WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2005

ENROLLED
Committee Substitute For
SENATE BILL NO. 646

(By Senators Unger and Sinard)

PASSED April 8, 2005

In Effect 90 Days From Passage
ENROLLED

COMMITTEE SUBSTITUTE

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 administration of this article, the terms defined in subsec-
(b) Terms defined. –

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

(2) "Sale", "sales" or "selling" includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

(3) "Taxpayer" means any person liable for any tax hereunder.

(4) "Gross income" means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal) or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his or her business, and extension of credit in connection with the sale of any tangible personal property or service and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or
otherwise, interest or discount paid or any other expenses whatsoever.

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

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

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

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

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

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

(11) "Net number of dekatherms of gas withdrawn" means the sum of the daily withdrawal of dekatherms of gas in excess of the sum of the daily injection of dekatherms of gas during a tax month.
(12) "Gas storage operator" means any person who operates a storage reservoir or provides a storage service as defined in this subsection either as owner or lessee.

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

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

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

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

(17) "Member", for purposes of the exemption provided in subdivision (7), subsection (b), section three of this article, means a person having membership rights in a homeowners' association, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization ordinarily conferred on members of the homeowners association, such as the right to vote, the right to elect officers and directors and the right to hold office within the organization. The term "member" also includes a "unit owner" as that term is defined in section one hundred three, article one, chapter thirty-six-b of this code.
§11-13-3. Exemptions; annual exemption and periods thereof.

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

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

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

(2) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

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

(4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes and production credit associations, organized under the provisions of the federal Farm Credit Act of 1933;
(5) Any credit union organized under the provisions of chapter thirty-one of this code or any other chapter of this code: Provided, That the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;

(6) Gross income derived from advertising service rendered in the business of radio and television broadcasting; and

(7) Gross income of a nonprofit homeowners' association received from assessments on its members for community services such as road maintenance, common area maintenance, water service, sewage service and security service.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor