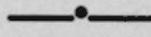


No: 705

1985 MAY -3 PM 4:33
OFFICE OF THE CLERK
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED

SENATE BILL NO. 705

Originating in the
(By Mr. Committee on Finance)



PASSED April 13 1985

In Effect from Passage



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.

1 (a) *Periods before July 1, 1987.*—For taxable years or
 2 months thereof ending prior to the first day of July, one
 3 thousand nine hundred eighty-seven, there is hereby levied
 4 and shall be collected annual privilege taxes against the
 5 persons, on account of the business and other activities, and
 6 in the amounts to be determined by the application of rates
 7 against values or gross income as set forth in sections two-a
 8 to two-m, both inclusive, of this article and the application
 9 of the surtax rate against gross income as set forth in section
 10 two-k: *Provided*, That on the first day of July, one thousand
 11 nine hundred eighty-five, the taxes imposed by this section,
 12 at the rates set forth in sections two-b through two-m, both
 13 inclusive, of this article, and in effect on the first day of
 14 January, one thousand nine hundred eighty-five, exclusive
 15 of any surtaxes, shall be reduced by five percent for taxable
 16 months beginning on and after said first day of July:
 17 *Provided, however*, That on and after the first day of July,
 18 one thousand nine hundred eighty-five, the rate of tax
 19 under section two-b of this article shall not be less than
 20 eight-tenths of one percent: *Provided further*, That there
 21 shall be no such reduction of the rates set forth in section
 22 two-a or two-l of this article.

23 (b) *Periods after June 30, 1987.*—For taxable years or
 24 months thereof beginning after the thirtieth day of June,

25 one thousand nine hundred eighty-seven, there is hereby
26 levied and shall be collected annual privilege taxes against
27 the persons, on account of the business and other activities,
28 and in the amount to be determined by the application of
29 rates against values or gross income as set forth in sections
30 two-d and two-m of this article: *Provided*, That on and after
31 the first day of July, one thousand nine hundred eighty-
32 seven, the rates applicable to the privileges exercised in
33 sections two-d and two-m of this article shall be restored
34 and returned to those which were in effect as to such
35 privileges on the first day of January, one thousand nine
36 hundred eighty-five.

37 (c) If any person liable for any tax under sections two-a,
38 two-b, two-l or two-m shall ship or transport his products
39 or any part thereof out of the state without making sale of
40 such products, the value of the products in the condition or
41 form in which they exist immediately before transportation
42 out of the state shall be the basis for the assessment of the
43 tax imposed in said sections, except in those instances in
44 which another measure of the tax is expressly provided. The
45 tax commissioner shall prescribe equitable and uniform
46 rules for ascertaining such value.

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

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

63 (f) A person exercising any privilege taxable under
64 section two-a, two-b, two-l or two-m of this article and
65 engaging in the business of selling his natural resources,
66 manufactured products or electricity at retail in this state

67 shall be required to make returns of the gross proceeds of
68 such retail sales and pay the tax imposed in section two-c of
69 this article for the privilege of engaging in the business of
70 selling such natural resources, manufactured products or
71 electricity at retail in this state. But any person exercising
72 any privilege taxable under section two-a, two-b, two-l or
73 two-m of this article and engaging in the business of selling
74 his natural resources, manufactured products or electricity
75 to producers of natural resources, manufacturers,
76 wholesalers, jobbers, retailers or commercial consumers for
77 use or consumption in the purchaser's business shall not be
78 required to pay the tax imposed in section two-c of this
79 article: *Provided*, That on and after the effective date of this
80 proviso, a person exercising any privilege taxable under
81 section two-b of this article, and engaging in the business of
82 selling his manufactured products in this state shall be
83 required to make returns of the gross proceeds of such
84 wholesale sales and pay the tax imposed by this section at
85 the rate set forth in section two-c of this article for the
86 privilege of engaging in the business of selling such
87 manufactured products in this state.

88 (g) Persons exercising any privilege taxable under
89 section two-b or two-m of this article shall not be required
90 to pay the tax imposed in section two-c of this article for the
91 privilege of selling their manufactured products or
92 electricity for delivery outside of this state, but the gross
93 income derived from the sale of such products or electricity
94 outside of this state shall be included in determining the
95 measure of the tax imposed on such person in section two-b
96 or two-m.

97 (h) A person exercising privileges taxable under the
98 other sections of this article, producing coal, oil, natural
99 gas, minerals, timber or other natural resource products,
100 the production of which is taxable under sections two-a and
101 two-l, and using or consuming the same in his business or
102 transferring or delivering the same as any royalty payment,
103 in kind, or the like, shall be deemed to be engaged in the
104 business of mining and producing coal, oil, natural gas,
105 minerals, timber or other natural resource products for sale,
106 profit or commercial use, and shall be required to make
107 returns on account of the production of the business
108 showing the gross proceeds or equivalent in accordance

109 with uniform and equitable rules for determining the value
110 upon which such privilege tax shall be levied,
111 corresponding as nearly as possible to the gross proceeds
112 from the sale of similar products of like quality or character
113 by other taxpayers, which rules the tax commissioner shall
114 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.

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

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

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

27 (d) With respect to the manufacturing, compounding or
28 preparing for sale of timber or timber products, the measure

29 of this tax is the value of the entire timber product
30 manufactured, compounded or prepared in the state for
31 sale, profit or commercial use, regardless of the place of sale
32 or the fact that deliveries may be made to points outside the
33 state but such value shall not include the value of any
34 timber or timber products used as ingredients, components,
35 or elements of such timber products.

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

44 (f) It is further provided, however, that in those
45 instances in which the same person partially manufactures,
46 compounds or prepares products within this state and
47 partially manufactures, compounds or prepares such
48 products outside of this state the measure of this tax under
49 this section shall be that proportion of the sale price of the
50 product that the payroll cost of manufacturing within this
51 state bears to the entire payroll cost of manufacturing the
52 product; or, at the option of the taxpayer, the measure of his
53 tax under this section shall be the proportion of the sales
54 value of the articles that the cost of operations in West
55 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.

Samuel Estlin
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Jedd C. Miller
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Dan Torbert
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *2nd*
day day of, 1985.

Hubert H. Brown
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/55

Title 6:24 p.m.