; relating to the determination of value and gross income generally; relating to interrelationship between various sections of said article thirteen; relating to the business and occupation or privilege tax on banking and other financial business and gross income for such purpose; imposing an additional tax upon the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any coal, the amount of such tax to be equal to the value of the coal produced as shown by the gross proceeds derived from the sale thereof by the producer multiplied by thirty-five one hundredths of one percent; providing that such additional tax is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution; providing for seventy-five percent of the net proceeds of such additional tax to be distributed to the various counties in which the coal upon which such additional
tax is imposed was located at the time it was severed from the ground, such counties being hereinafter referred to as the "coal producing counties"; providing that the remaining twenty-five percent of the net proceeds of such additional tax shall be deposited in the "county and municipal fund" to be created by an act of the Legislature and thereafter distributed as provided in such act; providing that such additional tax shall be due and payable, reported and remitted as elsewhere provided in said article thirteen; providing that the enforcement and other provisions of said article thirteen shall apply to such additional tax; authorizing the state tax commissioner to promulgate reasonable rules and regulations requiring the furnishing of additional information or as otherwise necessary to implement the provisions of said section two-1; creating a special fund in the state treasurer's office to be known as the "county coal revenue fund"; providing for seventy-five percent of the net proceeds of such additional tax to be deposited in such county coal revenue fund; providing for the distribution of the moneys in such county coal revenue fund to the coal producing counties; specifying that the amount of money to be distributed to a coal producing county shall be determined by applying the percentage to which such coal producing county is entitled to the total amount of moneys in the county coal revenue fund then available for distribution to all coal producing counties; specifying a formula for the ascertainment of the percentage to which a coal producing county is entitled; relating to the method of payment of the sum due to a coal producing county; relating to the deposit and expenditure of moneys so received by a coal producing county; authorizing the state tax commissioner to retain each year thirty-five thousand dollars of the additional amount collected as a fee for the administration of such additional tax by the state tax commissioner and the distribution of the net proceeds thereof by the state treasurer; defining the term "normal tax" for the purpose of said article thirteen; and providing limitations on the business and occupation or privilege tax and the rates thereof which cities, towns and villages may impose.
Be it enacted by the Legislature of West Virginia:

That sections two, two-k, three-b and twenty-five, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article thirteen be further amended by adding thereto a new section, designated section two-l, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax.

1 There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-a to two-l, inclusive, of this article.

2 If any person liable for any tax under sections two-a, two-b or two-l shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said section, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

3 In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

4 Gross income included in the measure of the tax under
sections two-a, two-b and two-l of this article shall neither
be added nor deducted in computing the tax levied under
the other sections of this article.

A person exercising any privilege taxable under sec-
tions two-a, two-b or two-l of this article and engaging
in the business of selling his natural resources or manu-
factured products at retail in this state shall be required
to make returns of the gross proceeds of such retail sales
and pay the tax imposed in section two-c of this article
for the privilege of engaging in the business of selling
such natural resources or manufactured products at
retail in this state. But any person exercising any priv-
ilege taxable under sections two-a, two-b or two-l of
this article and engaging in the business of selling his
natural resources or manufactured products to pro-
ducers of natural resources, manufacturers, wholesalers,
jobbers, retailers or commercial consumers for use
or consumption in the purchaser's business shall not
be required to pay the tax imposed in section two-c
of this article.

Manufacturers exercising any privilege taxable under
section two-b of this article shall not be required to
pay the tax imposed in section two-c of this article for
the privilege of selling their manufactured products
for delivery outside of this state, but the gross in-
come derived from the sale of such manufactured
products outside of this state shall be included in
determining the measure of the tax imposed on such
manufacturer in section two-b.

A person exercising privileges taxable under the other
sections of this article, producing coal, oil, natural gas,
minerals, timber or other natural resource products the
production of which is taxable under sections two-a and
two-l, and using or consuming the same in his busi-
ness or transferring or delivering the same as any roy-
alty payment, in kind, or the like, shall be deemed to
be engaged in the business of mining and producing
coal, oil, natural gas, minerals, timber or other natural
resource products for sale, profit or commercial use,
and shall be required to make returns on account of
the production of the business showing the gross pro-
ceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe.

§11-13-2k. Banking and other financial business; legislative findings.

Upon every person engaging or continuing within this state in the business of banking or financial business, from and after the first day of April, one thousand nine hundred seventy-one, the tax shall be equal to one and fifteen one-hundredths percent of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property: Provided, however, that gross income shall not include (a) interest received on the obligations of the United States, its agencies and instrumentalities, (b) interest received on the obligations of this or any other state, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia, or (c) interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients: Provided, however, that all interest derived on activities exempt under (c) above, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

Persons taxed pursuant to the provisions of this section shall not be taxed under sections two-a to two-j, inclusive, or section two-l of this article.

