

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975




ENROLLED
Committee Substitute
FOR
SENATE BILL NO. 285

(By Mr. McGraw, original sponsor)



PASSED March 8, 1975

In Effect July 1, 1975 



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 285
(MR. MCGRAW, *original sponsor*)

[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
2 privilege taxes against the persons, on account of the
3 business and other activities, and in the amounts to be
4 determined by the application of rates against values
5 or gross income as set forth in sections two-a to two-l,
6 inclusive, of this article.

7 If any person liable for any tax under sections two-a,
8 two-b or two-l shall ship or transport his products or
9 any part thereof out of the state without making sale
10 of such products, the value of the products in the con-
11 dition or form in which they exist immediately before
12 transportation out of the state shall be the basis for
13 the assessment of the tax imposed in said section, ex-
14 cept in those instances in which another measure of the
15 tax is expressly provided. The tax commissioner shall
16 prescribe equitable and uniform rules for ascertaining
17 such value.

18 In determining value, however, as regards sales from
19 one to another of affiliated companies or persons, or
20 under other circumstances where the relation between
21 the buyer and seller is such that the gross proceeds from
22 the sale are not indicative of the true value of the sub-
23 ject matter of the sale, the tax commissioner shall pre-
24 scribe uniform and equitable rules for determining the
25 value upon which such privilege tax shall be levied,
26 corresponding as nearly as possible to the gross pro-
27 ceeds from the sale of similar products of like quality
28 or character where no common interest exists between
29 the buyer and seller but the circumstances and condi-
30 tions are otherwise similar.

31 Gross income included in the measure of the tax under

32 sections two-a, two-b and two-l of this article shall neither
33 be added nor deducted in computing the tax levied under
34 the other sections of this article.

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

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

61 A person exercising privileges taxable under the other
62 sections of this article, producing coal, oil, natural gas,
63 minerals, timber or other natural resource products the
64 production of which is taxable under sections two-a and
65 two-l, and using or consuming the same in his busi-
66 ness or transferring or delivering the same as any roy-
67 alty payment, in kind, or the like, shall be deemed to
68 be engaged in the business of mining and producing
69 coal, oil, natural gas, minerals, timber or other natural
70 resource products for sale, profit or commercial use,
71 and shall be required to make returns on account of
72 the production of the business showing the gross pro-

73 ceeds or equivalent in accordance with uniform and
 74 equitable rules for determining the value upon which
 75 such privilege tax shall be levied, corresponding as
 76 nearly as possible to the gross proceeds from the sale
 77 of similar products of like quality or character by other
 78 taxpayers, which rules the tax commissioner shall pre-
 79 scribe.

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

1 Upon every person engaging or continuing within this
 2 state in the business of banking or financial business,
 3 from and after the first day of April, one thousand nine
 4 hundred seventy-one, the tax shall be equal to one and
 5 fifteen one-hundredths percent of the gross income re-
 6 ceived from interest, premiums, discounts, dividends,
 7 service fees or charges, commissions, fines, rents from
 8 real or tangible personal property, however denominated,
 9 royalties, charges for bookkeeping or data processing,
 10 receipts from check sales, charges or fees, and receipts
 11 from the sale of tangible personal property: *Provided,*
 12 *however,* That gross income shall not include (a) interest
 13 received on the obligations of the United States, its
 14 agencies and instrumentalities, (b) interest received on
 15 the obligations of this or any other state, territory or
 16 possession of the United States, or any political sub-
 17 division of any of the foregoing or of the District of
 18 Columbia, or (c) interest received on investments or
 19 loans primarily secured by first mortgages or deeds of
 20 trust on residential property occupied by nontransients:
 21 *Provided, however,* That all interest derived on activities
 22 exempt under (c) above, shall be reported, as to amounts,
 23 on the return of a person taxable under the provisions of
 24 this section.

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

28 The Legislature hereby finds and declares that it is
 29 the intent of the Legislature to subject national banking
 30 associations and other financial organizations to the tax
 31 imposed by this article, in accordance with the authoriza-
 32 tion contained in section five thousand two hundred

33 nineteen of the Revised Statutes of the United States as
34 amended by Public Law 91-156 enacted the twenty-fourth
35 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.

1 (a) Upon every person exercising the privilege of
2 engaging or continuing within this state in the business
3 of severing, extracting, reducing to possession and pro-
4 ducing for sale, profit or commercial use any coal, the
5 amount of such tax to be equal to the value of the coal
6 produced as shown by the gross proceeds derived from
7 the sale thereof by the producer, multiplied by thirty-
8 five one hundredths of one percent, and the tax imposed
9 by section two of this article in conjunction with this
10 subsection (a) shall be in addition to the tax imposed
11 by said section two in conjunction with section two-a
12 of this article, and the tax imposed by section two of
13 this article in conjunction with this subsection (a) is
14 hereinafter in this section referred to as "such additional
15 tax." The measure of such additional tax is the value
16 of the entire production in this state, regardless of the
17 place of sale or the fact that the delivery may be
18 made to points outside the state.

