

No. 1

WEST VIRGINIA LEGISLATURE



FIRST EXTRAORDINARY SESSION, 1989



ENROLLED

Committee Substitute for
SENATE BILL NO. 1

(By Senator *Jesse M. Brinkley, et al*)



PASSED *January 31*, 1989

In Effect *March 1, 1989*

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ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 1

(By SENATORS TUCKER (Mr. PRESIDENT) AND HARMAN,
By REQUEST OF THE EXECUTIVE)

[Passed January 31, 1989; to take effect March 1, 1989.]

AN ACT to repeal sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a and eleven, article fifteen of said chapter; to amend and reenact sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code; to further amend said article thirteen by adding thereto a new section, designated section two-n; to amend and reenact section three, article thirteen-a of said chapter; to amend and reenact sections two, three and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto two new sections, designated sections eight-a and thirty-three; to amend and reenact section two, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto a new section, designated section twenty-nine; and to amend and reenact sections six and seventeen, article twenty-three of said chapter, all relating to the Fiscal Responsibility Act of 1989; amending and reenacting existing provisions of the

business and occupation tax, the severance tax, the consumers sales and service tax, the use tax and the business franchise tax; eliminating the expiration of the temporary one-cent increase in the consumers sales and service tax and the use tax, making the increase in these taxes permanent preserving the dedication of certain additional revenues therefrom for repayment of pneumoconiosis fund debt; defining terms used in the business and occupation tax; imposing the business and occupation tax, beginning the first day of March, one thousand nine hundred eighty-nine, upon the service of gas storage and prescribing the rate thereof and due dates of installment payments; setting forth an alternative method of calculating the business and occupation tax due from electric power and light companies and from generators of electric power; imposing such tax based on the number of kilowatt hours of electric power generated or sold within this state; specifying different rates of tax and exempting from tax kilowatt hours of electric power sold for certain purposes; requiring tax to be computed based on current law and under the alternative method, with liability for tax being the greater of the two; increasing the severance tax rates effective the first day of March, one thousand nine hundred eighty-nine; eliminating the exemption from the consumers sales and service tax and use tax for sales of property or services to persons in the business of contracting when such property or services are directly used in the activities of contracting; eliminating references to contracting in the definition of "directly used and consumed" for purposes of the consumers sales and service tax and the use tax; providing that property installed, fixed or incorporated into realty by a contractor is not subject to the consumers sales and service tax exemption for resale; removing the sales tax exemption for food intended for human consumption; providing an exemption mandated under Title forty-two, United States Code section one thousand seven hundred eighty-six; providing transition rules; making the effective date for all such changes to the consumers sales and service and use tax laws the first day of March, one thousand nine hundred eighty-nine;

eliminating the credit against the business franchise tax for the amount of tax that would be attributable to the portion of the business franchise tax base giving rise to a severance tax liability for taxable years ending after the twenty-eighth day of February, one thousand nine hundred eighty-nine, prorating the credit as to months before the first day of March, one thousand nine hundred eighty-nine; increasing the rate of the business franchise tax for taxable years beginning on or after specified date; permitting proration of tax when taxable year is less than twelve months; providing for a minimum tax; clarifying that charitable organizations and churches may continue to be exempt from sales and use tax on purchases of food for meals for which no charge is made; and providing that certain sales to persons engaged in contracting or subcontracting pursuant to a written contract with this state, a political subdivision thereof or a public corporation are exempt from the sales and use tax in certain instances.

Be it enacted by the Legislature of West Virginia:

That sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-a and eleven, article fifteen of said chapter eleven be repealed; that sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section two-n; that section three, article thirteen-a of said chapter be amended and reenacted; that sections two, three and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto two new sections, designated sections eight-a and thirty-three; that section two, article fifteen-a of said chapter be amended and reenacted; that said article fifteen-a be further amended by adding thereto a new section, designated section twenty-nine; and that sections six and seventeen, article twenty-three of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) shall have the meanings ascribed to
4 them by this section, unless a different meaning is
5 clearly required by either the context in which the
6 term is used or by specific definition.

7 (b) *Terms defined.*

8 (1) “Person” or the term “company,” herein used
9 interchangeably, includes any individual, firm,
10 copartnership, joint adventure, association, corpora-
11 tion, trust or any other group or combination acting as
12 a unit, and the plural as well as the singular number,
13 unless the intention to give a more limited meaning is
14 disclosed by the context.

15 (2) “Sale,” “sales” or “selling” includes any transfer
16 of or title to property or electricity, whether for
17 money or in exchange for other property.

18 (3) “Taxpayer” means any person liable for any tax
19 hereunder.

20 (4) “Gross income” means the gross receipts of the
21 taxpayer, received as compensation for personal
22 services and the gross receipts of the taxpayer derived
23 from trade, business, commerce or sales and the value
24 proceeding or accruing from the sale of tangible
25 property (real or personal), or service, or both, and all
26 receipts by reason of the investment of the capital of
27 the business engaged in, including rentals, royalties,
28 fees, reimbursed costs or expenses or other
29 emoluments however designated and including all
30 interest, carrying charges, fees or other like income,
31 however denominated, derived by the taxpayer from
32 repetitive carrying of accounts, in the regular course
33 and conduct of his business, and extension of credit in
34 connection with the sale of any tangible personal
35 property or service, and without any deductions on

36 account of the cost of property sold, the cost of
37 materials used, labor costs, taxes, royalties paid in cash
38 or in kind or otherwise, interest or discount paid or
39 any other expenses whatsoever.

40 (5) "Gross proceeds of sales" means the value,
41 whether in money or other property, actually proceed-
42 ing from the sale of tangible property without any
43 deduction on account of the cost of property sold or
44 expenses of any kind.

45 (6) "Business" shall include all activities engaged in
46 or caused to be engaged in with the object of gain or
47 economic benefit, either direct or indirect. "Business"
48 shall include the rendering of gas storage service by
49 any person for the gain or economic benefit of any
50 person, including, but not limited to, the storage
51 operator, whether or not incident to any other busi-
52 ness activity.

53 (7) "Gas" means either natural gas unmixed, or any
54 mixture of natural and artificial gas or any other gas.

55 (8) "Storage reservoir" means that portion of any
56 subterranean sand or rock stratum or strata into
57 which gas is or may be injected for the purpose of
58 storage.

59 (9) "Gas storage service" means the injection of gas
60 into a storage reservoir, the storage of gas for any
61 period of time in a storage reservoir, or the with-
62 drawal of gas from a storage reservoir. Such gas may
63 be owned by the storage operator or any other person.

64 (10) "Gas storage operator" means any person who
65 operates a storage reservoir or provides a storage
66 service as defined herein, either as owner or lessee.

67 (11) "Month" or "tax month" means the calendar
68 month.

69 (12) "Dekatherm" means the thermal energy unit
70 equal to one million British thermal units (BTU's) or
71 the equivalent of one thousand cubic feet of gas having
72 a heating content of one thousand BTU's per cubic
73 foot.

74 (13) "Taxable year" means the calendar year, or the
75 fiscal year ending during such calendar year, upon the
76 basis of which tax liability is computed under this
77 article. "Taxable year" means, in case of a return
78 made for a fractional part of a year under the
79 provisions of this article, or under regulations
80 promulgated by the tax commissioner, the period for
81 which such return is made.

