State Tax Department
Leg. Reg. 11-10
Series XIII

Title 110
Legislative Rule

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

~~STATE~~ TAX DEPARTMENT

~~LEGISLATIVE~~

~~Chapter 11-10~~
Series ~~XIII~~ 13
~~(1974)~~

Subject: Business and Occupation Tax

Section 1. General.

1.01. Type of Regulations -- These regulations are "legislature rules" as defined in West Virginia Code § 2A-1-2(d) (1982).

1.02. Scope -- These regulations explain and clarify the West Virginia business and occupation tax, West Virginia Code § 11-13-1 et. seq.

W. Va. Code § 11-10-5(a)

1.03. Authority -- These regulations are issued under authority of West Virginia Code § 11-10-5(a).

1.04. Effective Date -- These regulations became effective on July 1, 1974.

1.05. Filing Date -- These regulations were promulgated on June 1, 1974 and filed on June 1, 1974 in the office of the Secretary of State. In compliance with West Virginia Code § 29A-2-5 (1982), these regulations were refiled with the Secretary of State on December 29, 1982.

1.06. Citation. -- These regulations may be cited as W. Va. Leg. Reg. (BOT) 11-10, Series XIII, §_____, page_____ (1974).

Section 1a. Definitions

1a.01. For purposes of these rules and regulations, the following terms are hereby defined.

(a) The term "person" or the term "company", herein used interchangeably, includes any individual, firm, partnership, co-partnership, 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.

(b) "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year when permission is obtained from the Tax Commissioner to use the fiscal year as the tax period in lieu of the calendar year. If a taxpayer desires to employ a tax year other than the calendar year, he must request, in writing, permission from the Tax Department.

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

(d) "Sale", "sales" or "selling" includes any transfer of the ownership of, or title to, property, whether for money or in exchange for other property. When property is exchanged for other property rather than for money, the taxpayer must place a value on the property received and report the same for business and occupation tax purposes as if money were received.

(e) The term "sale price" means the consideration, whether money, credits, price, or other property expressed in the terms

of money, paid or delivered by a buyer to a seller, all without any deduction, on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery cost, taxes or any other expenses whatsoever paid or accrued, and without any deduction on account of losses.

(f) The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible property without any deduction on account of cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery cost, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(g) "Gross income" means all income from whatever source derived, unless excluded by law. Gross income shall include income realized in any form, whether in money, property, or services. Gross income means the gross receipts of the taxpayer, other than a banking or financial business, 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. Gross income includes all receipts by the reason of the investment of the capital of the business engaged in and shall include rents, royalties, fees, reimbursed costs or expenses or other emoluments however designated. Gross income includes 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 business, and extension of credit in connection with the sale of any tangible personal property or service.

(1) If services or property are paid for other than in money, the fair market value of the property or service taken in payment must be included in gross income.

(2) No deduction shall be allowed against gross income for 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 expense whatsoever.

(3) For the definition of gross income of a banking or financial business, see section 2k.02 of these rules and regulations.

(4) Examples of gross income are:

(A) A construction company, which desires to purchase a piece of heavy equipment, does not have available capital to make such purchase and, therefore, transfers title to a parcel of real estate to the heavy equipment dealer in return for the piece of heavy equipment. The fair market value of the real estate received by the heavy equipment dealer will

be included in the dealer's gross income for purposes of the business and occupation tax. An indicator as to the value of the real estate received by the dealer would be the price of the heavy equipment if it has been purchased for cash. This indicator does not conclusively establish the amount of gross receipts which inured to the dealer. If the article (real estate) received has a greater value than the article (heavy equipment) exchanged, then it is necessary that the dealer report the greater value for business and occupation tax purposes.

(B) A person in the business of selling and servicing home appliances has income for the taxable year in the following manner: $97,000 from the retail sale of appliances; $13,000 received from servicing and repairing appliances; and $10,000 received from the rental of a building. Even though the rental income is not directly related to the business of selling and servicing home appliances, it is an item of gross income as defined by the business and occupation tax law. All three are items of gross income

which the taxpayer must report on his business and occupation tax return. Each item of gross income must be reported under its proper business classification.

(C) B agrees to construct an apartment building for R. The contract entered into by the parties stipulates that B's remuneration shall be his costs plus twenty percent (20%) thereof. B constructs said building and his costs aggregate $150,000 for which R makes reimbursement to B. B receives also $30,000 from R as his 20% of costs as stipulated by the contract. On his business and occupation tax return, B will report, as gross income, $180,000. B will receive no deduction against gross income for monies received as reimbursed costs or expenses.

(D) M, who is in the business of drilling for and producing natural gas and oil, agrees with L, a landowner, to sink a well on L's land. The parties agree that if gas or oil is discovered, L will be entitled to a one-eighth royalty therefrom, either in cash or in kind at L's option. The well is successful and L decides to accept, in payment (as his one-

eighth royalty) from M, 2,000 barrels of oil and $35,000 in cash. M, on his business and occupation tax return, must report the entire gross income received from the production of oil and is not allowed a deduction therefrom for either the royalty paid in cash or in kind to L. M must also place a value on the 2,000 barrels of oil paid L as a royalty and report said value for purposes of this tax.

(h) The terms "gross income" and "gross proceeds of sales" shall not include cash discounts allowed and taken on sales. When a contract of sale is made subject to cancellation at the option of one of the parties to revision in the event goods sold are defective or if the sale is made subject to discount upon cash payment, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed. The selling price of a service or article of property does not include the amount of bona fide cash discount actually taken by the purchaser and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount column on the business and occupation tax return.

(1) Cash discount deductions will be allowed under the production and manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

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(2) The cost to the retailer of business stimulants and promotions are not considered cash discounts; nor is the value of such stimulants and promotions cash discounts. The expense incurred by the merchant in purchasing and distributing such items is a cost of doing business and is not deductible or excludible from gross income or gross proceeds of sales.

(3) X, a retail grocer, to stimulate business, purchases trading stamps and dispenses the same, based upon the amount of each individual order, to his customers. In preparing his business and occupation tax return, X is not permitted to deduct the cost or value of the trading stamps from his gross proceeds of sales to arrive at his taxable income.

(i) The terms "gross income" and "gross proceeds of sales" shall not include the proceeds of sale of goods, ware or merchandise returned by the customers when the sale price is refunded either in cash or by credit.

(1) When sales are made either upon approval or upon a sale and return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the vendor may deduct an amount equal to the

selling price from gross proceeds of sales in computing tax liability, if the gross income from said sale has been previously reported or entered in the gross amount column on the business and occupation tax return.

(j) The terms "gross income" and "gross proceeds of sales" shall not include the amount allowed as trade-in value for any article accepted as part payment for any article sold.

(1) This particular situation is prevalent in the automobile business. For example, X sells Y a new automobile for $3,200. In payment for the new automobile, X accepts $2,500 in cash and also accepts Y's used automobile which has a trade-in value of $700. X must report, on his business and occupation tax return, the amount of $2,500 as gross income. When X sells the used automobile, the amount received from said sale will also be subject to business and occupation tax.

(k) The terms "gross income" and "gross proceeds of sales" shall not include excise taxes imposed by the State of West Virginia.

(1) Excise taxes imposed by the State of West Virginia are not to be included in gross income to determine the amount of business and occupation tax payable. For purposes of this deduction or exclu-

sion from gross income, the following constitute West Virginia excise taxes: gasoline tax, diesel fuel tax, cigarette tax, beer barrel tax and soft drink tax.

(2) Exclusions or deductions from gross income for West Virginia excise taxes will be disallowed unless the taxpayer provides necessary information on his annual business and occupation tax return to support the claimed deduction. On his tax return, the taxpayer claiming this exclusion or deduction must itemize the quantity of gasoline, diesel fuel, cigarettes, beer and soft drinks sold. Adequate records must be maintained to properly establish the deductions claimed.

