

SB 225

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



# ENROLLED

SENATE BILL NO. 225

(By Senators OLIVERIO AND ROSS)



PASSED MARCH 12, 1998

In Effect NINETY DAYS FROM Passage

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STATE OF WEST VIRGINIA

**ENROLLED**

**Senate Bill No. 225**

(BY SENATORS OLIVERIO AND ROSS)

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[Passed March 12, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact section two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales tax; definitions; production of natural resources; and including construction of ventilation and dewatering structures within definition of production of natural resources.

*Be it enacted by the Legislature of West Virginia:*

That section two, article fifteen, 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 15. CONSUMERS SALES TAX.**

**§11-15-2. Definitions.**

1 For the purpose of this article:

2 (a) "Business" includes all activities engaged in or  
3 caused to be engaged in with the object of gain or eco-  
4 nomic benefit, direct or indirect, and all activities of the  
5 state and its political subdivisions which involve sales of  
6 tangible personal property or the rendering of services  
7 when those service activities compete with or may com-  
8 pete with the activities of other persons.

9 (b) "Communication" means all telephone, radio, light,  
10 light wave, radio telephone, telegraph and other commu-  
11 nication or means of communication, whether used for  
12 voice communication, computer data transmission or  
13 other encoded symbolic information transfers and shall  
14 include commercial broadcast radio, commercial broad-  
15 cast television and cable television.

16 (c) "Contracting":

17 (1) *In general.* — "Contracting" means and includes the  
18 furnishing of work, or both materials and work, for  
19 another (by a sole contractor, general contractor, prime  
20 contractor or subcontractor) in fulfillment of a contract  
21 for the construction, alteration, repair, decoration or  
22 improvement of a new or existing building or structure, or  
23 any part thereof, or for removal or demolition of a build-  
24 ing or structure, or any part thereof, or for the alteration,  
25 improvement or development of real property.

26 (2) *Form of contract not controlling.* — An activity that  
27 falls within the scope of the definition of contracting shall  
28 constitute contracting regardless of whether such contract  
29 governing the activity is written or verbal and regardless  
30 of whether it is in substance or form a lump sum contract,  
31 a cost-plus contract, a time and materials contract,  
32 whether or not open-ended, or any other kind of construc-  
33 tion contract.

34 (3) *Special rules.* — For purposes of this definition:

35 (A) The term "structure" includes, but is not limited to,  
36 everything built up or composed of parts joined together  
37 in some definite manner and attached or affixed to real  
38 property, or which adds utility to real property or any part  
39 thereof, or which adds utility to a particular parcel of  
40 property and is intended to remain there for an indefinite  
41 period of time;

42 (B) The term "alteration" means, and is limited to,  
43 alterations which are capital improvements to a building  
44 or structure or to real property;

45 (C) The term "repair" means, and is limited to, repairs  
46 which are capital improvements to a building or structure  
47 or to real property;

48 (D) The term "decoration" means, and is limited to,  
49 decorations which are capital improvements to a building  
50 or structure or to real property;

51 (E) The term "improvement" means, and is limited to,  
52 improvements which are capital improvements to a  
53 building or structure or to real property;

54 (F) The term "capital improvement" means improve-  
55 ments that are affixed to or attached to and become a part  
56 of a building or structure or the real property or which  
57 add utility to real property or any part thereof and that  
58 last, or are intended to be relatively permanent. As used  
59 herein, "relatively permanent" means lasting at least a  
60 year or longer in duration without the necessity for  
61 regularly scheduled recurring service to maintain such  
62 capital improvement. "Regular recurring service" means  
63 regularly scheduled service intervals of less than one year;

64 (G) Contracting does not include the furnishing of work,  
65 or both materials and work in the nature of hookup,  
66 connection, installation or other services if such service is  
67 incidental to the retail sale of tangible personal property  
68 from the service provider's inventory: *Provided*, That  
69 such hookup, connection or installation of the foregoing is