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

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

25 (b) *Periods after June 30, 1987.* — For taxable years
26 or months beginning after the thirtieth day of June,
27 one thousand nine hundred eighty-seven, there is
28 hereby levied and shall be collected annual privilege
29 taxes against the persons, on account of the business
30 and other activities, and in the amount to be
31 determined by the application of rates against values
32 or gross income as set forth in sections two-d and

33 two-m of this article: *Provided*, That on and after the
34 first day of July, one thousand nine hundred eighty-
35 seven, the rates applicable to the privileges exercised
36 in sections two-d and two-m of this article shall be
37 restored and returned to those which were in effect as
38 to such privileges on the first day of January, one
39 thousand nine hundred eighty-five: *Provided, how-*
40 *ever*, That for taxable months or taxable years begin-
41 ning after the twenty-eighth day of February, one
42 thousand nine hundred eighty-nine, there is hereby
43 levied and shall be collected annual privilege taxes
44 against the persons, on account of the business and
45 other activities, and in the amount to be determined
46 by the application of rates against the measure of the
47 tax as set forth in sections two-d, two-e, two-m and
48 two-n of this article.

49 (c) If any person liable for any tax under section
50 two-m shall ship or transport his products or any part
51 thereof out of the state without making sale of such
52 products, the value of the products in the condition or
53 form in which they exist immediately before transpor-
54 tation out of the state shall be the basis for the
55 assessment of the tax imposed in such section, except
56 in those instances in which another measure of the tax
57 is expressly provided. The tax commissioner shall
58 prescribe equitable and uniform rules for ascertaining
59 such value.

60 (d) In determining value, however, as regards sales
61 from one to another of affiliated companies or persons,
62 or under other circumstances where the relation
63 between the buyer and seller is such that the gross
64 proceeds from the sale are not indicative of the true
65 value of the subject matter of the sale, the tax
66 commissioner shall prescribe uniform and equitable
67 rules for determining the value upon which such
68 privilege tax shall be levied, corresponding as nearly
69 as possible to the gross proceeds from the sale of
70 similar products of like quality or character where no
71 common interest exists between the buyer and seller
72 but the circumstances and conditions are otherwise
73 similar.

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

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business,
3 except railroad, railroad car, express, pipeline, tele-
4 phone and telegraph companies, water carriers by
5 steamboat or steamship and motor carriers, the tax
6 imposed by section two of this article shall be equal to
7 the gross income of the business derived from such
8 activity or activities multiplied by the respective rates
9 as follows:

10 (1) Street and interurban and electric railways, one
11 and four-tenths percent;

12 (2) Water companies, four and four-tenths percent,
13 except as to income received by municipally owned
14 water plants;

15 (3) Electric light and power companies, four percent
16 on sales and demand charges for domestic purposes
17 and commercial lighting and four percent on sales and
18 demand charges for all other purposes, and except as
19 to income received by municipally owned plants
20 producing or purchasing electricity and distributing
21 same: *Provided*, That electric light and power compa-
22 nies which engage in the supplying of public service
23 but which do not generate or produce in this state the
24 electric power they supply shall be taxed on the gross
25 income derived from sales of power which they do not
26 generate in this state at the rate of three percent on
27 sales and demand charges for domestic purposes and
28 commercial lighting and three percent on sales and
29 demand charges for all other purposes, except as to
30 income received by municipally owned plants: *Pro-*
31 *vided, however*, That the sale of electric power under
32 this section shall be taxed at the rate of two percent
33 on that portion of the gross proceeds derived from the
34 sale of electric power to a plant location of a customer
35 engaged in a manufacturing activity, if the contract
36 demand at such plant location exceeds two hundred
37 thousand kilowatts per hour per year, or if the usage
38 of such plant location exceeds two hundred thousand
39 kilowatts per hour in a year: *Provided further*, That

40 the sale of electric power under this section shall be
41 exempt from the tax imposed by this section and
42 section two of this article if it is separately metered
43 and consumed in an electrolytic process for the
44 manufacture of chlorine in this state, or is separately
45 metered and consumed in the manufacture of
46 ferroalloy in this state, and the rate reduction herein
47 provided to the taxpayer shall be passed on to the
48 manufacturer of the chlorine or ferroalloy. As used in
49 this section, the term "ferroalloy" means any of
50 various alloys of iron and one or more other elements
51 used as a raw material in the production of steel: *And*
52 *provided further*, That the term does not include the
53 final production of steel;

54 (4) Natural gas companies, four and twenty-nine
55 hundredths percent on the gross income: *Provided*,
56 That the sale of natural gas under this section shall be
57 exempt from the tax imposed by this section and
58 section two of this article to the extent that the natural
59 gas is separately metered and is gas from which the
60 purchaser derives hydrogen and carbon monoxide for
61 use in the manufacture of chemicals in this state, and
62 the full economic benefit of the exception herein
63 provided to the taxpayer shall be passed on to such
64 purchaser of the natural gas: *Provided, however*, That
65 there shall be no exemption for the sale of any natural
66 gas from which the purchaser derives carbon monox-
67 ide or hydrogen for the purpose of resale;

68 (5) Toll bridge companies, four and twenty-nine
69 hundredths percent; and

70 (6) Upon all other public service or utility business,
71 two and eighty-six hundredths percent.

72 (b) The measure of this tax shall not include gross
73 income derived from commerce between this state and
74 other states of the United States or between this state
75 and foreign countries. The measure of the tax under
76 this section shall include only gross income received
77 from the supplying of public service. The gross income
78 of the taxpayer from any other activity shall be
79 included in the measure of the tax imposed upon such

80 other activity by the appropriate section or sections of
81 this article.

82 (c) Beginning the first day of March, one thousand
83 nine hundred eighty-nine, electric light and power
84 companies shall determine their liability for payment
85 of tax under this section and sections two-m and two-
86 n of this article. If for taxable months beginning on or
87 after the first day of March, one thousand nine
88 hundred eighty-nine, liability for tax under section
89 two-n of this article is equal to or greater than the
90 sum of the power company's liability for payment of
91 tax under paragraph (3), subsection (a) of this section
92 and section two-m of this article, then the company
93 shall pay the tax due under section two-n of this
94 article and not the tax due under paragraph (3),
95 subsection (a) of this section and section two-m of this
96 article. If tax liability under section two-n is less, then
97 tax shall be paid under paragraph (3), subsection (a) of
98 this section and section two-m of this article and the
99 tax due under section two-n shall not be paid. The
100 provisions of paragraph (3), subsection (a) of this
101 section shall expire and become null and void for
102 taxable years beginning on or after the first day of
103 January, one thousand nine hundred ninety-eight.

§11-13-2e. Business of gas storage; effective date.

1 (a) *Rate of tax.* — Upon every person engaging or
2 continuing within this state in any gas storage business
3 utilizing one or more gas storage reservoirs located
4 within this state, the tax imposed by section two of
5 this article shall be equal to five cents multiplied by
6 the sum of (1) the number of dekatherms of gas
7 injected into such a gas storage reservoir during a tax
8 month and (2) the number of dekatherms of gas
9 withdrawn from such a gas storage reservoir during a
10 tax month, whether or not such gas is owned by, or is
11 injected or withdrawn for, the storage operator or any
12 other person. Fractional parts of dekatherms shall be
13 included in the measure of tax as provided in
14 regulations promulgated by the tax commissioner.

15 (b) *Effective date.* — The measure of tax under this

16 section shall include gas injected into, or withdrawn
17 from, a gas storage reservoir after the twenty-eighth
18 day of February, one thousand nine hundred eighty-
19 nine.

20 (c) *Administration; installment payments.* — The tax
21 due under this section shall be administered, collected
22 and enforced as provided in this article and articles
23 nine and ten of this chapter. The tax due under this
24 section shall be remitted in periodic installments as
25 provided in section four of this article, except that
26 such periodic installment payments shall be remitted
27 on or before the twentieth day of the month following
28 the month or quarter in which the tax accrues.