(3) The annual business and occupation tax return provides a column for subtracting the State excise tax deduction from gross proceeds of sales and provides a schedule, on the reverse side, for the itemization of said deduction. (See the illustrative example in § 1a.01(k) of these rules and regulations.)

(k) The terms "gross income" and "gross proceeds of sales" shall not include certain excise taxes imposed by the United States of America.

(1) All excise taxes levied by the federal government are not deductible from gross income or from gross proceeds of sales. The test as to whether or not a particular federal excise tax is to included in or excluded from gross income for business and occupation tax purposes is whether the particular excise tax is a tax on the manufacturing process or a tax which attaches at the time of sale and not before. Therefore, to qualify as a deduction from gross income, the burden of said tax must rest upon the consumer.

(2) Federal excise taxes which are taxes upon the process of manufacturing are not deductible or excludible from gross income or gross proceeds of sales for business and occupation tax purposes. This includes, but is not limited to, federal excise taxes on alcohol and distilled spirits, tobaccos, cigars, cigarettes, matches, automobiles, tires, et cetera.

(3) Federal excise taxes which are taxes upon the consumer and which are held in trust by the vendor as agent for the federal government may be deducted from gross income or gross proceeds of sales in determining the amount of business and occupation tax liability. This includes federal

excise taxes paid on gasoline, diesel fuel and lubricants.

(4) Persons claiming deductions for federal excise taxes must itemize on the annual business and occupation tax from and provide necessary information to support said deduction. Deductions claimed for federal excise taxes will be disallowed in those cases where the taxpayer fails to provide an itemization.

(5) An example pertaining to state and federal excise taxes is presented below:

> John Doe owns and operates a service station. During the calendar year 1972, he sold, at retail, gasoline, oil, cigars, cigarettes, and soft drinks. His retail sales for the taxable year totaled $157,000 and his service income from repairing and washing of automobiles totaled $23,000.

The taxpayer must report and pay tax under two (2) business classifications, retail and service. He is allowed a deduction from gross income, reported under the retail classification on the tax form, for State excise taxes on cigarettes, soft drinks and powders and gasoline. The taxpayer is also permitted a deduction for federal excise taxes on

gasoline and oil. No deduction is permitted for the federal excise tax on cigars and cigarettes. (See ~~the form attached~~ hereto as to the proper manner in ~~preparing same~~ for this example.)

~~For Work See Appendix A~~

(See Appendix A for an example)

Section 1a.01(k)

A -

WEST VIRGINIA BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED

55-1234567

John Doe, dba
Doe's Service Station
22 Maple Street
Charleston, West Virginia 25314

THE FIRST LINE OF THIS SECTION IS YOUR ACCOUNT IDENTIFICATION NUMBER. PLEASE REFERENCE ACCOUNT NUMBER ON CORRESPONDENCE.

PLEASE CHANGE NAME AND ADDRESS IF NOT CORRECT.

Type of Business (Check One)	
INDIVIDUAL	X
CORPORATION	
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

This return covers one of the following periods:

a. The calendar year ending December 31, 1972 b. Or, The fiscal year ending _____ 19 ____

c. Or, If you began business within the previous twelve (12) months,
Or, If this is a final return, the period from _____, 19____ to _____, 19____

State Exact Date Business Began February 1, 1966

If you purchased this business in the past twelve (12) months, give the previous owner's full name and address:
N/A

During the period covered by this return, did you:

a. Quit Business? No Exact date _____

b. Sell or otherwise dispose of your business? No Exact date _____

c. If business was sold, give exact name and address of new owner N/A

Where are your records kept? (Post Office) Charleston, W. Va.

Principal place of business in West Virginia _____

NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL) Service station. Retail sales of gasoline, oil and related products. Also repair cars and sell some grocery items.

GIVE NAME AND ADDRESS OF ANY ADDITIONAL BUSINESS(ES) OPERATED IN W. VA. BY THE REPORTING TAXPAYER

BEFORE YOU COMPLETE THE REMAINDER OF THIS PAGE, YOU MUST FULLY COMPUTE GROSS TAX (SCHEDULE A) AND ITEMIZE EXEMPTIONS (SCHEDULE B) ON PAGE 2.