19 (b) Such additional tax is imposed pursuant to the
20 provisions of section six-a, article ten of the West Vir-
21 ginia constitution for the benefit of and use by the various
22 counties and municipalities in this state. Seventy-five
23 percent of the net proceeds of such additional tax
24 shall, after appropriation thereof by the Legislature,

25 be distributed by the state treasurer to the various coun-
26 ties in this state in which the coal upon which such addi-
27 tional tax is imposed was located at the time it was
28 severed from the ground, such counties being herein-
29 after in this section referred to as the "coal producing
30 counties," and the remaining twenty-five percent of
31 the net proceeds of such additional tax shall be de-
32 posited in the "county and municipal fund" to be
33 created by the enactment of legislation to amend
34 chapter eight of this code by adding thereto a new
35 article, designated article twenty-three-a, for dis-
36 tribution, after appropriation thereof by the Leg-
37 islature, as to be provided by said article twenty-
38 three-a.

39 (c) Such additional tax shall be due and payable,
40 reported and remitted as elsewhere provided in this
41 article for the tax imposed by said section two in con-
42 junction with said section two-a of this article and
43 all of the enforcement and other provisions of this
44 article shall apply to such additional tax. In addition
45 to the reports and other information required under
46 the provisions of this article and the tonnage reports
47 required to be filed under the provisions of section
48 seventy-two, article two, chapter twenty-two of this
49 code, the state tax commissioner is hereby granted
50 plenary power and authority to promulgate reasonable
51 rules and regulations requiring the furnishing by
52 producers of such additional information as may be
53 necessary to compute the allocation required under
54 the provisions of subsection (f) of this section. The
55 state tax commissioner is also hereby granted plenary
56 power and authority to promulgate such other rea-
57 sonable rules and regulations as may be necessary to
58 implement the provisions of this section.

59 (d) In order to provide a procedure for the distri-
60 bution of seventy-five percent of the net proceeds of
61 such additional tax to such coal producing counties,
62 there is hereby created in the state treasurer's office a
63 special fund to be known as the "county coal revenue
64 fund," hereinafter referred to as "such fund." Seventy-
65 five percent of the net proceeds of such additional tax shall

66 be deposited in such fund from time to time as such pro-
67 ceeds are received by the state tax commissioner. The
68 moneys in such fund shall, after appropriation thereof by
69 the Legislature, be distributed to such coal producing coun-
70 ties in the manner set forth in subsection (e) of this section.

71 (e) The moneys in such fund shall be allocated among
72 and distributed quarterly to the coal producing counties
73 by the state treasurer in the manner hereinafter in
74 this subsection specified. On or before each distri-
75 bution date, the state treasurer shall determine the
76 total amount of moneys in such fund which will
77 be available for distribution to such coal producing
78 counties on that distribution date. The amount of
79 money to be distributed to a coal producing county
80 shall be determined by applying the percentage to
81 which such coal producing county is entitled to the
82 total amount of moneys in such fund then available
83 for distribution to all coal producing counties. The per-
84 centage to which a coal producing county is entitled
85 shall be determined in accordance with subsection (f)
86 of this section.

87 (f) The percentage to which a coal producing county
88 is entitled shall be determined by (i) dividing the total
89 amount of moneys in such fund then available for dis-
90 tribution by the total number of tons of coal mined
91 in this state during the preceding quarter, and (ii) mul-
92 tiplying the quotient thus obtained by the number of
93 tons of coal removed from the ground in such county
94 during the preceding quarter. After determining the
95 percentage to which a coal producing county is entitled
96 as aforesaid, a warrant of the state auditor for the
97 sum due to such coal producing county shall be ob-
98 tained and a check drawn thereon making payment
99 of such sum shall thereafter be distributed to such
100 coal producing county.

101 (g) The moneys distributed to a coal producing
102 county under the provisions of this section shall be de-
103 posited in the general revenue fund of such coal pro-
104 ducing county and thereafter expended by the county
105 commission of such coal producing county for such pub-
106 lic purposes as such county commission shall determine

107 to be in the best interest of the people of such coal pro-
108 ducing county.

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

**§11-13-3b. Definitions; reduction allowed in tax due; how
computed.**

1 When used in this section, the phrase "normal tax"
2 shall mean the tax computed by the application of rates
3 against values or gross income as set forth in sections
4 two-a to two-l, inclusive, of this article, less exemption
5 at the rate of fifty dollars annually or at the rate of
6 four dollars and sixteen cents per month for the period
7 actually engaged in business.

8 The normal tax shall be computed by the application
9 of rates against values or gross income as set forth in
10 sections two-a to two-l, inclusive, of this article.

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

1 Notwithstanding the provisions of section five, article
2 thirteen, chapter eight of this code, no city, town or
3 village shall impose a business and occupation tax or
4 privilege tax upon occupations or privileges taxed under
5 sections two-a, two-b, two-c, two-d, two-e, two-g, two-h,
6 two-i and two-j of this article, in excess of rates, in
7 effect under this article on January one, one thousand
8 nine hundred fifty-nine, or in excess of one percent
9 of gross income under section two-k of this article, or
10 at all under section two-l of this article.

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

James L. Davis
Chairman Senate Committee

Laurence C. Chuston Jr
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1975.

Joe Dillan Jr
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. B. Trotter
President of the Senate

Levin H. McManis
Speaker House of Delegates

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

Anna P. Prange
Governor



PRESENTED TO THE
GOVERNOR

Date 3/20/75

Time 4:30 P.M.