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

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

19 (b) The measure of this tax shall be the value of all
20 electric power generated or produced in this state for
21 sale, profit or commercial use, regardless of the place
22 of sale or the fact that transmission may be to points
23 outside this state: *Provided*, That the gross income
24 received by municipally owned plants generating or

25 producing electricity shall not be subject to tax under
26 this article.

27 (c) Beginning the first day of March, one thousand
28 nine hundred eighty-nine, every person taxable under
29 this section shall determine their liability for payment
30 of tax under this section and under paragraph (3),
31 subsection (a), section two-d of this article and section
32 two-n of this article. If for taxable months beginning
33 on or after the first day of March, one thousand nine
34 hundred eighty-nine such person's liability for pay-
35 ment of tax under this section and paragraph (3),
36 subsection (a), section two-d of this article is less than
37 the amount of such person's liability for payment of
38 tax under section two-n of this article, then such
39 person shall pay the tax due under section two-n and
40 not the sum of the amount of tax due under this
41 section and under paragraph (3), subsection (a), section
42 two-d of this article. If the tax due under section two-
43 n of this article is less, then the amount of tax due
44 under this section and paragraph (3), subsection (a),
45 section two-d of this article shall be paid. The
46 provisions of this section shall expire and become null
47 and void for taxable years beginning on or after the
48 first day of January, one thousand nine hundred
49 ninety-eight.

**§11-13-2n. Business of generating or producing or selling
electric power; exemptions; rates.**

1 (a) *Rate of tax.* — Upon every person engaging or
2 continuing within this state in the business of
3 generating or producing electricity for sale, profit or
4 commercial use, either directly or indirectly through
5 the activity of others, in whole or in part, or in the
6 business of selling electricity to consumers, or in both
7 businesses, the tax imposed by section two of this
8 article shall be equal to:

9 (1) Two tenths of one cent times the kilowatt hours
10 of net generation available for sale that was generated
11 or produced in this state by the taxpayer during the
12 taxable year, except that this rate shall be five
13 hundredths of one cent times the kilowatt hours of net

14 generation available for sale that was generated or
15 produced in this state by the taxpayer and sold to a
16 plant location of a customer engaged in manufacturing
17 activity if the contract demand at such plant location
18 exceeds two hundred thousand kilowatts per hour per
19 year or if the usage at such plant location exceeds two
20 hundred thousand kilowatts per hour in a year:
21 *Provided*, That in order to encourage the development
22 of industry to improve the environment of this state,
23 the tax imposed by this section on any person
24 generating or producing electric power and an alterna-
25 tive form of energy at a facility located within this
26 state substantially from gob or other mine refuse shall
27 be equal to five hundredths of one cent times the
28 kilowatt hours of net generation or production avail-
29 able for sale. The measure of tax under this paragraph
30 shall be equal to the total kilowatt hours of net
31 generation available for sale that was generated or
32 produced in this state by the taxpayer after the
33 twenty-eighth day of February, one thousand nine
34 hundred eighty-nine, regardless of the place of sale or
35 use, or the fact that transmission may be made to
36 points outside this state.

37 (2) Fifteen hundredths of one cent times the kilowatt
38 hours of electricity sold to consumers in this state that
39 were not generated or produced in this state by the
40 taxpayer, except that the rate shall be five hundredths
41 of one cent times the kilowatt hours of electricity not
42 generated or produced in this state by the taxpayer
43 which is sold to a plant location in this state of a
44 customer engaged in manufacturing activity if the
45 contract demand at such plant location exceeds two
46 hundred thousand kilowatts per hour per year or if
47 the usage at such plant location exceeds two hundred
48 thousand kilowatts per hour in a year. The measure of
49 tax under this paragraph shall be equal to the total
50 kilowatt hours of electricity sold to consumers in this
51 state after the twenty-eighth day of February, one
52 thousand nine hundred eighty-nine, that were not
53 generated or produced in this state by the taxpayer, to
54 be determined by subtracting from the total kilowatt
55 hours of electricity sold to consumers in the state the

56 net kilowatt hours of electricity generated or produced
57 in the state by the taxpayer during the taxable year.

58 (b) *Exemptions.* — The provisions of this section
59 shall not apply to:

60 (1) Kilowatt hours of electricity generated and sold,
61 or purchased and resold, by a municipally owned
62 plant.

63 (2) Kilowatt hours of electric power that are
64 separately metered and consumed in an electrolytic
65 process for the manufacture of chlorine.

66 (3) Kilowatt hours of electric power that are
67 separately metered and consumed in the manufacture
68 of ferroalloy. As used in this paragraph, the term
69 “ferroalloy” means any of the various alloys of iron
70 and one or more other elements used as a raw
71 material in the production of steel but shall not
72 include electric power used in the production of steel.

73 (4) The full economic benefits provided to the
74 taxpayer by paragraphs (2) and (3) of this subsection
75 shall be passed on to the manufacturer of the chlorine
76 or ferroalloy.

77 (c) *Credit.* — Any person taxable under paragraph
78 (2), subsection (a) of this section shall be allowed a
79 credit against the amount of tax due under that
80 paragraph for any electric power generation taxes paid
81 by the taxpayer with respect to such electric power to
82 the state in which such power was generated or
83 produced. The amount of credit allowed shall not
84 exceed the tax liability arising under paragraph (2),
85 subsection (a) of this section with respect to the sale of
86 such power.

87 (d) *Transition rule.* — Beginning the first day of
88 March, one thousand nine hundred eighty-nine, elec-
89 tric light and power companies shall determine their
90 liability for payment of tax under this section and
91 sections two-d and two-m of this article. If for taxable
92 months beginning on or after the first day of March,
93 one thousand nine hundred eighty-nine, liability for
94 tax under section two-n of this article is equal to or

95 greater than the sum of the power company's liability
96 for payment of tax under paragraph (3), subsection (a),
97 section two-d and section two-m of this article, then
98 the company shall pay the tax due under section two-
99 n of this article and not the tax due under paragraph
100 (3), subsection (a) of section two-d and section two-m
101 of this article. If tax liability under section two-n is
102 less, then tax shall be paid under paragraph (3),
103 subsection (a), section two-d and section two-m of this
104 article and the tax due under section two-n shall not
105 be paid. The provisions of this subsection (d) shall
106 expire and become null and void for taxable years
107 beginning on or after the first day of January, one
108 thousand nine hundred ninety-eight.

ARTICLE 13A. SEVERANCE TAXES.

**§11-13A-3. Imposition of privilege tax; phase-in of
modified rates and effective dates there-
for.**

1 (a) Upon every person exercising the privilege of
2 engaging or continuing within this state in severing,
3 extracting, reducing to possession and producing for
4 sale, profit or commercial use any natural resource
5 product or products there is hereby imposed a tax in
6 the amount to be determined by the application of
7 rates against the gross value of the articles produced,
8 as shown by the gross proceeds derived from the sale
9 thereof by the producer, except as otherwise provided,
10 multiplied by the rates, in the classifications and
11 according to the effective dates in subsection (b) of this
12 section.