1. GROSS TAX (FROM SCHEDULE A)		$ 931.09
2. Tax Credit for Industrial Expansion (Schedule C or Approved Credit Form must be attached) a. Available Annual Credit $ b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)		- 0.-
3. Adjusted Tax (Line 1 less Line 2)		931.09
4. Less Exemption of $50 Annually; $12.50 Per Quarter; $4.16 Per Month or 14 Cents Per Day NOTE: This Exemption is Allowed Only for the Period Actually Engaged in Business		50.-
5. Net Amount of Tax (Line 3 less Line 4)		881.09
6. Less Payment Remittances Made on Quarterly Estimated Returns as follows: 1st Quarter $205 2nd Quarter $195 3rd Quarter $220 TOTAL $620		620.-
7. Balance of Tax Due (Line 5 less Line 6)		261.09
8. Add: Penalty of 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		- 0 -
9. Total Tax and Penalty Due (Add Line 7 and Line 8)		261.09

THIS RETURN WITH PAYMENT TO COVER TAX DUE MUST BE RECEIVED WITHIN ONE MONTH FROM END OF PERIOD COVERED THEREBY AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE.

Section 1a.01(k)

A

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	CODE	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	RATE	COLUMN 6 TAX	LINE
1	A	PRODUCTION, COAL				3.50		1
2	A	SAND, GRAVEL, OR OTHER MINERAL PRODUCT NOT QUARRIED OR MINED				4.34		2
3	A	OIL, BLAST FURNACE SLAG				4.34		3
4	A	NATURAL GAS IN EXCESS OF $3,000.00 (ANNUAL EXEMPTION)				8.63		4
5	A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A	TIMBER				2.20		6
7	A	OTHER NATURAL RESOURCE PRODUCTS				2.86		7
8	B	MANUFACTURED, COMPOUNDED OR PREPARED FOR SALE PRODUCTS				.88		8
9	C	SELLING TANGIBLE PROPERTY, RETAILERS	157,000 -	35,802 -	121,198 -	.55	669 59	9
10	C	WHOLESALERS				.27		10
11	D	ELECTRIC LIGHT AND POWER COMPANIES (SALES & DEMAND CHARGES, DOMESTIC PURPOSES AND COMMERCIAL LIGHTING)				3.72		11
12	D	WATER COMPANIES				4.40		12
13	D	ELECTRIC LIGHT & POWER COMPANIES (ALL OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES)				4.29		13
14	D	NATURAL GAS COMPANIES, TOLL BRIDGES				4.29		14
15	D	ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.86		15
16	E	CONTRACTING (ENTERED INTO PRIOR TO APRIL 1, 1971)				2.00		16
17	E	CONTRACTING (ENTERED INTO ON OR AFTER APRIL 1, 1971)				2.20		17
18	G	AMUSEMENT				.71		18
19	H	SERVICE OR CALLING AND ALL OTHER BUSINESS	23,000 -	- 0 -	23,000 -	1.15	264 50	19
20	I	RENTALS, ROYALTIES, FEES OR OTHERWISE				1.15		20
21	K	BANKING AND OTHER FINANCIAL BUSINESS				1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE 1 OF THIS RETURN							931 09	

SCHEDULE B
EXEMPTIONS

CLASSIFICATIONS	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS	
Retailers	$35,802.00	Gasoline -	
		280,000 gals. x .085 (state)	23,800.00
		280,000 gals. x .04 (fed.)	11,200.00
		Oil - 2,500 gals. x .06 (fed.)	150.00
		Cigarettes - 403 cartons x 1.20 (st.)	483.60
		Soft drinks - 700 cases x .24 (st)	168.00
		40 pkgs. (Kool-Aid) x .01 (state)	.40
		TOTAL	35,802.00

SIGNATURE REQUIRED

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS RETURN (INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS) AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT, AND COMPLETE.

