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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Committee Substitute for
SENATE BILL NO. 328

(By Senator Ross, et al)



PASSED March 12, 1994
In Effect from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 328

(SENATORS ROSS, SHARPE, HELMICK,
DITTMAR, ANDERSON, HUMPHREYS, SCHOONOVER,
MINARD, WOOTON, MANCHIN AND YODER, *original sponsors*)

[Passed March 12, 1994; in effect from passage.]

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 the state consumers sales tax; and providing a definition of the phrase "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
- 4 economic benefit, direct or indirect, and all activities of

5 the state and its political subdivisions which involve
6 sales of tangible personal property or the rendering of
7 services when those service activities compete with or
8 may compete with the activities of other persons.

9 (b) "Communication" means all telephone, radio, light,
10 light wave, radio telephone, telegraph and other
11 communication or means of communication, whether
12 used for voice communication, computer data transmis-
13 sion or other encoded symbolic information transfers
14 and shall include commercial broadcast radio, commer-
15 cial broadcast 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,
23 or any part thereof, or for removal or demolition of a
24 building or structure, or any part thereof, or for the
25 alteration, 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
28 shall constitute contracting regardless of whether such
29 contract governing the activity is written or verbal and
30 regardless of whether it is in substance or form a lump
31 sum contract, a cost-plus contract, a time and materials
32 contract, whether or not open-ended, or any other kind
33 of construction 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
39 part thereof, or which adds utility to a particular parcel
40 of property and is intended to remain there for an
41 indefinite 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
47 structure or to real property.

48 (D) The term “decoration” means, and is limited to,
49 decorations which are capital improvements to a
50 building 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
56 part of a building or structure or the real property or
57 which add utility to real property or any part thereof and
58 that last, or are intended to be relatively permanent. As
59 used herein, “relatively permanent” means lasting at
60 least a year or longer in duration without the necessity
61 for regularly scheduled recurring service to maintain
62 such capital improvement. “Regular recurring service”
63 means regularly scheduled service intervals of less than
64 one year.

65 (G) Contracting does not include the furnishing of
66 work, or both materials and work in the nature of
67 hookup, connection, installation or other services if such
68 service is incidental to the retail sale of tangible personal
69 property from the service provider’s inventory:
70 *Provided*, That such hookup, connection or installation
71 of the foregoing is incidental to the sale of the same and
72 performed by the seller thereof or performed in
73 accordance with arrangements made by the seller
74 thereof. Examples of transactions that are excluded from
75 the definition of contracting pursuant hereto include,
76 but are not limited to, the sale of wall-to-wall carpeting
77 and the installation of wall-to-wall carpeting, the sale,
78 hookup and connection of mobile homes, window air

79 conditioning units, dishwashers, clothing washing
80 machines or dryers, other household appliances, drapery
81 rods, window shades, venetian blinds, canvas awnings,
82 free standing industrial or commercial equipment and
83 other similar items of tangible personal property.
84 Repairs made to the foregoing are within the definition
85 of contracting if such repairs involve permanently
86 affixing to or improving real property or something
87 attached thereto which extends the life of the real
88 property or something affixed thereto or allows or is
89 intended to allow such real property or thing perma-
90 nently attached thereto to remain in service for a year or
91 longer.

92 (d) (1) "Directly used or consumed" in the activities of
93 manufacturing, transportation, transmission, communi-
94 cation or the production of natural resources means used
95 or consumed in those activities or operations which
96 constitute an integral and essential part of such
97 activities, as contrasted with and distinguished from
98 those activities or operations which are simply inciden-
99 tal, convenient or remote to such activities.