13 (b) *Tax rates; classifications; effective dates.* —
14 Beginning on and after the first day of July, one
15 thousand nine hundred eighty-seven, and for each
16 date, as specified below, the rates of tax on each
17 respective classification and for each respective year
18 are as follows:

19 (1) On coal, and including the thirty-five one
20 hundredths (.35) of one percent additional severance
21 tax on such coal for the benefit of counties and

22 municipalities, as provided in section six of this
23 article, on

24 July 1, 1987 — three and eighty-five one hundredths
25 (3.85) percent;

26 July 1, 1988 — three and eighty-eight one
27 hundredths (3.88) percent; and

28 March 1, 1989 — and thereafter — five (5.0) percent.

29 (2) On limestone or sandstone quarried or mined, on

30 July 1, 1987 — two and two-tenths (2.2) percent;

31 July 1, 1988 — two and fifty-six one hundredths
32 (2.56) percent;

33 July 1, 1989 — two and ninety-two one hundredths
34 (2.92) percent;

35 July 1, 1990 — three and twenty-eight one
36 hundredths (3.28) percent;

37 July 1, 1991 — three and sixty-four one hundredths
38 (3.64) percent;

39 July 1, 1992 — four (4.0) percent;

40 July 1, 1993 — four and fifty one hundredths (4.5)
41 percent; and

42 July 1, 1994 — and thereafter — five (5.0) percent.

43 (3) On oil, on

44 July 1, 1987 — four and thirty-four one hundredths
45 (4.34) percent;

46 July 1, 1988 — four and two hundred seventy-two
47 one thousandths (4.272) percent; and

48 March 1, 1989 — and thereafter — five (5.0) percent.

49 (4)(a) On natural gas, on

50 July 1, 1987 — six and five-tenths (6.5) percent;

51 July 1, 1988 — six (6.0) percent;

52 July 1, 1989 — five and five-tenths (5.5) percent; and

53 July 1, 1990 — and thereafter — five (5.0) percent.

54 (4)(b) On natural gas produced from new wells
55 drilled and placed in service on and after July 1, 1987,
56 on

57 July 1, 1987 — four (4.0) percent; and

58 March 1, 1989 — and thereafter — five (5.0) percent.

59 (5) On sand, gravel or other mineral product not
60 quarried or mined, on

61 July 1, 1987 — four and thirty-four one hundredths
62 (4.34) percent;

63 July 1, 1988 — four and two hundred seventy-two
64 one thousandths (4.272) percent; and

65 March 1, 1989 — and thereafter — five (5.0) percent.

66 (6) On timber, on

67 July 1, 1987 — two and five-tenths (2.5) percent; and

68 March 1, 1989 — and thereafter — three and twenty-
69 two hundredths (3.22) percent.

70 (7) On other natural resources, on

71 July 1, 1987 — two and eighty-six one hundredths
72 (2.86) percent;

73 July 1, 1988 — three and eighty-eight one
74 thousandths (3.088) percent;

75 July 1, 1989 — three and three hundred sixteen one
76 thousandths (3.316) percent;

77 July 1, 1990 — three and five hundred forty-four one
78 thousandths (3.544) percent;

79 July 1, 1991 — three and seven hundred seventy-two
80 one thousandths (3.772) percent;

81 July 1, 1992 — four (4.0) percent;

82 July 1, 1993 — four and fifty one hundredths (4.5)
83 percent; and

84 July 1, 1994 — and thereafter — five (5.0) percent.

85 (c) *Tax in addition to other taxes.* — The taxes
86 imposed by this article shall apply to all persons

87 severing or processing (or both severing and
88 processing) natural resources in this state and shall be
89 in addition to all other taxes imposed by law.

90 (d) *Statement of purpose; relationship to existing*
91 *contracts.* — It is the intent of the Legislature in
92 enacting this article to continue the imposition of the
93 tax upon exercising the privilege of engaging in or
94 continuing within this state the business of severing,
95 extracting, reducing to possession and producing for
96 sale, profit or commercial use, natural resource
97 products, which was imposed by section two-a, article
98 thirteen of this chapter prior to the first day of July,
99 one thousand nine hundred eighty-seven, by such act.
100 The provisions of any contract entered into prior to
101 the effective date of this act and relating to the
102 allocation, reimbursement, payment or assessment of
103 the tax imposed by section two-a, article thirteen of
104 this chapter, formerly, shall apply with full force and
105 effect to the tax imposed by this article; it being the
106 intent of the Legislature that, for purposes of any such
107 contractual provision, the tax imposed by this article
108 shall be considered the same as the tax imposed by
109 section two-a, article thirteen of this chapter prior to
110 the first day of July, one thousand nine hundred
111 eighty-seven.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

1 For purposes of this article:

2 (a) "Persons" shall mean any individual, partner-
3 ship, association, corporation, municipal corporation,
4 guardian, trustee, committee, executor or
5 administrator.

6 (b) "Tax commissioner" shall mean the state tax
7 commissioner.

8 (c) "Gross proceeds" shall mean the amount
9 received in money, credits, property or other consider-
10 ation from sales and services within this state, without
11 deduction on account of the cost of property sold,
12 amounts paid for interest or discounts or other

13 expenses whatsoever. Losses shall not be deducted, but
14 any credit or refund made for goods returned may be
15 deducted.

16 (d) "Sale," "sales" or "selling" shall include any
17 transfer of the possession or ownership of tangible
18 personal property for a consideration, including a lease
19 or rental, when the transfer or delivery is made in the
20 ordinary course of the transferor's business and is
21 made to the transferee or his agent for consumption or
22 use or any other purpose.

23 (e) "Vendor" shall mean any person engaged in this
24 state in furnishing services taxed by this article or
25 making sales of tangible personal property.

26 (f) "Ultimate consumer" or "consumer" shall mean
27 a person who uses or consumes services or personal
28 property.

29 (g) "Business" shall include all activities engaged in
30 or caused to be engaged in with the object of gain or
31 economic benefit, direct or indirect, and all activities
32 of the state and its political subdivisions which involve
33 sales of tangible personal property or the rendering of
34 services when those service activities compete with or
35 may compete with the activities of other persons.

36 (h) "Tax" shall include all taxes, interest and
37 penalties levied hereunder.

38 (i) "Service" or "selected service" shall include all
39 nonprofessional activities engaged in for other persons
40 for a consideration, which involve the rendering of a
41 service as distinguished from the sale of tangible
42 personal property, but shall not include contracting,
43 personal services or the services rendered by an
44 employee to his employer or any service rendered for
45 resale.

46 (j) "Purchaser" shall mean a person who purchases
47 tangible personal property or a service taxed by this
48 article.

49 (k) "Personal service" shall include those:

50 (1) Compensated by the payment of wages in the
51 ordinary course of employment; and

52 (2) Rendered to the person of an individual without,
53 at the same time, selling tangible personal property,
54 such as nursing, barbering, shoeshining, manicuring
55 and similar services.

56 (l) "Taxpayer" shall mean any person liable for the
57 tax imposed by this article.

58 (m) "Drugs" shall include all sales of drugs or
59 appliances to a purchaser, upon prescription of a
60 physician or dentist and any other professional person
61 licensed to prescribe.

62 (n) (1) "Directly used or consumed" in the activities
63 of manufacturing, transportation, transmission, com-
64 munication or the production of natural resources
65 shall mean used or consumed in those activities or
66 operations which constitute an integral and essential
67 part of such activities, as contrasted with and
68 distinguished from those activities or operations which
69 are simply incidental, convenient or remote to such
70 activities.