1/7/73 (Date) John Doe (Signature of Officer) Owner (Title)

(l) The terms "gross income" or "gross proceeds of sales" shall not include money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another. The manner in which the attorney keeps his books and recrods must clearly and properly reflect this situation. Money or property received for the benefit of a client should be credited to a trustee or escrow account so that the State's tax examiners do not credit and include said funds in the trustee's gross income. For example, X, an attorney, institutes suit on behalf of a client and receives a favorable verdict. As a result thereof, the defendant, rather than making restitution directly to the plaintiff, pays the amount of the verdict to X. Therefore, X has received money for the benefit of a client and said amount shall not constitute gross income to X. X, the attorney, will include in gross income for business and occupation tax purposes only his fee.

(m) The business and occupation tax act imposes taxes upon persons engaged in business. The term "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. The term "business" shall include the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer. And said term shall also include the activities of a banking business or financial organization.

(1) In determining whether a business is engaged in for "direct or indirect economic gain or benefit", the lack of profit suffered in said activity is not relevant; nor is it material that the business was engaged in without profit as the primary motivation. In order to further clarify this situation, two examples are presented below.

(A) The D E Company provides, for employee use, a cafeteria in the basement of its office building. The cost of operating the cafeteria, for a year, is $110,000 and the gross income derived therefrom is $93,000. Even though the cafeteria operation reflected a loss for the taxable year, the gross amount of income derived therefrom is subject, under the retail classification, to business and occupation tax; for the cafeteria business was engaged in for indirect economic benefit or gain. By providing a direct benefit to its employees, the company has incurred an indirect benefit which places the operation within the definition of "business" for the purposes of this tax.

(B) The D E Company decides to provide safety equipment to its industrial employees. It

decides to provide said equipment at below cost prices to its employees; therefore, said activity is engaged in without profit motivation. The gross amount received from the sale of such equipment is subject to business and occupation tax; for the company receives an indirect economic benefit by providing its employees with such equipment. It can be expected that employees who take advantage of the safety equipment will be safer, have less loss of time accidents and will perform better than previously.

(2) "Business" shall not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. Sales are deemed to be casual or isolated when made by a person who is not engaged in the business of selling the type of property involved. Examples of casual sales are the following:

(A) Sale of any property which is of a type not regularly sold by the taxpayer; e.g., sale of an automobile or radio by a person engaged in the business of plumbing.

(B) Sale of household goods or personal effects by a person who is not engaged in the business of selling; e.g., sale of used furniture and a used automobile by a retired individual.

(C) Sale of property by a person who is engaged in a business but who is not engaged in the business of selling; e.g., sale of a parcel of realty by a doctor.

Persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual sales even though such sales are made infrequently.

(n) The term "banking business" or "financial organization" shall mean any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety per centum of the assets of which consists of intangible personal property and at least ninety per centum of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.

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(o) The term "service business or calling" shall include all activities engaged in by a person for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible property.

(1) This term shall include, but not be limited to:

(A) Persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances or commodities which are owned by another person. A Company manufacturers plastic toys on orders received from B Company. B Company retains title to and supplies the raw materials. The payment received by A Company for manufacturing said articles shall be reported under the service classification on the business and occupation tax return. In this particular situation, B Company is deemed to be the manufacturer.

(2) Persons acting as independent contractors in producing natural resource products owned by other persons, as personal property, immediately after the same are severed, extracted, reduced to possession and produced. For example, C owns a large tract of standing timber and enters into a contract with D for the severance of the same. The income received by D for severing C's timber must

be reported under the service classification on the business and occupation tax return. In this particular situtation, C is deemed to be the producer of the natural resource product.

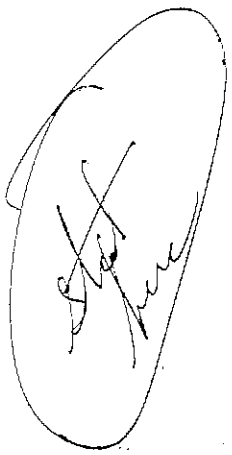
(3) The repetitive carrying of accounts, in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or service, except as to persons engaged in banking and other financial businesses. For example, the E F Furniture Company sells furniture with a retail price of $300 to an individual and agrees to allow the purchaser to make time payments on the account. For carrying the account, the seller stipulates a charge of one percent per month on the unpaid balance of said account. At the end of six months, the purchaser has paid his account in full and the seller has received $310 therefrom. Therefore, the additional $10 over and above the sale price of the furniture must be reported by the seller under the service classification on the business and occupation tax return; for the $10 was received for providing a service rather than for the sale of merchandise.

