

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978

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ENROLLED

Committee Substitute for
SENATE BILL NO. 163

(By Mr. *Clatus*)

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PASSED *March 11* 1978

In Effect *April 1, 1978* ~~Passage~~



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 163
(By MR. OATES)

[Passed March 11, 1978; in effect April 1, 1978.]

AN ACT to amend and reenact sections two, two-b, two-d, 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; to further amend said article thirteen by adding thereto a new section, designated section two-m; and to amend and reenact section two, article thirteen-c of said chapter eleven, all relating to business and occupation taxes; imposition of privilege taxes on privileges of generating or producing electric power and on supplying of public service by electric light and power companies; establishing rates and measures of such taxes; establishing rate of tax on electric light and power companies which supply public service but which do not produce electric power; establishing rate of tax on electric power used in certain quantities at plant locations of manufacturers; clarifying tax treatment of electricity generated by manufacturers for own use; relating to tax credit for industrial expansion; and expanding definition of "industrial taxpayer" to include persons exercising privilege of generating or producing electric power.

Be it enacted by the Legislature of West Virginia:

That sections two, two-b, two-d, 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; that said article thirteen be further amended by adding thereto a new section, designated section

two-m; and that section two, article thirteen-c of said chapter eleven be amended and reenacted, 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 an-
2 nual privilege taxes against the persons, on account of
3 the business and other activities, and in the amounts to
4 be determined by the application of rates against values
5 or gross income as set forth in sections two-a to two-m,
6 inclusive, of this article.

7 If any person liable for any tax under sections two-a,
8 two-b, two-l or two-m shall ship or transport his products
9 or any part thereof out of the state without making
10 sale of such products, the value of the products in the
11 condition or form in which they exist immediately be-
12 fore transportation out of the state shall be the basis
13 for the assessment of the tax imposed in said section,
14 except in those instances in which another measure of
15 the tax is expressly provided. The tax commissioner
16 shall prescribe equitable and uniform rules for ascertain-
17 ing 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
22 from the sale are not indicative of the true value of
23 the subject matter of the sale, the tax commissioner
24 shall prescribe uniform and equitable rules for deter-
25 mining the value upon which such privilege tax shall
26 be levied, corresponding as nearly as possible to the
27 gross proceeds from the sale of similar products of like
28 quality or character where no common interest exists
29 between the buyer and seller but the circumstances
30 and conditions are otherwise similar.

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

35 A person exercising any privilege taxable under sec-
36 tions two-a, two-b, two-l or two-m of this article and

37 engaging in the business of selling his natural resources,
38 manufactured products, or electricity at retail in this
39 state shall be required to make returns of the gross
40 proceeds of such retail sales and pay the tax imposed
41 in section two-c of this article for the privilege of en-
42 gaging in the business of selling such natural resources,
43 manufactured products or electricity at retail in this
44 state. But any person exercising any privilege taxable
45 under sections two-a, two-b, two-l or two-m of this
46 article and engaging in the business of selling his
47 natural resources, manufactured products, or electricity
48 to producers of natural resources, manufacturers, whole-
49 salers, jobbers, retailers or commercial consumers for use
50 or consumption in the purchaser's business shall not be
51 required to pay the tax imposed in section two-c of this
52 article.

53 Persons exercising any privilege taxable under sec-
54 tion two-b or two-m of this article shall not be required
55 to pay the tax imposed in section two-c of this article
56 for the privilege of selling their manufactured products
57 or electricity for delivery outside of this state, but the
58 gross income derived from the sale of such products
59 or electricity outside of this state shall be included in
60 determining the measure of the tax imposed on such
61 person in section two-b or two-m.

62 A person exercising privileges taxable under the other
63 sections of this article, producing coal, oil, natural gas,
64 minerals, timber or other natural resource products the
65 production of which is taxable under sections two-a
66 and two-l, and using or consuming the same in his
67 business or transferring or delivering the same as any
68 royalty payment, in kind, or the like, shall be deemed
69 to be engaged in the business of mining and producing
70 coal, oil, natural gas, minerals, timber or other natural
71 resource products for sale, profit or commercial use, and
72 shall be required to make returns on account of the
73 production of the business showing the gross proceeds
74 or equivalent in accordance with uniform and equitable
75 rules for determining the value upon which such privilege
76 tax shall be levied, corresponding as nearly as possible
77 to the gross proceeds from the sale of similar products

78 of like quality or character by other taxpayers, which
79 rules the tax commissioner shall prescribe.