71 (2) Uses of property or consumption of services
72 which constitute direct use or consumption in the
73 activities of manufacturing, transportation, transmis-
74 sion, communication or the production of natural
75 resources shall include only:

76 (A) In the case of tangible personal property, phys-
77 ical incorporation of property into a finished product
78 resulting from manufacturing production or the
79 production of natural resources; (B) Causing a direct
80 physical, chemical or other change upon property
81 undergoing manufacturing production or production of
82 natural resources;

83 (C) Transporting or storing property undergoing
84 transportation, communication, transmission,
85 manufacturing production, or production of natural
86 resources;

87 (D) Measuring or verifying a change in property

88 directly used in transportation, communication,
89 transmission, manufacturing production or production
90 of natural resources;

91 (E) Physically controlling or directing the physical
92 movement or operation of property directly used in
93 transportation, communication, transmission,
94 manufacturing production or production of natural
95 resources;

96 (F) Directly and physically recording the flow of
97 property undergoing transportation, communication,
98 transmission, manufacturing production or production
99 of natural resources;

100 (G) Producing energy for property directly used in
101 transportation, communication, transmission,
102 manufacturing production or production of natural
103 resources;

104 (H) Facilitating the transmission of gas, water, steam
105 or electricity from the point of their diversion to
106 property directly used in transportation, communica-
107 tion, transmission, manufacturing production or pro-
108 duction of natural resources;

109 (I) Controlling or otherwise regulating atmospheric
110 conditions required for transportation, communication,
111 transmission, manufacturing production or production
112 of natural resources;

113 (J) Serving as an operating supply for property
114 undergoing transmission, manufacturing production or
115 production of natural resources or for property
116 directly used in transportation, communication, trans-
117 mission, manufacturing production or production of
118 natural resources;

119 (K) Maintenance or repair of property directly used
120 in transportation, communication, transmission,
121 manufacturing production or production of natural
122 resources;

123 (L) Storage, removal or transportation of economic
124 waste resulting from the activities of manufacturing,
125 transportation, communication, transmission or the

126 production of natural resources;

127 (M) Pollution control or environmental quality or
128 protection activity directly relating to the activities of
129 manufacturing, transportation, communication, trans-
130 mission or the production of natural resources and
131 personnel, plant, product or community safety or
132 security activity directly relating to the activities of
133 manufacturing, transportation, communication, trans-
134 mission or the production of natural resources; or

135 (N) Otherwise be used as an integral and essential
136 part of transportation, communication, transmission,
137 manufacturing production or production of natural
138 resources.

139 (3) Uses of property or services which would not
140 constitute direct use or consumption in the activities of
141 manufacturing, transportation, transmission, commu-
142 nication or the production of natural resources shall
143 include, but not be limited to:

144 (A) Heating and illumination of office buildings;

145 (B) Janitorial or general cleaning activities;

146 (C) Personal comfort of personnel;

147 (D) Production planning, scheduling of work, or
148 inventory control;

149 (E) Marketing, general management, supervision,
150 finance, training, accounting and administration; or

151 (F) An activity or function incidental or convenient
152 to transportation, communication, transmission,
153 manufacturing production or production of natural
154 resources, rather than an integral and essential part of
155 such activities.

156 (o) "Contracting" shall mean the furnishing of work,
157 or both materials and work, in fulfillment of a contract
158 for the construction, alteration, repair, decoration or
159 improvement of a new or existing building or struc-
160 ture, or any part thereof, or for removal or demolition
161 of a building or structure, or any part thereof, or for
162 the alteration, improvement or development of real

163 property. For purposes of this definition, the term
164 "structure" shall include, but not be limited to,
165 everything built up or composed of parts joined
166 together in some definite manner and attached to real
167 property, or which adds utility to a particular parcel of
168 property and is intended to remain there for an
169 indefinite period of time.

170 (p) "Manufacturing" shall mean a systematic
171 operation or integrated series of systematic operations
172 engaged in as a business or segment of a business
173 which transforms or converts tangible personal prop-
174 erty by physical, chemical or other means into a
175 different form, composition or character from that in
176 which it originally existed.

177 (q) "Transportation" shall mean the act or process of
178 conveying, as a commercial enterprise, passengers or
179 goods from one place or geographical location to
180 another place or geographical location.

181 (r) "Transmission" shall mean the act or process of
182 causing liquid, natural gas or electricity to pass or be
183 conveyed from one place or geographical location to
184 another place or geographical location through a
185 pipeline or other medium for commercial purposes.

186 (s) "Communication" shall mean all telephone,
187 radio, light, light wave, radio telephone, telegraph and
188 other communication or means of communication,
189 whether used for voice communication, computer data
190 transmission or other encoded symbolic information
191 transfers and shall include commercial broadcast
192 radio, commercial broadcast television and cable
193 television.

194 (t) "Production of natural resources" shall mean the
195 performance, by either the owner of the natural
196 resources or another, of the act or process of exploring,
197 developing, severing, extracting, reducing to possession
198 and loading for shipment for sale, profit or commercial
199 use of any natural resource products and any reclama-
200 tion, waste disposal or environmental activities
201 associated therewith.

§11-15-3. Amount of tax; allocation of tax and transfers.

1 (a) For the privilege of selling tangible personal
2 property and of dispensing certain selected services
3 defined in sections two and eight of this article, the
4 vendor shall collect from the purchaser the tax as
5 provided under this article, and shall pay the amount
6 of tax to the tax commissioner in accordance with the
7 provisions of this article.

8 (b) Beginning on the first day of March, one thou-
9 sand nine hundred eighty-nine, the general consumer
10 sales and service tax imposed by this article shall be at
11 the rate of six cents on the dollar of sales or services,
12 excluding gasoline and special fuel sales, which remain
13 taxable at the rate of five cents on the dollar of sales.

14 (c) There shall be no tax on sales where the mone-
15 tary consideration is five cents or less. The amount of
16 the tax shall be computed as follows:

17 (1) On each sale, where the monetary consideration
18 is from six cents to sixteen cents, both inclusive, one
19 cent.

20 (2) On each sale, where the monetary consideration
21 is from seventeen cents to thirty-three cents, both
22 inclusive, two cents.

23 (3) On each sale, where the monetary consideration
24 is from thirty-four cents to fifty cents, both inclusive,
25 three cents.

26 (4) On each sale, where the monetary consideration
27 is from fifty-one cents to sixty-seven cents, both
28 inclusive, four cents.

29 (5) On each sale, where the monetary consideration
30 is from sixty-eight cents to eighty-four cents, both
31 inclusive, five cents.

32 (6) On each sale, where the monetary consideration
33 is from eighty-five cents to one dollar, both inclusive,
34 six cents.

35 (7) If the sale price is in excess of one dollar, six
36 cents on each whole dollar of sale price, and upon any

37 fractional part of a dollar in excess of whole dollars as
38 follows: One cent on the fractional part of the dollar if
39 less than seventeen cents; two cents on the fractional
40 part of the dollar if in excess of sixteen cents but less
41 than thirty-four cents; three cents on the fractional
42 part of the dollar if in excess of thirty-three cents but
43 less than fifty-one cents; four cents on the fractional
44 part of the dollar if in excess of fifty cents but less
45 than sixty-eight cents; five cents on the fractional part
46 of the dollar if in excess of sixty-seven cents but less
47 than eighty-five cents; and six cents on the fractional
48 part of the dollar if in excess of eighty-four cents. For
49 example, the tax on sales from one dollar and one cent
50 to one dollar and sixteen cents, both inclusive, seven
51 cents; on sales from one dollar and seventeen cents to
52 one dollar and thirty-three cents, both inclusive, eight
53 cents; on sales from one dollar and thirty-four cents to
54 one dollar and fifty cents, both inclusive, nine cents;
55 on sales from one dollar and fifty-one cents to one
56 dollar and sixty-seven cents, both inclusive, ten cents;
57 on sales from one dollar and sixty-eight cents to one
58 dollar and eighty-four cents, both inclusive, eleven
59 cents and on sales from one dollar and eighty-five
60 cents to two dollars, both inclusive, twelve cents.