100 (2) Uses of property or consumption of services which
101 constitute direct use or consumption in the activities of
102 manufacturing, transportation, transmission, communi-
103 cation or the production of natural resources includes
104 only:

105 (A) In the case of tangible personal property, physical
106 incorporation of property into a finished product
107 resulting from manufacturing production or the
108 production of natural resources;

109 (B) Causing a direct physical, chemical or other change
110 upon property undergoing manufacturing production or
111 production of natural resources;

112 (C) Transporting or storing property undergoing
113 transportation, communication, transmission, manufac-
114 turing production or production of natural resources;

115 (D) Measuring or verifying a change in property

116 directly used in transportation, communication, trans-
117 mission, manufacturing production or production of
118 natural resources;

119 (E) Physically controlling or directing the physical
120 movement or operation of property directly used in
121 transportation, communication, transmission, manufac-
122 turing production or production of natural resources;

123 (F) Directly and physically recording the flow of
124 property undergoing transportation, communication,
125 transmission, manufacturing production or production
126 of natural resources;

127 (G) Producing energy for property directly used in
128 transportation, communication, transmission, manufac-
129 turing production or production of natural resources;

130 (H) Facilitating the transmission of gas, water, steam
131 or electricity from the point of their diversion to
132 property directly used in transportation, communication,
133 transmission, manufacturing production or production
134 of natural resources;

135 (I) Controlling or otherwise regulating atmospheric
136 conditions required for transportation, communication,
137 transmission, manufacturing production or production
138 of natural resources;

139 (J) Serving as an operating supply for property
140 undergoing transmission, manufacturing production or
141 production of natural resources, or for property directly
142 used in transportation, communication, transmission,
143 manufacturing production or production of natural
144 resources;

145 (K) Maintenance or repair of property, including
146 maintenance equipment, directly used in transportation,
147 communication, transmission, manufacturing production
148 or production of natural resources;

149 (L) Storage, removal or transportation of economic
150 waste resulting from the activities of manufacturing,
151 transportation, communication, transmission or the

152 production of natural resources;

153 (M) Pollution control or environmental quality or
154 protection activity directly relating to the activities of
155 manufacturing, transportation, communication, trans-
156 mission or the production of natural resources and
157 personnel, plant, product or community safety or
158 security activity directly relating to the activities of
159 manufacturing, transportation, communication, trans-
160 mission or the production of natural resources; or

161 (N) Otherwise be used as an integral and essential part
162 of transportation, communication, transmission, manu-
163 facturing production or production of natural resources.

164 (3) Uses of property or services which would not
165 constitute direct use or consumption in the activities of
166 manufacturing, transportation, transmission, communi-
167 cation or the production of natural resources include,
168 but are not limited to:

169 (A) Heating and illumination of office buildings;

170 (B) Janitorial or general cleaning activities;

171 (C) Personal comfort of personnel;

172 (D) Production planning, scheduling of work or
173 inventory control;

174 (E) Marketing, general management, supervision,
175 finance, training, accounting and administration; or

176 (F) An activity or function incidental or convenient to
177 transportation, communication, transmission, manufac-
178 turing production or production of natural resources,
179 rather than an integral and essential part of such
180 activities.

181 (e) (1) "Directly used or consumed" in the activities of
182 gas storage, the generation or production or sale of
183 electric power, the provision of a public utility service or
184 the operation of a utility business, means used or
185 consumed in those activities or operations which
186 constitute an integral and essential part of such

187 activities or operation, as contrasted with and distin-
188 guished from activities or operations which are simply
189 incidental, convenient or remote to such activities.

190 (2) Uses of property or consumption of services which
191 constitute direct use or consumption in the activities of
192 gas storage, the generation or production or sale of
193 electric power, the provision of a public utility service,
194 or the operation of a utility business include only:

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

204 (B) Tangible personal property or services, including
205 equipment, machinery, apparatus, supplies, fuel and
206 power, appliances, pipes, wires and mains which are
207 used immediately in the transmission or distribution of
208 gas, water and electricity to the public, and equipment,
209 machinery, tools, repair parts and supplies used to keep
210 in operation exempt transmission or distribution devices,
211 and such vehicles and their equipment as are specifically
212 designed and equipped for such purposes are exempt
213 from the tax when used to keep a transmission or
214 distribution system in operation or repair. For purposes
215 of this subsection, transmission or distribution activities
216 shall commence from the close of production at a
217 production plant or wellhead when a product is ready for
218 transmission or distribution to the public and shall
219 conclude at the point where the product is received by
220 the public;