The Legislature hereby finds and declares that it is the intent of the Legislature to subject national banking associations and other financial organizations to the tax imposed by this article, in accordance with the authorization contained in section five thousand two hundred
nineteen of the Revised Statutes of the United States as amended by Public Law 91-156 enacted the twenty-fourth day of December, one thousand nine hundred sixty-nine.

§11-13-21. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of all counties and municipalities; distribution of major portion of such additional tax to coal producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports and rules and regulations; creation of special fund in office of state treasurer; method and formula for distribution of additional tax to coal producing counties; expenditure of funds by coal producing counties for public purposes; retention of fixed amount for cost of administration.

(a) Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any coal, the amount of such tax to be equal to the value of the coal produced as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent, and the tax imposed by section two of this article in conjunction with this subsection (a) shall be in addition to the tax imposed by said section two in conjunction with section two-a of this article, and the tax imposed by section two of this article in conjunction with this subsection (a) is hereinafter in this section referred to as “such additional tax.” The measure of such additional 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.

(b) Such additional tax is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution for the benefit of and use by the various counties and municipalities in this state. Seventy-five percent of the net proceeds of such additional tax shall, after appropriation thereof by the Legislature,
be distributed by the state treasurer to the various coun-
ties in this state in which the coal upon which such addi-
tional tax is imposed was located at the time it was
severed from the ground, such counties being herein-
after in this section referred to as the "coal producing
counties," and the remaining twenty-five percent of
the net proceeds of such additional tax shall be de-
posited in the "county and municipal fund" to be
created by the enactment of legislation to amend
chapter eight of this code by adding thereto a new
article, designated article twenty-three-a, for dis-
tribution, after appropriation thereof by the Leg-
islature, as to be provided by said article twenty-
three-a.

(c) Such additional tax shall be due and payable,
reported and remitted as elsewhere provided in this
article for the tax imposed by said section two in con-
junction with said section two-a of this article and
all of the enforcement and other provisions of this
article shall apply to such additional tax. In addition
to the reports and other information required under
the provisions of this article and the tonnage reports
required to be filed under the provisions of section
seventy-two, article two, chapter twenty-two of this
code, the state tax commissioner is hereby granted
plenary power and authority to promulgate reasonable
rules and regulations requiring the furnishing by
producers of such additional information as may be
necessary to compute the allocation required under
the provisions of subsection (f) of this section. The
state tax commissioner is also hereby granted plenary
power and authority to promulgate such other rea-
sonable rules and regulations as may be necessary to
implement the provisions of this section.

(d) In order to provide a procedure for the distri-
bution of seventy-five percent of the net proceeds of
such additional tax to such coal producing counties,
there is hereby created in the state treasurer's office a
special fund to be known as the "county coal revenue
fund," hereinafter referred to as "such fund." Seventy-
five percent of the net proceeds of such additional tax shall
be deposited in such fund from time to time as such proceeds are received by the state tax commissioner. The moneys in such fund shall, after appropriation thereof by the Legislature, be distributed to such coal producing counties in the manner set forth in subsection (e) of this section.

(e) The moneys in such fund shall be allocated among and distributed quarterly to the coal producing counties by the state treasurer in the manner hereinafter in this subsection specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in such fund which will be available for distribution to such coal producing counties on that distribution date. The amount of money to be distributed to a coal producing county shall be determined by applying the percentage to which such coal producing county is entitled to the total amount of moneys in such fund then available for distribution to all coal producing counties. The percentage to which a coal producing county is entitled shall be determined in accordance with subsection (f) of this section.

(f) The percentage to which a coal producing county is entitled shall be determined by (i) dividing the total amount of moneys in such fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter, and (ii) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter. After determining the percentage to which a coal producing county is entitled as aforesaid, a warrant of the state auditor for the sum due to such coal producing county shall be obtained and a check drawn thereon making payment of such sum shall thereafter be distributed to such coal producing county.

(g) The moneys distributed to a coal producing county under the provisions of this section shall be deposited in the general revenue fund of such coal producing county and thereafter expended by the county commission of such coal producing county for such public purposes as such county commission shall determine.
to be in the best interest of the people of such coal producing county.

(h) The state tax commissioner shall retain for the benefit of the state from the additional tax collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the state tax commissioner and the distribution of the net proceeds thereof by the state treasurer.

§11-13-3b. 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-l, 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-l, inclusive, of this article.

§11-13-25. Cities, towns or villages restricted from imposing additional tax.

Notwithstanding the provisions of section five, article thirteen, chapter eight 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 rates, in effect under this article on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of this article, or at all under section two-l of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1975.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within disappeared this the 25th day of March, 1975.

[Signature]
Governor
PRESENTED TO THE GOVERNOR

Date  3/20/75
Time  4:30 p.m.