61 (d) Separate sales, such as daily or weekly deliveries,
62 shall not be aggregated for the purpose of computation
63 of the tax even though such sales are aggregated in the
64 billing or payment therefor. Notwithstanding any
65 other provision, coin-operated amusement and
66 vending machine sales shall be aggregated for the
67 purpose of computation of this tax.

68 (e) Of the taxes collected under the provisions of this
69 article, one sixth of such taxes collected for the period
70 subsequent to the thirty-first day of May one thousand
71 nine hundred eighty-eight prior to the first day of
72 July, one thousand nine hundred eighty-nine, and not
73 attributable to or resulting from the repeal of section
74 eleven of this article or attributable to tax on
75 purchases of gasoline and special fuel, shall be
76 reasonably allocated, with allowance for refunds and
77 net of reasonable costs of administration, to and

78 deposited by the tax commissioner in the special
79 account created in the treasury by section eight-a,
80 article four-b, chapter twenty-three of this code, not to
81 exceed the amount sufficient for making timely
82 repayment of the principal and interest under the first
83 payment due, by the thirtieth day of June, one
84 thousand nine hundred eighty-nine, in repayment for
85 the moneys previously transferred from such
86 pneumoconiosis fund.

§11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to
2 contracting services. However, purchases by a contrac-
3 tor of tangible personal property or taxable services
4 for use or consumption in the providing of a
5 contracting service shall be taxable beginning the first
6 day of March, one thousand nine hundred eighty-nine,
7 except as otherwise provided in this article.

8 (b) *Transition rules.* — The exemption from pay-
9 ment of tax on purchases of tangible personal property
10 or taxable services directly used or consumed in the
11 activity of contracting, as defined in section two of this
12 article, which expires as of the first day of March, one
13 thousand nine hundred eighty-nine, shall nevertheless
14 remain in effect with respect to:

15 (1) Tangible personal property or taxable services
16 purchased by a contractor on or after said first day of
17 March in fulfillment of a written contract for
18 contracting, as defined in section two of this article,
19 that was executed and legally binding on the parties
20 thereto on or before the fifteenth day of February, one
21 thousand nine hundred eighty-nine; or in fulfillment
22 of a written contract entered into after the said
23 fifteenth day of February pursuant to a written bid for
24 contracting that was made on or before the said
25 fifteenth day of February that was binding on the
26 contractor, but only to the extent that the bid is
27 subsequently incorporated into a written contract; or

28 (2) Tangible personal property or taxable services
29 purchased by a contractor on or after the said first day
30 of March pursuant to a written contract executed on

31 or before the fifteenth day of February, one thousand
32 nine hundred eight-nine, to purchase in specified
33 quantities identified tangible personal property or
34 specified taxable services.

35 (3) Tangible personal property or taxable services
36 purchased by a contractor for consumption or use in
37 fulfillment of a written contract entered into before
38 the first day of September, one thousand nine hun-
39 dred eighty-nine, when such contract is for the
40 construction of a new improvement to real property
41 the construction or operation of which was approved
42 by a federal or state regulatory body prior to the first
43 day of February, one thousand nine hundred eighty-
44 nine.

45 (c) *Renewals and extensions.* — A renewal of any
46 contract shall constitute a new contract for purposes of
47 this section, and the date of entry into a contract
48 renewal by the parties, the date or dates of tender of
49 consideration and the time of performance of any
50 contractual obligations under a renewed contract shall
51 be treated as the dates for determining application of
52 this section to the renewed contract. Extensions of
53 time granted or agreed upon by the parties to a
54 contract for performance of the contract or for tender
55 of consideration under the contract shall not be
56 treated as contract renewals. Contracts to which such
57 extensions apply shall be treated under these transi-
58 tion rules as if the original contractual provisions for
59 performance and tender of consideration remain in
60 effect.

61 (d) *Definitions.* — For purposes of this section:

62 (1) The term “contract” or “contracts” means
63 written agreements reciting or setting forth a fixed
64 price consideration or a consideration based upon cost
65 plus a stated percentage or a stated monetary incre-
66 ment. This term shall not mean or include ongoing
67 sales contracts, contracts whereby any element of the
68 consideration or the property or services sold or to be
69 rendered in performance of the contract are
70 undefined, or determined, as to either nature or

71 quantity, subsequent to the making of the contract, or
72 any open-ended contract.

73 (2) The term "contract renewal" or "renewal"
74 means a covenant or agreement entered into or
75 assumed by parties which have a current contractual
76 relation or which have had a past contractual relation,
77 whereby the parties agree to incur obligations beyond
78 those which they were, or would have been, required,
79 at the minimum, to carry out under their current or
80 past contractual relation.

§11-15-9. Exemptions.

1 (a) Sales of gas, steam and water delivered to
2 consumers through mains or pipes, and sales of
3 electricity;

4 (b) Sales of textbooks required to be used in any of
5 the schools of this state;

6 (c) Sales of property or services to the state, its
7 institutions or subdivisions, and to the United States,
8 including agencies of federal, state or local
9 governments for distribution in public welfare or
10 relief work;

11 (d) Sales of motor vehicles which are titled by the
12 department of motor vehicles and which are subject to
13 the tax imposed by section four, article three, chapter
14 seventeen-a of the code;

15 (e) Sales of property or services to churches and
16 bona fide charitable organizations who make no
17 charge whatsoever for the services they render:
18 *Provided*, That the exemption herein granted shall
19 apply only to services, equipment, supplies, food for
20 meals and materials directly used or consumed by
21 these organizations, and shall not apply to purchases of
22 gasoline or special fuel;

23 (f) Sales of property or services to corporations or
24 organizations qualified under section 501(c)(3) of the
25 Internal Revenue Code of 1986, as amended, or under
26 section 501(c)(4) of the Internal Revenue Code of 1986,
27 as amended, who make casual and occasional sales not

28 conducted in a repeated manner or in the ordinary
29 course of repetitive and successive transactions of like
30 character: *Provided*, That the exemption herein
31 granted shall apply only to services, equipment,
32 supplies and materials directly used or consumed in
33 the activities for which such organizations qualify as
34 tax exempt organizations under the Internal Revenue
35 Code by these organizations and shall not apply to
36 purchases of gasoline or special fuel;

37 (g) Sales of property or services to persons engaged
38 in this state in the business of manufacturing, trans-
39 portation, transmission, communication or in the
40 production of natural resources: *Provided*, That the
41 exemption herein granted shall apply only to services,
42 machinery, supplies and materials directly used or
43 consumed in the businesses or organizations named
44 above, and shall not apply to purchases of gasoline or
45 special fuel: *Provided, however*, That on and after the
46 first day of July, one thousand nine hundred eighty-
47 seven, the exemption provided in this subsection shall
48 apply only to services, machinery, supplies and
49 materials directly used or consumed in the activities of
50 manufacturing, transportation, transmission, commu-
51 nication or the production of natural resources in the
52 businesses or organizations named above and shall not
53 apply to purchases of gasoline or special fuel;

54 (h) An isolated transaction in which any tangible
55 personal property is sold, transferred, offered for sale
56 or delivered by the owner thereof or by his represen-
57 tative for the owner's account, such sale, transfer,
58 offer for sale or delivery not being made in the
59 ordinary course of repeated and successive
60 transactions of like character by such owner or on his
61 account by such representative;

62 (i) Sales of tangible personal property and services
63 rendered for use or consumption in connection with
64 the business of dispensing a service subject to tax
65 under this article and sales of tangible personal
66 property and services rendered for use or consumption
67 in connection with the commercial production of an
68 agricultural product the ultimate sale of which will be

69 subject to the tax imposed by this article or which
70 would have been subject to tax under this article:
71 *Provided*, That sales of tangible personal property and
72 services to be used or consumed in the construction of
73 or permanent improvement to real property and sales
74 of gasoline and special fuel shall not be exempt;