**§11-13-2b. Manufacturing, compounding or preparing products;
processing of food; exception of generated or pro-
duced electric power by public utilities or others;
treatment accorded electricity generated by man-
ufacturers for own use.**

1 Upon every person engaging or continuing within this
2 state in the business of manufacturing, compounding or
3 preparing for sale, profit, or commercial use, either di-
4 rectly or through the activity of others in whole or ⁱⁿ part, *Mc. 80.8*
5 any article or articles, substance or substances, com-
6 modity or commodities, or newspaper publishing (in-
7 cluding all gross income or proceeds of sale from circula-
8 tion and advertising), except electric power produced
9 by public utilities or others, the amount of the tax to
10 be equal to the value of the article, substance, commodity
11 or newspaper, manufactured, compounded or prepared for
12 sale, as shown by the gross proceeds derived from the
13 sale thereof by the manufacturer or person compounding
14 or preparing the same, except as otherwise provided,
15 multiplied by a rate of eighty-eight one-hundredths of
16 one percent. The measure of this tax is the value of the
17 entire product manufactured, compounded or prepared
18 in this state for sale, profit or commercial use, regard-
19 less of the place of sale or the fact that deliveries may
20 be made to points outside the state. The value of elec-
21 tricity generated by persons taxed under the provisions
22 of this section, which electricity is directly used by
23 such persons in the business of manufacturing and not
24 sold or otherwise transferred or transmitted to others,
25 shall be exempt from the imposition of any tax under
26 this article. The dressing and processing of food by a
27 person, firm or corporation, which food is to be sold
28 on a wholesale basis by such person, firm or corporation
29 shall not be considered as manufacturing or compound-
30 ing, but the sale of these products on a wholesale basis
31 shall be subject to the same tax as is imposed on the
32 business of selling at wholesale as provided in section
33 two-c.

34 It is further provided, however, that in those instances
35 in which the same person partially manufactures, com-
36 pounds or prepares products within this state and
37 partially manufactures, compounds or prepares such
38 products outside of this state the measure of his tax
39 under this section shall be that proportion of the sale
40 price of the product that the payroll cost of manufac-
41 turing within this state bears to the entire payroll cost
42 of manufacturing the product; or, at the option of the
43 taxpayer, the measure of his tax under this section shall
44 be the proportion of the sales value of the articles that
45 the cost of operations in West Virginia bears to the full
46 cost of manufacture of the articles.

§11-13-2d. Public service or utility business.

1 Upon any person engaging or continuing within this
2 state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, there is likewise hereby
6 levied and shall be collected taxes on account of the
7 business engaged in equal to gross income of the
8 business multiplied by the respective rates as follows:
9 Street and interurban and electric railways, one and
10 four-tenths percent; water companies, four and four-
11 tenths percent except as to income received by
12 municipally owned water plants; electric light and
13 power companies, four percent on sales and demand
14 charges for domestic purposes and commercial lighting
15 and four percent on sales and demand charges for
16 all other purposes, except as to income received by
17 municipally owned plants producing or purchasing
18 electricity and distributing same: *Provided*, That elec-
19 tric light and power companies which engage in the
20 supplying of public service but which do not generate
21 or produce electric power shall be taxed on the gross
22 income derived therefrom at the rate of three percent
23 on sales and demand charges for domestic purposes
24 and commercial lighting and three percent on sales
25 and demand charges for all other purposes, except as
26 to income received by municipally owned plants:

27 *Provided, however,* That the sale of electric power under
 28 this section shall be taxed at the rate of two and forty-six
 29 hundredths percent on that portion of the gross proceeds
 30 derived from the sale of electric power to a plant location
 31 of a customer engaged in a manufacturing activity, if the
 32 contract demand at such plant location exceeds two hun-
 33 dred thousand kilowatts per hour per year, or if the usage
 34 at such plant location exceeds two hundred thousand kilo-
 35 watts per hour in a year; natural gas companies, four and
 36 twenty-nine hundredths percent on the gross income; toll
 37 bridge companies, four and twenty-nine hundredths per-
 38 cent; and upon all other public service or utility business,
 39 two and eighty-six hundredths percent. The measure of
 40 this tax shall not include gross income derived from com-
 41 merce between this state and other states of the United
 42 States or between this state and foreign countries. The
 43 measure of the tax under this section shall include only
 44 gross income received from the the supplying of public
 45 services. The gross income of the taxpayer from any other
 46 activity shall be included in the measure of the tax im-
 47 posed upon the appropriate section or sections of this
 48 article.