70 incidental to the sale of the same and performed by the  
71 seller thereof or performed in accordance with arrange-  
72 ments made by the seller thereof. Examples of transac-  
73 tions that are excluded from the definition of contracting  
74 pursuant hereto include, but are not limited to, the sale of  
75 wall-to-wall carpeting and the installation of wall-to-wall  
76 carpeting, the sale, hookup and connection of mobile  
77 homes, window air conditioning units, dishwashers,  
78 clothing washing machines or dryers, other household  
79 appliances, drapery rods, window shades, venetian blinds,  
80 canvas awnings, free standing industrial or commercial  
81 equipment and other similar items of tangible personal  
82 property. Repairs made to the foregoing are within the  
83 definition of contracting if such repairs involve perma-  
84 nently affixing to or improving real property or something  
85 attached thereto which extends the life of the real prop-  
86 erty or something affixed thereto or allows or is intended  
87 to allow such real property or thing permanently attached  
88 thereto to remain in service for a year or longer.

89 (d) (1) "Directly used or consumed" in the activities of  
90 manufacturing, transportation, transmission, communica-  
91 tion or the production of natural resources means used or  
92 consumed in those activities or operations which consti-  
93 tute an integral and essential part of such activities, as  
94 contrasted with and distinguished from those activities or  
95 operations which are simply incidental, convenient or  
96 remote to such activities.

97 (2) Uses of property or consumption of services which  
98 constitute direct use or consumption in the activities of  
99 manufacturing, transportation, transmission, communica-  
100 tion or the production of natural resources includes only:

101 (A) In the case of tangible personal property, physical  
102 incorporation of property into a finished product resulting  
103 from manufacturing production or the production of  
104 natural resources;

105 (B) Causing a direct physical, chemical or other change

106 upon property undergoing manufacturing production or  
107 production of natural resources;

108 (C) Transporting or storing property undergoing trans-  
109 portation, communication, transmission, manufacturing  
110 production or production of natural resources;

111 (D) Measuring or verifying a change in property directly  
112 used in transportation, communication, transmission,  
113 manufacturing production or production of natural  
114 resources;

115 (E) Physically controlling or directing the physical  
116 movement or operation of property directly used in  
117 transportation, communication, transmission, manufac-  
118 turing production or production of natural resources;

119 (F) Directly and physically recording the flow of prop-  
120 erty undergoing transportation, communication, transmis-  
121 sion, manufacturing production or production of natural  
122 resources;

123 (G) Producing energy for property directly used in  
124 transportation, communication, transmission, manufac-  
125 turing production or production of natural resources;

126 (H) Facilitating the transmission of gas, water, steam or  
127 electricity from the point of their diversion to property  
128 directly used in transportation, communication, transmis-  
129 sion, manufacturing production or production of natural  
130 resources;

131 (I) Controlling or otherwise regulating atmospheric  
132 conditions required for transportation, communication,  
133 transmission, manufacturing production or production of  
134 natural resources;

135 (J) Serving as an operating supply for property undergo-  
136 ing transmission, manufacturing production or production  
137 of natural resources, or for property directly used in  
138 transportation, communication, transmission, manufac-  
139 turing production or production of natural resources;

140 (K) Maintenance or repair of property, including main-  
141 tenance equipment, directly used in transportation,  
142 communication, transmission, manufacturing production  
143 or production of natural resources;

144 (L) Storage, removal or transportation of economic  
145 waste resulting from the activities of manufacturing,  
146 transportation, communication, transmission or the  
147 production of natural resources;

148 (M) Pollution control or environmental quality or  
149 protection activity directly relating to the activities of  
150 manufacturing, transportation, communication, transmis-  
151 sion or the production of natural resources and personnel,  
152 plant, product or community safety or security activity  
153 directly relating to the activities of manufacturing,  
154 transportation, communication, transmission or the  
155 production of natural resources; or

156 (N) Otherwise be used as an integral and essential part  
157 of transportation, communication, transmission, manufac-  
158 turing production or production of natural resources.