75 (j) Sales of tangible personal property to a person for
76 the purpose of resale in the form of tangible personal
77 property: *Provided*, That sales of gasoline and special
78 fuel by distributors and importers shall be taxable
79 except when the sale is to another distributor for
80 resale: *Provided, however*, That sales of building
81 materials or building supplies or other property to any
82 person engaging in the activity of contracting, as
83 defined in this article, which is to be installed in,
84 affixed to or incorporated by such person or his agent
85 into any real property, building or structure shall not
86 be exempt under this subsection, except that sales of
87 tangible personal property to a person engaging in the
88 activity of contracting pursuant to a written contract
89 with this state, or with a political subdivision thereof,
90 or with a public corporation created by the Legislature
91 or by another government entity pursuant to an act of
92 the Legislature, for a building or structure (or
93 improvement thereto) or other improvement to real
94 property that is or will be owned and used by the
95 governmental entity for a governmental or propri-
96 etary purpose, who incorporates such property in such
97 building, structure or improvement shall, with respect
98 to such tangible personal property, nevertheless be
99 deemed to be the vendor of such property to the
100 governmental entity and any person seeking to qualify
101 for and assert this exception must do so pursuant to
102 such legislative rules and regulations as the tax
103 commissioner may promulgate and upon such forms
104 as the tax commissioner may prescribe. A subcontrac-
105 tor who, pursuant to a written subcontract with a
106 prime contractor who qualifies for this exception,
107 provides equipment, or materials, and labor to such a
108 prime contractor shall be treated in the same manner
109 as the prime contractor is treated with respect to the
110 prime contract under this exception and the legislative

111 rules and regulations promulgated by the tax
112 commissioner;

113 (k) Sales of property or services to nationally
114 chartered fraternal or social organizations for the sole
115 purpose of free distribution in public welfare or relief
116 work: *Provided*, That sales of gasoline and special fuel
117 shall be taxable;

118 (l) Sales and services, fire fighting or station house
119 equipment, including construction and automotive,
120 made to any volunteer fire department organized and
121 incorporated under the laws of the state of West
122 Virginia: *Provided*, That sales of gasoline and special
123 fuel shall be taxable;

124 (m) Sales of newspapers when delivered to
125 consumers by route carriers;

126 (n) Sales of drugs dispensed upon prescription and
127 sales of insulin to consumers for medical purposes;

128 (o) Sales of radio and television broadcasting time,
129 preprinted advertising circulars and newspaper and
130 outdoor advertising space for the advertisement of
131 goods or services;

132 (p) Sales and services performed by day-care centers;

133 (q) Casual and occasional sales of property or
134 services not conducted in a repeated manner or in the
135 ordinary course of repetitive and successive
136 transactions of like character by corporations or
137 organizations qualified under section 501(c)(3) of the
138 Internal Revenue Code of 1986, as amended, or under
139 section 501(c)(4) of the Internal Revenue Code of 1986,
140 as amended;

141 (r) Sales of property or services to a school which
142 has approval from the West Virginia board of regents
143 to award degrees, which has its principal campus in
144 this state, and which is exempt from federal and state
145 income taxes under section 501(c)(3) of the Internal
146 Revenue Code of 1986, as amended: *Provided*, That
147 sales of gasoline and special fuel shall be taxable;

148 (s) Sales of mobile homes to be utilized by

149 purchasers as their principal year-round residence and
150 dwelling: *Provided*, That these mobile homes shall be
151 subject to tax at the three percent rate;

152 (t) Sales of lottery tickets and materials by licensed
153 lottery sales agents and lottery retailers authorized by
154 the state lottery commission, under the provisions of
155 article twenty-two, chapter twenty-nine of this code;

156 (u) Leases of motor vehicles titled pursuant to the
157 provisions of article three, chapter seventeen-a of this
158 code to lessees for a period of thirty or more consec-
159 utive days. This exemption shall apply to leases
160 executed on or after the first day of July, one thou-
161 sand nine hundred eighty-seven, and to payments
162 under long-term leases executed before such date, for
163 months thereof beginning on or after such date;

164 (v) Notwithstanding the provisions of subsection (g)
165 of this section or any provisions of this article to the
166 contrary, sales of property and services to persons
167 subject to tax under article thirteen, thirteen-a or
168 thirteen-b of this chapter: *Provided*, That the exemp-
169 tion herein granted shall apply both to property or
170 services directly or not directly used or consumed in
171 the conduct of privileges which are subject to tax
172 under such articles but shall not apply to purchases of
173 gasoline or special fuel;

174 (w) Sales of propane to consumers for poultry house
175 heating purposes, with any seller to such consumer
176 who may have prior paid such tax in his price, to not
177 pass on the same to the consumer, but to make
178 application and receive refund of such tax from the
179 tax commissioner, pursuant to rules and regulations
180 which shall be promulgated by the tax commissioner;
181 and notwithstanding the provisions of section eighteen
182 of this article or any other provisions of such article to
183 the contrary;

184 (x) Any sales of tangible personal property or
185 services purchased after the thirtieth day of Septem-
186 ber, one thousand nine hundred eighty-seven, and
187 lawfully paid for with food stamps pursuant to the
188 federal food stamp program codified in 7 United States

189 Code, §2011, et seq., as amended, or with drafts issued
190 through the West Virginia special supplemental food
191 program for women, infants and children codified in
192 42 United States Code, §1786;

193 (y) Sales of tickets for activities sponsored by
194 elementary and secondary schools located within this
195 state; and

196 (z) Sales of electronic data processing services and
197 related software: *Provided*, That for the purposes of
198 this subsection (z) "electronic data processing
199 services" means (1) the processing of another's data,
200 including all processes incident to processing of data
201 such as keypunching, keystroke verification,
202 rearranging or sorting of previously documented data
203 for the purpose of data entry or automatic processing,
204 and changing the medium on which data is sorted,
205 whether these processes are done by the same person
206 or several persons; and (2) providing access to com-
207 puter equipment for the purpose of processing data or
208 examining or acquiring data stored in or accessible to
209 such computer equipment.

§11-15-33. Effective Date.

1 The provisions of this article as amended or added
2 by this act shall take effect on the first day of March,
3 one thousand nine hundred eighty-nine, and apply to
4 all taxable years ending after that date: *Provided*, That
5 if an effective date is expressly provided in such
6 provision, that specific effective date shall control in
7 lieu of this general effective date provision.

ARTICLE 15A. USE TAX.

**§11-15A-2. Imposition of tax; six percent tax rate
beginning March one, one thousand
nine hundred eighty-nine; inclusion of
services as taxable on and after the first
day of July, one thousand nine hundred
eighty-seven; transition rules; allocation
of tax and transfers.**

1 (a) An excise tax is hereby levied and imposed on
2 the use in this state of tangible personal property or

3 taxable services, to be collected and paid as hereinafter
4 provided, at the rate of six percent of the purchase
5 price of such property or taxable services, beginning
6 on the first day of March, one thousand nine hundred
7 eighty-nine, except that sales of gasoline and special
8 fuel shall remain taxable at five percent. "Taxable
9 services," for the purposes of this article, means
10 services of the nature that are subject to the tax
11 imposed by article fifteen of this chapter. In this
12 article, wherever the words "tangible personal prop-
13 erty" or "property" appear, the same shall include the
14 words "or taxable services," where the context so
15 requires.