221 (C) Tangible personal property or services, including
222 equipment, machinery, apparatus, supplies, fuel and
223 power, appliance, pipes, wires and mains, which are used
224 immediately in the storage of gas or water, and equip-

225 ment, machinery, tools, supplies and repair parts used to
226 keep in operation exempt storage devices;

227 (D) Tangible personal property or services used
228 immediately in the storage, removal or transportation of
229 economic waste resulting from the activities of gas
230 storage, the generation or production or sale of electric
231 power, the provision of a public utility service, or the
232 operation of a utility business;

233 (E) Tangible personal property or services used
234 immediately in pollution control or environmental
235 quality or protection activity or community safety or
236 security directly relating to the activities of gas storage,
237 generation or production or sale of electric power, the
238 provision of a public utility service or the operation of a
239 utility business.

240 (3) Uses of property or services which would not
241 constitute direct use or consumption in the activities of
242 gas storage, generation or production or sale of electric
243 power, the provision of a public utility service or the
244 operation of a utility business include, but are not
245 limited to:

246 (A) Heating and illumination of office buildings;

247 (B) Janitorial or general cleaning activities;

248 (C) Personal comfort of personnel;

249 (D) Production planning, scheduling of work or
250 inventory control;

251 (E) Marketing, general management, supervision,
252 finance, training, accounting and administration; or

253 (F) An activity or function incidental or convenient to
254 the activities of gas storage, generation or production or
255 sale of electric power, the provision of public utility
256 service or the operation of a utility business.

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

260 (g) "Gas storage" means the injection of gas into a
261 storage reservoir, or the storage of gas for any period of
262 time in a storage reservoir, or the withdrawal of gas from
263 a storage reservoir, engaged in by businesses subject to
264 the business and occupation tax imposed by sections two
265 and two-e, article thirteen of this chapter.

266 (h) "Generating or producing or selling of electric
267 power" means the generation, production or sale of
268 electric power engaged in by businesses subject to the
269 business and occupation tax imposed by section two,
270 two-d, two-m or two-n, article thirteen of this chapter.

271 (i) "Gross proceeds" means the amount received in
272 money, credits, property or other consideration from
273 sales and services within this state, without deduction on
274 account of the cost of property sold, amounts paid for
275 interest or discounts or other expenses whatsoever.
276 Losses shall not be deducted, but any credit or refund
277 made for goods returned may be deducted.

278 (j) "Management information services" means, and is
279 limited to, data processing, data storage, data recovery
280 and backup, programming recovery and backup,
281 telecommunications, computation and computer
282 processing, computer programming, electronic informa-
283 tion and data management activities, or any combination
284 of such activities, when such activity, or activities, is not
285 subject to regulation by the West Virginia public service
286 commission and such activity, or activities, is for the
287 purpose of managing, planning for, organizing or
288 operating, any industrial or commercial business, or any
289 enterprise, facility or facilities of an industrial or
290 commercial business, whether such industrial or
291 commercial business or enterprise, facility or facilities of
292 an industrial or commercial business is located within or
293 without this state and without regard to whether such
294 industrial or commercial business, or enterprise, facility
295 or facilities of an industrial or commercial business is
296 owned by the provider of the management information
297 services or by a "related person", as defined in Section

298 267(b) of the Internal Revenue Code of 1986, as amended.

299 (k) "Management information services facility" means
300 a building, or any part thereof, or a complex of build-
301 ings, or any part thereof, including the machinery and
302 equipment located therein, that is exclusively dedicated
303 to providing management information services to the
304 owner or operator thereof or to another person.

305 (l) "Manufacturing" means a systematic operation or
306 integrated series of systematic operations engaged in as
307 a business or segment of a business which transforms or
308 converts tangible personal property by physical,
309 chemical or other means into a different form, composi-
310 tion or character from that in which it originally existed.