159 (3) Uses of property or services which would not consti-  
160 tute direct use or consumption in the activities of manu-  
161 facturing, transportation, transmission, communication or  
162 the production of natural resources include, but are not  
163 limited to:

164 (A) Heating and illumination of office buildings;

165 (B) Janitorial or general cleaning activities;

166 (C) Personal comfort of personnel;

167 (D) Production planning, scheduling of work or inven-  
168 tory control;

169 (E) Marketing, general management, supervision,  
170 finance, training, accounting and administration; or

171 (F) An activity or function incidental or convenient to  
172 transportation, communication, transmission, manufac-

173 turing production or production of natural resources,  
174 rather than an integral and essential part of such activi-  
175 ties.

176 (e) (1) "Directly used or consumed" in the activities of  
177 gas storage, the generation or production or sale of electric  
178 power, the provision of a public utility service or the  
179 operation of a utility business, means used or consumed in  
180 those activities or operations which constitute an integral  
181 and essential part of such activities or operation, as  
182 contrasted with and distinguished from activities or  
183 operations which are simply incidental, convenient or  
184 remote to such activities.

185 (2) Uses of property or consumption of services which  
186 constitute direct use or consumption in the activities of  
187 gas storage, the generation or production or sale of electric  
188 power, the provision of a public utility service, or the  
189 operation of a utility business include only:

190 (A) Tangible personal property or services, including  
191 equipment, machinery, apparatus, supplies, fuel and  
192 power and appliances, which are used immediately in  
193 production or generation activities and equipment,  
194 machinery, supplies, tools and repair parts used to keep in  
195 operation exempt production or generation devices. For  
196 purposes of this subsection, production or generation  
197 activities shall commence from the intake, receipt or  
198 storage of raw materials at the production plant site;

199 (B) Tangible personal property or services, including  
200 equipment, machinery, apparatus, supplies, fuel and  
201 power, appliances, pipes, wires and mains which are used  
202 immediately in the transmission or distribution of gas,  
203 water and electricity to the public, and equipment,  
204 machinery, tools, repair parts and supplies used to keep in  
205 operation exempt transmission or distribution devices,  
206 and such vehicles and their equipment as are specifically  
207 designed and equipped for such purposes are exempt from  
208 the tax when used to keep a transmission or distribution



209 system in operation or repair. For purposes of this  
210 subsection, transmission or distribution activities shall  
211 commence from the close of production at a production  
212 plant or wellhead when a product is ready for transmis-  
213 sion or distribution to the public and shall conclude at the  
214 point where the product is received by the public;

215 (C) Tangible personal property or services, including  
216 equipment, machinery, apparatus, supplies, fuel and  
217 power, appliance, pipes, wires and mains, which are used  
218 immediately in the storage of gas or water, and equip-  
219 ment, machinery, tools, supplies and repair parts used to  
220 keep in operation exempt storage devices;

221 (D) Tangible personal property or services used immedi-  
222 ately in the storage, removal or transportation of eco-  
223 nomic waste resulting from the activities of gas storage,  
224 the generation or production or sale of electric power, the  
225 provision of a public utility service, or the operation of a  
226 utility business;

227 (E) Tangible personal property or services used immedi-  
228 ately in pollution control or environmental quality or  
229 protection activity or community safety or security  
230 directly relating to the activities of gas storage, generation  
231 or production or sale of electric power, the provision of a  
232 public utility service or the operation of a utility business.

233 (3) Uses of property or services which would not consti-  
234 tute direct use or consumption in the activities of gas  
235 storage, generation or production or sale of electric power,  
236 the provision of a public utility service or the operation of  
237 a utility business include, but are not limited to:

238 (A) Heating and illumination of office buildings;

239 (B) Janitorial or general cleaning activities;

240 (C) Personal comfort of personnel;

241 (D) Production planning, scheduling of work or inven-  
242 tory control;

243 (E) Marketing, general management, supervision,  
244 finance, training, accounting and administration; or

245 (F) An activity or function incidental or convenient to  
246 the activities of gas storage, generation or production or  
247 sale of electric power, the provision of public utility  
248 service or the operation of a utility business.

