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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 646

(By Senators UNGER AND MINARD)

PASSED APRIL 8, 2005

In Effect 90 Days From Passage

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FOR

Senate Bill No. 646

(SENATORS UNGER AND MINARD, *original sponsors*)

[Passed April 8, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-13-1 and §11-13-3 of the Code of West Virginia, 1931, as amended, all relating generally to business and occupation tax; exempting from tax gross income received by nonprofit homeowners associations for community services to members; deleting obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-13-1 and §11-13-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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 subsec-

3 tion (b) shall have the meanings ascribed to them by this
4 section, unless a different meaning is clearly required by
5 either the context in which the term is used or by specific
6 definition.

7 (b) *Terms defined.* -

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

15 (2) "Sale", "sales" or "selling" includes any transfer of
16 or title to property or electricity, whether for money or in
17 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 services
22 and the gross receipts of the taxpayer derived from trade,
23 business, commerce or sales and the value proceeding or
24 accruing from the sale of tangible property (real or
25 personal) or service, or both, and all receipts by reason of
26 the investment of the capital of the business engaged in,
27 including rentals, royalties, fees, reimbursed costs or
28 expenses or other emoluments however designated and
29 including all interest, carrying charges, fees or other like
30 income, however denominated, derived by the taxpayer
31 from repetitive carrying of accounts, in the regular course
32 and conduct of his or her business, and extension of credit
33 in connection with the sale of any tangible personal
34 property or service and without any deductions on account
35 of the cost of property sold, the cost of materials used,
36 labor costs, taxes, royalties paid in cash or in kind or

37 otherwise, interest or discount paid or any other expenses
38 whatsoever.

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

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

51 (7) "Gas" means either natural gas unmixed or any
52 mixture of natural and artificial gas or any other gas.

53 (8) "Storage reservoir" means that portion of any
54 subterranean sand or rock stratum or strata into which gas
55 has been injected for the purpose of storage prior to the
56 first day of March, one thousand nine hundred eighty-nine.

57 (9) "Gas storage service" means the injection of gas into
58 a storage reservoir, the storage of gas for any period of
59 time in a storage reservoir or the withdrawal of gas from
60 a storage reservoir. The gas may be owned by the storage
61 operator or any other person.

62 (10) "Net number of dekatherms of gas injected" means
63 the sum of the daily injection of dekatherms of gas in
64 excess of the sum of the daily withdrawals of dekatherms
65 of gas during a tax month.

66 (11) "Net number of dekatherms of gas withdrawn"
67 means the sum of the daily withdrawal of dekatherms of
68 gas in excess of the sum of the daily injection of
69 dekatherms of gas during a tax month.

70 (12) "Gas storage operator" means any person who
71 operates a storage reservoir or provides a storage service
72 as defined in this subsection either as owner or lessee.

73 (13) "Month" or "tax month" means the calendar month.

74 (14) "Dekatherm" means the thermal energy unit equal
75 to one million British thermal units (BTU's) or the equiva-
76 lent of one thousand cubic feet of gas having a heating
77 content of one thousand BTU's per cubic foot.

78 (15) "Taxable year" means the calendar year, or the
79 fiscal year ending during the calendar year, upon the basis
80 of which tax liability is computed under this article.
81 "Taxable year" means, in case of a return made for a
82 fractional part of a year under the provisions of this
83 article, or under regulations promulgated by the Tax
84 Commissioner, the period for which the return is made.

85 (16) "Homeowners' association" means a homeowners'
86 association as defined in Section 528 of the Internal
87 Revenue Code of 1986, as amended. The term "homeown-
88 ers' association" also includes any unit owners' association
89 organized under section one hundred one, article three,
90 chapter thirty-six-b of this code.

91 (17) "Member", for purposes of the exemption provided
92 in subdivision (7), subsection (b), section three of this
93 article, means a person having membership rights in a
94 homeowners' association, in accordance with the provi-
95 sions of its articles of incorporation, bylaws or other
96 instruments creating its form and organization; and having
97 bona fide rights and privileges in the organization ordi-
98 narily conferred on members of the homeowners associa-
99 tion, such as the right to vote, the right to elect officers
100 and directors and the right to hold office within the
101 organization. The term "member" also includes a "unit
102 owner" as that term is defined in section one hundred
103 three, article one, chapter thirty-six-b of this code.

§11-13-3. Exemptions; annual exemption and periods thereof.

1 (a) *Monthly exemption.* – For any tax imposed under the
2 provisions of this article with respect to any period
3 beginning on or after the first day of July, one thousand
4 nine hundred eighty-five, there shall be an exemption in
5 every case of forty-one dollars and sixty-seven cents per
6 month in amount of tax computed under the provisions of
7 this article. Only one exemption shall be allowed to any
8 one person, whether the person exercises one or more
9 privileges taxable hereunder.

10 (b) *Exemptions from tax.* – The provisions of this article
11 shall not apply to:

12 (1) Insurance companies which pay the State of West
13 Virginia a tax upon premiums: *Provided*, That said
14 exemption shall not extend to that part of the gross income
15 of insurance companies which is received for the use of
16 real property, other than property in which any company
17 maintains its office or offices, in this state, whether the
18 income be in the form of rentals or royalties;

19 (2) Nonprofit cemetery companies organized and oper-
20 ated for the exclusive benefit of their members;

21 (3) Fraternal societies, organizations and associations
22 organized and operated for the exclusive benefit of their
23 members and not for profit: *Provided*, That the exemption
24 shall not extend to that part of the gross income arising
25 from the sale of alcoholic liquor, food and related services
26 of fraternal societies, organizations and associations which
27 are licensed as private clubs under the provisions of article
28 seven, chapter sixty of this code;

29 (4) Corporations, associations and societies organized
30 and operated exclusively for religious or charitable
31 purposes and production credit associations, organized
32 under the provisions of the federal Farm Credit Act of
33 1933;

34 (5) Any credit union organized under the provisions of
35 chapter thirty-one of this code or any other chapter of this
36 code: *Provided*, That the exemptions of this section shall
37 not apply to corporations or cooperative associations
38 organized under the provisions of article four, chapter
39 nineteen of this code;

40 (6) Gross income derived from advertising service
41 rendered in the business of radio and television broadcast-
42 ing; and

43 (7) Gross income of a nonprofit homeowners' association
44 received from assessments on its members for community
45 services such as road maintenance, common area mainte-
46 nance, water service, sewage service and security service.

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

Sandy White
.....
Chairman Senate Committee

D. Russ Berry
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Dorrell Elphinstone
.....
Clerk of the Senate

Gregory M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert St. 123
.....
Speaker House of Delegates

The within *is approved* this the *28th*
Day of *April* 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 20 2005

Time 2:55pm