WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

SENATE BILL NO. 705
(Originating in the Committee on Finance)

PASSED April 13, 1985
In Effect from Passage
AN ACT to amend and reenact sections two and two-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to business and occupation tax liability of persons exercising the privilege of engaging or continuing within this state in any taxable activity; providing for certain tax rates to be reduced by five percent for taxable months beginning on and after the first day of July, one thousand nine hundred eighty-five; providing for all tax rates except those set forth in sections two-d and two-m, to expire on the first day of July, one thousand nine hundred eighty-seven, for taxable months beginning on and after such date; providing for the rates set forth in sections two-d and two-m to, on the first day of July, one thousand nine hundred eighty-seven, increase and revert back to those rates in effect on the first day of January, one thousand nine hundred eighty-five, for taxable months beginning on and after said first day of July; reducing rate of tax under section two-b to eight-tenths of one percent upon the effective date of this bill or said first day of July, whichever is first, and for there to be no five percent reduction of said rate; requiring persons exercising the privilege of manufacturing, compounding, or preparing tangible personal property for sale, profit or commercial use to pay tax imposed on privilege of selling
such products at wholesale in this state on or after the
effective date of this bill; and providing for persons
exercising the privilege of dressing and processing of food
for human consumption sold in this state to report gross
proceeds of such sales under wholesale sales classification or
retail sales classification and pay applicable rate of tax
thereon.

Be it enacted by the Legislature of West Virginia:

That sections two and two-b, 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.

§11-13-2. Imposition of privilege tax; reduction and
restoration of rates; expiration on July 1, 1987, of
all tax on all privileges except public service
utility businesses and electric power generation.

(a) Periods before July 1, 1987.—For taxable years or
months thereof ending prior to the first day of July, one
thousand nine hundred eighty-seven, 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
and two-m, both inclusive, of this article and the application
of the surtax rate against gross income as set forth in section
two-k: Provided, That on the first day of July, one thousand
nine hundred eighty-five, the taxes imposed by this section,
at the rates set forth in sections two-b through two-m, both
inclusive, of this article, and in effect on the first day of
January, one thousand nine hundred eighty-five, exclusive
of any surtaxes, shall be reduced by five percent for taxable
months beginning on and after said first day of July:
Provided, however, That on and after the first day of July,
one thousand nine hundred eighty-five, the rate of tax
under section two-b of this article shall not be less than
eight-tenths of one percent: Provided further, That there
shall be no such reduction of the rates set forth in section
two-a or two-l of this article.

(b) Periods after June 30, 1987.—For taxable years or
months thereof beginning after the thirtieth day of June,
one thousand nine hundred eighty-seven, 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 amount to be determined by the application of rates against values or gross income as set forth in sections two-d and two-m of this article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the rates applicable to the privileges exercised in sections two-d and two-m of this article shall be restored and returned to those which were in effect as to such privileges on the first day of January, one thousand nine hundred eighty-five. 

(c) If any person liable for any tax under sections two-a, two-b, two-l or two-m 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 sections, 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.

(d) 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.

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

(f) A person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products or electricity 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, manufactured products or electricity at retail in this state. But any person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products or electricity to producers 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: Provided, That on and after the effective date of this proviso, a person exercising any privilege taxable under section two-b of this article, and engaging in the business of selling his manufactured products in this state shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate set forth in section two-c of this article for the privilege of engaging in the business of selling such manufactured products in this state.

(g) Persons exercising any privilege taxable under section two-b or two-m 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 or electricity for delivery outside of this state, but the gross income derived from the sale of such products or electricity outside of this state shall be included in determining the measure of the tax imposed on such person in section two-b or two-m.

(h) 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 business or transferring or delivering the same as any royalty 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 proceeds 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.

§11-13-2b. Manufacturing, compounding or preparing
products; exception of generated or produced
electric power by public utilities or others;
treatment accorded electricity generated by
manufacturers for own use; exemption of
dressing and processing food for human
consumption; valuation of timber products.

(a) Upon every person engaging or continuing within
this state in the business of manufacturing, compounding or
preparing for sale, profit or commercial use, either directly
or through the activity of others in whole or in part, any
article or articles, substance or substances, commodity or
commodities, or newspaper publishing (including all gross
income or proceeds of sale from circulation and advertising)
except electric power produced by public utilities or others,
the amount of the tax to be equal to the value of the article,
substance, commodity or newspaper, manufactured,
compounded or prepared for sale, as shown by the gross
proceeds derived from the sale thereof by the manufacturer
or person compounding or preparing the same, except as
otherwise provided, multiplied by a rate of eight-tenths of
one percent.

(b) The measure of this tax is the value of the entire
product manufactured, compounded or prepared in the
state for sale, profit or commercial use, regardless of the
place of sale or the fact that deliveries may be made to
points outside the state.

(c) The value of electricity generated by persons taxed
under the provisions of this section, which electricity is
directly used by such persons in the business of
manufacturing and not sold or otherwise transferred or
transmitted to others, shall be exempt from the imposition
of any tax under this article.

(d) With respect to the manufacturing, compounding or
preparing for sale of timber or timber products, the measure
of this tax is the value of the entire timber product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state but such value shall not include the value of any timber or timber products used as ingredients, components, or elements of such timber products.

(e) The dressing and processing of food intended for human consumption by a person, firm or corporation, which food is to be sold in this state by such person, firm or corporation shall not be considered as manufacturing or compounding or preparing for sale, but the sale of these products shall be reported under section two-c of this article, as either a wholesale or retail sale, as the case may be.

(f) It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within this state and partially manufactures, compounds or prepares such products outside of this state the measure of this tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within..................................this the......................
day of ......................1985.

Governor
PRESENTED TO THE
GOVERNOR

Date  4/30/85
Time  6:24 p.m.