311 (m) "Personal service" includes those:

312 (1) Compensated by the payment of wages in the
313 ordinary course of employment; and

314 (2) Rendered to the person of an individual without, at
315 the same time, selling tangible personal property, such as
316 nursing, barbering, shoe shining, manicuring and similar
317 services.

318 (n) "Persons" means any individual, partnership,
319 association, corporation, state or its political subdivi-
320 sions or agency of either, guardian, trustee, committee,
321 executor or administrator.

322 (o) "Production of natural resources" means, except for
323 oil and gas, the performance, by either the owner of the
324 natural resources or another, of the act or process of
325 exploring, developing, severing, extracting, reducing to
326 possession and loading for shipment and shipment for
327 sale, profit or commercial use of any natural resource
328 products and any reclamation, waste disposal or
329 environmental activities associated therewith. For the
330 natural resources oil and gas, "production of natural
331 resources" means the performance, by either the owner
332 of the natural resources, a contractor, or a subcontractor,
333 of the act or process of exploring, developing, drilling,

334 well stimulation activities such as logging, perforating or
335 fracturing, well completion activities such as the
336 installation of the casing, tubing and other machinery
337 and equipment, and any reclamation, waste disposal or
338 environmental activities associated therewith, including
339 the installation of the gathering system or other pipeline
340 to transport the oil and gas produced or environmental
341 activities associated therewith and any service work
342 performed on the well or well site after production of the
343 well has initially commenced. All work performed to
344 install or maintain facilities up to the point of sale for
345 severance tax purposes would be included in the
346 "production of natural resources" and subject to the
347 direct use concept. "Production of natural resources"
348 does not include the performance or furnishing of work,
349 or materials or work, in fulfillment of a contract for the
350 construction, alteration, repair, decoration or improve-
351 ment of a new or existing building or structure, or any
352 part thereof, or for the alteration, improvement or
353 development of real property, by persons other than
354 those otherwise directly engaged in the activities
355 specifically set forth in this subsection as "production of
356 natural resources".

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

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

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

372 (s) "Service" or "selected service" includes all
373 nonprofessional activities engaged in for other persons
374 for a consideration, which involve the rendering of a
375 service as distinguished from the sale of tangible
376 personal property, but shall not include contracting,
377 personal services or the services rendered by an
378 employee to his employer or any service rendered for
379 resale.

380 (t) "Tax" includes all taxes, interest and penalties
381 levied hereunder.

382 (u) "Tax commissioner" means the state tax commis-
383 sioner.

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

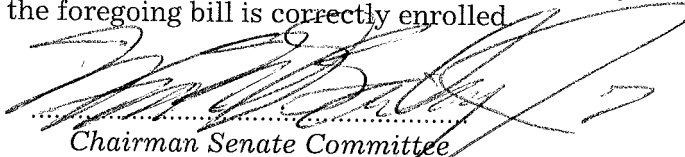
386 (w) "Transmission" means the act or process of causing
387 liquid, natural gas or electricity to pass or be conveyed
388 from one place or geographical location to another place
389 or geographical location through a pipeline or other
390 medium for commercial purposes.

391 (x) "Transportation" means the act or process of
392 conveying, as a commercial enterprise, passengers or
393 goods from one place or geographical location to another
394 place or geographical location.

395 (y) "Ultimate consumer" or "consumer" means a
396 person who uses or consumes services or personal
397 property.

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

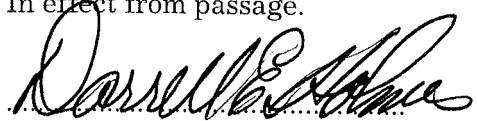
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled



.....
Chairman Senate Committee

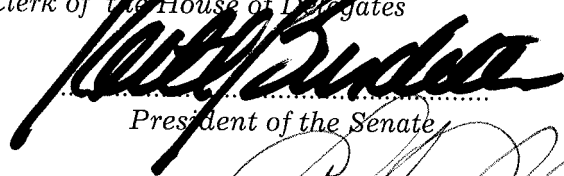

.....
Chairman House Committee


Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this the *15th*
Main day of, 1994.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/18/94

Time

4:34 pm