16 (b) Such tax is hereby imposed upon every person
17 using tangible personal property or taxable services
18 within this state. That person's liability is not
19 extinguished until such tax has been paid. A receipt
20 with the tax separately stated thereon issued by a
21 retailer engaged in business in this state, or by a
22 foreign retailer who is authorized by the tax commis-
23 sioner to collect the tax imposed by this article,
24 relieves the purchaser from further liability for the
25 tax to which the receipt refers.

26 (c) Purchases of tangible personal property or
27 taxable services made for the government of the
28 United States or any of its agencies by ultimate
29 consumers shall be subject to the tax imposed by this
30 section. Industrial materials and equipment owned by
31 the federal government within the state of West
32 Virginia of a character not ordinarily readily obtain-
33 able within the state, shall not be subject to use tax
34 when sold, if such industrial materials and equipment
35 would not be subject to use taxes if such were sold
36 outside of the state for use in West Virginia.

37 (d) This article shall not apply to purchases made by
38 counties or municipal corporations.

39 (e) The provisions of this section, as amended, shall
40 apply on and after the first day of March, one thou-
41 sand nine hundred eighty-nine, except where another
42 internal specific effective date controls.

43 (f) Of the taxes collected under the provisions of this
 44 article, one sixth of such taxes collected for the period
 45 subsequent to the thirty-first day of May, one thou-
 46 sand nine hundred eighty-eight and prior to the first
 47 day of July, one thousand nine hundred eighty-nine,
 48 and not attributable to or resulting from the repeal of
 49 section eleven, article fifteen of this chapter or
 50 attributable to tax on gasoline and special fuel, shall be
 51 reasonably allocated, with allowances for refunds and
 52 net of reasonable costs of administration, to, and
 53 deposited by the tax commissioner in the special
 54 account created in the treasury by section eight-a,
 55 article four-b, chapter twenty-three of this code, not to
 56 exceed the amount sufficient for making timely
 57 repayment of the principal and interest under the first
 58 payment due, by the thirtieth day of June, one
 59 thousand nine hundred eighty-nine, in repayment for
 60 the moneys previously transferred from such
 61 pneumoconiosis fund.

§11-15A-29. Effective date.

1 The provisions of this article as amended or added
 2 by this act shall take effect on the first day of March,
 3 one thousand nine hundred eighty-nine, and apply to
 4 all taxable years ending after that date: *Provided*, That
 5 if an effective date is expressly provided in such
 6 provision, that specific effective date shall control in
 7 lieu of this general effective date provision.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

1 (a) *General.* — An annual business franchise tax is
 2 hereby imposed on the privilege of doing business in
 3 this state and in respect of the benefits and protections
 4 conferred. Such tax shall be collected from every
 5 domestic corporation, every corporation having its
 6 commercial domicile in this state, every foreign or
 7 domestic corporation owning or leasing real or tangi-
 8 ble personal property located in this state or doing
 9 business in this state and from every partnership
 10 owning or leasing real or tangible personal property
 11 located in this state or doing business in this state,

12 effective on and after the first day of July, one
13 thousand nine hundred eighty-seven.

14 (b) *Amount of tax and rate; effective date.*

15 (1) On and after the first day of July, one thousand
16 nine hundred eighty-seven, the amount of tax shall be
17 the greater of fifty dollars or fifty-five one hundredths
18 of one percent of the value of the tax base, as
19 determined under this article: *Provided*, That when
20 the taxpayer's first taxable year under this article is a
21 short taxable year, the taxpayer's liability shall be
22 prorated based upon the ratio which the number of
23 months in which such short taxable year bears to
24 twelve: *Provided, however*, That this subdivision (1)
25 shall not apply to taxable years beginning on or after
26 the first day of January, one thousand nine hundred
27 eighty-nine.

28 (2) *Taxable years after December 31, 1988.* — For
29 taxable years beginning on or after the first day of
30 January, one thousand nine hundred eighty-nine, the
31 amount of tax due under this article shall be the
32 greater of fifty dollars or seventy-five one hundredths
33 of one percent of the value of the tax base as
34 determined under this article: *Provided*, That when
35 the taxpayer's taxable year for federal income tax
36 purposes is a short taxable year, the tax determined by
37 application of the tax rate to the taxpayer's tax base
38 shall be prorated based upon the ratio which the
39 number of months in such short taxable year bears to
40 twelve: *Provided, however*, That when the taxpayer's
41 first taxable year under this article is less than twelve
42 months, the taxpayer's liability shall be prorated based
43 upon the ratio which the number of months taxpayer
44 was doing business in this state bears to twelve but in
45 no event shall the tax due be less than fifty dollars.

§11-23-17. Credits against tax; expiration of credits.

1 (a) A credit shall be allowed against the tax imposed
2 by this article equal to the amount of franchise tax
3 liability due under this article, for the taxable year
4 (determined before application of other allowable
5 credits) multiplied by a fraction, the numerator of

6 which is the gross income of the business subject to
7 tax under article thirteen-a of this chapter and the
8 denominator of which is the total amount of gross
9 receipts derived from or attributable to all of
10 taxpayer's activity in West Virginia.

11 (b) For taxable years ending after the thirtieth day
12 of June, one thousand nine hundred eighty-eight, a
13 credit shall be allowed against the tax imposed by this
14 article equal to the amount of franchise tax liability
15 due under this article, for the taxable year
16 (determined before application of other allowable
17 credits) multiplied by a fraction, the numerator of
18 which is the gross income of the business subject to
19 tax under article thirteen of this chapter and the
20 denominator of which is the total amount of gross
21 receipts derived from or attributable to all of
22 taxpayer's activity in West Virginia: *Provided*, That
23 such credit shall be prorated and only that amount
24 attributable to months of the taxable year beginning
25 after June thirtieth, one thousand nine hundred
26 eighty-eight, shall be allowed as a credit.

27 (c) A parent taxpayer who files a separate return
28 under this article shall be allowed a credit against such
29 taxpayer's liability for the tax under this article for
30 the amount of net taxes that would have been paid
31 without regard to the adjustment required by
32 subparagraph (D), paragraph (2), subsection (b),
33 section three of this article for the taxable year by a
34 subsidiary corporation or partnership: *Provided*, That
35 the amount of credit allowed shall not exceed the
36 amount of tax that would have been paid, without
37 regard to such adjustment, under this article by the
38 subsidiary or partnership, multiplied by the percent-
39 age of the parent's ownership of the subsidiary corpo-
40 ration or partnership. In the case of corporations, this
41 percentage shall be equal to the percentage of stock of
42 all classes owned by the parent. In no case shall any
43 credit allowable by this section, which is not used on
44 an annual return, be carried forward or back, but
45 instead the same shall be forfeited.

46 (d) A credit shall be allowed against the tax imposed

47 by this article for the taxable year equal to the amount
48 of liability of the taxpayer for the taxable year for the
49 full amount of any tax imposed pursuant to article
50 eight of this chapter on the capital of the business, as
51 determined under sections fourteen and fourteen-a,
52 article three of this chapter.

53 (e) *Expiration of credits.* — The credits authorized in
54 subsection (a) of this section, shall expire and not be
55 authorized or allowed for any taxable month begin-
56 ning on or after the first day of March, one thousand
57 nine hundred eighty-nine. For taxable years beginning
58 before said first day of March and ending after such
59 date, the annual credit heretofore allowed by
60 subsection (a) of this section shall be prorated by the
61 number of months in the taxable year and only that
62 portion of the credit attributable to months ending
63 prior to said first day of March shall be allowable
64 under this section.

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

Frederick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

To take effect March 1, 1989.

Irvin C. Hick
.....
Clerk of the Senate

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

Paul T. ...
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is* approved this the *7th*
day of *January*, 1989.

Winston Caperton
.....
Governor

WGCTII

2/1/89

2:20 p.m.