249 (f) "Drugs" includes all sales of drugs or appliances to a  
250 purchaser, upon prescription of a physician or dentist and  
251 any other professional person licensed to prescribe.

252 (g) "Gas storage" means the injection of gas into a  
253 storage reservoir, or the storage of gas for any period of  
254 time in a storage reservoir, or the withdrawal of gas from  
255 a storage reservoir, engaged in by businesses subject to the  
256 business and occupation tax imposed by sections two and  
257 two-e, article thirteen of this chapter.

258 (h) "Generating or producing or selling of electric  
259 power" means the generation, production or sale of  
260 electric power engaged in by businesses subject to the  
261 business and occupation tax imposed by section two,  
262 two-d, two-m or two-n, article thirteen of this chapter.

263 (i) "Gross proceeds" means the amount received in  
264 money, credits, property or other consideration from sales  
265 and services within this state, without deduction on  
266 account of the cost of property sold, amounts paid for  
267 interest or discounts or other expenses whatsoever. Losses  
268 shall not be deducted, but any credit or refund made for  
269 goods returned may be deducted.

270 (j) "Management information services" means, and is  
271 limited to, data processing, data storage, data recovery  
272 and backup, programming recovery and backup, telecom-  
273 munications, computation and computer processing,  
274 computer programming, electronic information and data  
275 management activities, or any combination of such  
276 activities, when such activity, or activities, is not subject  
277 to regulation by the West Virginia public service commis-

278 sion and such activity, or activities, is for the purpose of  
279 managing, planning for, organizing or operating, any  
280 industrial or commercial business, or any enterprise,  
281 facility or facilities of an industrial or commercial busi-  
282 ness, whether such industrial or commercial business or  
283 enterprise, facility or facilities of an industrial or commer-  
284 cial business is located within or without this state and  
285 without regard to whether such industrial or commercial  
286 business, or enterprise, facility or facilities of an industrial  
287 or commercial business is owned by the provider of the  
288 management information services or by a "related person",  
289 as defined in Section 267(b) of the Internal Revenue Code  
290 of 1986, as amended.

291 (k) "Management information services facility" means a  
292 building, or any part thereof, or a complex of buildings, or  
293 any part thereof, including the machinery and equipment  
294 located therein, that is exclusively dedicated to providing  
295 management information services to the owner or opera-  
296 tor thereof or to another person.

297 (l) "Manufacturing" means a systematic operation or  
298 integrated series of systematic operations engaged in as a  
299 business or segment of a business which transforms or  
300 converts tangible personal property by physical, chemical  
301 or other means into a different form, composition or  
302 character from that in which it originally existed.

303 (m) "Personal service" includes those:

304 (1) Compensated by the payment of wages in the ordi-  
305 nary course of employment; and

306 (2) Rendered to the person of an individual without, at  
307 the same time, selling tangible personal property, such as  
308 nursing, barbering, shoe shining, manicuring and similar  
309 services.

310 (n) "Persons" means any individual, partnership, associ-  
311 ation, corporation, state or its political subdivisions or  
312 agency of either, guardian, trustee, committee, executor or

313 administrator.

314 (o) "Production of natural resources" means, except for  
315 oil and gas, the performance, by either the owner of the  
316 natural resources or another, of the act or process of  
317 exploring, developing, severing, extracting, reducing to  
318 possession and loading for shipment and shipment for  
319 sale, profit or commercial use of any natural resource  
320 products and any reclamation, waste disposal or environ-  
321 mental activities associated therewith and the construc-  
322 tion, installation or fabrication of ventilation structures,  
323 mine shafts, slopes, boreholes, dewatering structures,  
324 including associated facilities and apparatus, by the  
325 producer or others, including contractors and subcontrac-  
326 tors, at a coal mine or coal production facility. For the  
327 natural resources oil and gas, "production of natural  
328 resources" means the performance, by either the owner of  
329 the natural resources, a contractor, or a subcontractor, of  
330 the act or process of exploring, developing, drilling, well  
331 stimulation activities such as logging, perforating or  
332 fracturing, well completion activities such as the installa-  
333 tion of the casing, tubing and other machinery and  
334 equipment, and any reclamation, waste disposal or  
335 environmental activities associated therewith, including  
336 the installation of the gathering system or other pipeline  
337 to transport the oil and gas produced or environmental  
338 activities associated therewith and any service work  
339 performed on the well or well site after production of the  
340 well has initially commenced. All work performed to  
341 install or maintain facilities up to the point of sale for  
342 severance tax purposes would be included in the "produc-  
343 tion of natural resources" and subject to the direct use  
344 concept. "Production of natural resources" does not  
345 include the performance or furnishing of work, or materi-  
346 als or work, in fulfillment of a contract for the construc-  
347 tion, alteration, repair, decoration or improvement of a  
348 new or existing building or structure, or any part thereof,  
349 or for the alteration, improvement or development of real

350 property, by persons other than those otherwise directly  
351 engaged in the activities specifically set forth in this  
352 subsection as "production of natural resources".

353 (p) "Providing a public service or the operating of a  
354 utility business" means the providing of a public service or  
355 the operating of a utility by businesses subject to the  
356 business and occupation tax imposed by sections two and  
357 two-d, article thirteen of this chapter.

358 (q) "Purchaser" means a person who purchases tangible  
359 personal property or a service taxed by this article.

360 (r) "Sale", "sales" or "selling" includes any transfer of the  
361 possession or ownership of tangible personal property for  
362 a consideration, including a lease or rental, when the  
363 transfer or delivery is made in the ordinary course of the  
364 transferor's business and is made to the transferee or his  
365 agent for consumption or use or any other purpose.

366 (s) "Service" or "selected service" includes all nonprofes-  
367 sional activities engaged in for other persons for a consid-  
368 eration, which involve the rendering of a service as  
369 distinguished from the sale of tangible personal property,  
370 but shall not include contracting, personal services or the  
371 services rendered by an employee to his employer or any  
372 service rendered for resale.

373 (t) "Tax" includes all taxes, interest and penalties levied  
374 hereunder.

375 (u) "Tax commissioner" means the state tax commis-  
376 sioner.

377 (v) "Taxpayer" means any person liable for the tax  
378 imposed by this article.

379 (w) "Transmission" means the act or process of causing  
380 liquid, natural gas or electricity to pass or be conveyed  
381 from one place or geographical location to another place  
382 or geographical location through a pipeline or other  
383 medium for commercial purposes.

384 (x) "Transportation" means the act or process of convey-  
385 ing, as a commercial enterprise, passengers or goods from  
386 one place or geographical location to another place or  
387 geographical location.

388 (y) "Ultimate consumer" or "consumer" means a person  
389 who uses or consumes services or personal property.

390 (z) "Vendor" means any person engaged in this state in  
391 furnishing services taxed by this article or making sales of  
392 tangible personal property.

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

*[Signature]*  
.....  
Chairman Senate Committee.

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

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

The within *approved* this the *27th*  
*March*  
day of ....., 1998.

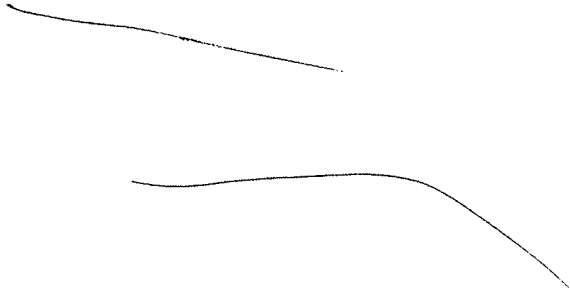
*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/98

Time 3:07 pm

Two handwritten lines, possibly a signature or scribble, located in the lower-middle section of the page. The top line is a straight diagonal stroke, and the bottom line is a curved stroke.