

**H. B. 2792**

(By Delegate R. Phillips (By Request))

[Introduced February 17, 2015; referred to the  
Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-13-1 of the Code of West Virginia, 1931, as amended, relating to the business and occupation tax; definitions; and including photography activities for the gain or economic benefit of any person in the definition of "business".

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

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

**ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

**§11-13-1. Definitions.**

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

(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

1 combination acting as a unit, and the plural as well as the singular number, unless the intention to  
2 give a more limited meaning is disclosed by the context.

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

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

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

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

20 (6) "Business" ~~shall~~ includes all activities engaged in or caused to be engaged in with the  
21 object of gain or economic benefit, either direct or indirect, and includes photographic activities of  
22 any nature engaged in by any person for the gain or economic benefit of any person wherever

1 conducted and through any method, means or media or Internet. "Business" ~~shall~~ includes the  
2 rendering of gas storage service by any person for the gain or economic benefit of any person,  
3 including, but not limited to, the storage operator, whether or not incident to any other business  
4 activity.

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

7 (8) "Storage reservoir" means that portion of any subterranean sand or rock stratum or strata  
8 into which gas has been injected for the purpose of storage prior to March 1, 1989.

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

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

15 (11) "Net number of dekatherms of gas withdrawn" means the sum of the daily withdrawal  
16 of dekatherms of gas in excess of the sum of the daily injection of dekatherms of gas during a tax  
17 month.

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

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

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

1 BTU's per cubic foot.

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

6 (16) "Homeowners' association" means a homeowners' association as defined in Section  
7 528 of the Internal Revenue Code of 1986, as amended. The term "homeowners' association" also  
8 includes any unit owners' association organized under section one hundred one, article three,  
9 chapter thirty-six-b of this code.

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

NOTE: The purpose of this bill is to include photography activities for the gain or economic benefit of any person in the definition of "business" for the purposes of the business and occupation tax.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.