§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 That gross income shall not include (a) interest received
 13 on the obligations of the United States, its agencies and
 14 instrumentalities, (b) interest received on the obligations
 15 of this or any other state, territory or possession of the

16 United States, or any political subdivision of any of the
 17 foregoing or of the District of Columbia, or (c) interest
 18 received on investments or loans primarily secured by
 19 first mortgages or deeds of trust on residential property
 20 occupied by nontransients: *Provided, however,* That all
 21 interest derived on activities exempt under (c) above,
 22 shall be reported, as to amounts, on the return of a
 23 person taxable under the provisions of this section.

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

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

**§11-13-2m. Business of generating or producing electric power;
 exception; rates.**

1 (1) Upon every person engaging or continuing within
 2 this state in the business of generating or producing
 3 electric power for sale, profit or commercial use, either
 4 directly or through the activity of others, in whole or
 5 in part, when the sale thereof is not subject to tax
 6 under section two-d of this article, the amount of the
 7 tax to be equal to the value of the electric power, as
 8 shown by the gross proceeds derived from the sale thereof
 9 by the generator or producer of the same multiplied
 10 by a rate of four percent, except that the rate shall be two
 11 and forty-six hundredths percent on that portion of the
 12 gross proceeds derived from the sale of electric power
 13 to a plant location of a customer engaged in a manufac-
 14 turing activity, if the contract demand at such plant
 15 location exceeds two hundred thousand kilowatts per hour
 16 per year, or if the usage at such plant location exceeds
 17 two hundred thousand kilowatts per hour in a year.

18 (2) The measure of this tax shall be the value of all

19 electric power generated or produced in this state for sale,
20 profit or commercial use, regardless of the place of sale or
21 the fact that transmission may be to points outside this
22 state: *Provided*, That the gross income received by muni-
23 cipally owned plants generating or producing electricity
24 shall not be subject to tax under this article.

§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-m, inclusive, of this article, less exemption
5 at the rate of fifty dollars annually or at the rate of four
6 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-m, 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:

4 (a) Upon occupations or privileges taxed under sec-
5 tions 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 effect
7 under this article on January one, one thousand nine
8 hundred fifty-nine;

9 (b) Upon occupations or privileges taxed under section
10 two-k of this article, in excess of one percent of gross
11 income;

12 (c) Under section two-l of this article; or

13 (d) Upon occupations or privileges taxed under section
14 two-m of this article, in excess of the tax rate applicable
15 to such occupations or privileges under section two-b
16 of this article on January one, one thousand nine hundred
17 fifty-nine.

ARTICLE 13C. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION.

§11-13C-2. Meaning of terms; "industrial taxpayer" defined.

1 (a) Any term used in this article shall have the same
2 meaning as when used in comparable context in article
3 thirteen of this chapter, unless a different meaning is
4 clearly required by the context or by definition in this
5 article.

6 (b) The term "industrial taxpayer" when used in this
7 article shall mean any person liable for tax under article
8 thirteen of this chapter exercising any of the following
9 privileges:

10 (1) Any privilege taxable under section two-b or two-m
11 of article thirteen of this chapter.

12 (2) Any privilege taxable under section two-h of article
13 thirteen of this chapter: *Provided*, That such privilege
14 is manufacturing for another, which privilege would be
15 taxable under section two-b or two-m of article thirteen
16 of this chapter if title to the raw materials involved in the
17 manufacturing process were vested in the taxpayer exer-
18 cising the privilege taxable under section two-h of article
19 thirteen of this chapter.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1978.

J. C. Wilson Jr.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Brathwaite Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 30
day of March 1978.

John D. Rhyne
Governor

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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date Mar. 30, 1978

Time 4:10 p.m.

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SECY. OF STATE