(4) The term "service business or calling" shall not include the services rendered by an employee to his employer. The business and occupation tax law imposes taxes upon persons engaged in business but not upon persons acting solely in the capacity of employees or servants.

(A) The question of whether a person is engaged in business or is acting in the capacity of an employee is dependent upon the facts in each case. The following rules may be accepted as a guide but are not necessarily controlling in individual cases. In cases of doubt, all of the facts should be submitted to the Tax Department for a specific ruling.

(B) An employee or servant is an individual whose entire compensation is fixed at a certain rate per day, week or month, or at a certain percentage of the business obtained by such employee or servant, payable in all events; one who has no direct interest in the income or profits of the business other than a wage or commission; one who has no liability for the expenses of maintaining an office or place of business unless required to by reason of employment, for other overhead or

for compensation of employees; one who has no liability for losses or indebtedness incurred in conduction of the business; one whose conduct with respect to services rendered, obtaining of, or transacting business, is supervised or controlled by the employer. A corporation, joint adventure, or any group of individuals acting as a unit, is not an employee or servant.



(C) Persons who furnish equipment on a rental basis and also furnish operators therefore, are presumed to be engaging in business and not to be employees or servants. Likewise, persons who furnish materials and the labor necessary in the placing or fabricating thereof are also presumed to be engaging in business and not to be employees or servants. The burden of proof will be upon such persons to show otherwise.

(D) The fact that a person is construed to be an employee under the provisions of the State Unemployment Compensation Law or the Federal Social Security Act, does not conclusively establish such person as an employee within

the provisions of the business and occupation tax law.

(E) Persons regularly performing odd job carpentry, painting or paper hanging, plumbing, bricklaying, electrical work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise. Here it is immaterial whether the workman is paid by the job, by the day or by the hour. It is likewise immaterial that the workman may supply labor only, any materials used being supplied by the property owner.

(F) A person engaging in business is generally one who holds himself out to the public as engaging in business either in respect to dealing in real or personal property or in respect to the rendition of services; one to whom gross income of the business inures; one upon whom liability for losses lies or who bears the expenses of conducting a business; one, generally acting in an independent capacity, whether or not subject to immediate control and supervision by a superior, or one who acts as an employer and has employees subject to his control and supervision.

(p) "Selling at wholesale" or "wholesale sales" shall mean and include:

(1) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property.

(2) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the business and occupation tax or the annual tax on incomes of certain carriers (West Virginia Code § 11-12A).

(3) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the State of West Virginia, its institutions or political subdivisions.

Price and quantity are not relevant in determining wholesale sales for business and occupation tax purposes. The fact that an item is discounted or is sold in large quantities does not make a transaction wholesale. It is the status and intention of the customer of the vendor which determines whether the gross proceeds received by the vendor from the sale are taxable under the retail classification or the wholesale classification. For example:

(4) H, who owns and operates a furniture store, is going out of business and is therefore liquidating

his entire inventory. V, who is also a retail furniture dealer, purchases part of H's inventory for $20,000. H must report, on his business and occupation tax return, $20,000 payment under the wholesale classification rather than the retail classification; for V, a furniture dealer whose activities are subject to the business and occupation tax law, purchased the stock for the purpose of resale. In order that H's method of accounting will reflect said sale at wholesale, it is necessary that he receive and have on record a consumers sales tax (West Virginia Code § 11-15) exemption certificate. Said certificate, prepared and signed by V, must certify that V is a merchant who purchased tangible personal property for the purpose of resale. Of course, in this particular situation, the exemption certificate is not primarily prepared and signed to assist H in determining taxable classification but to relieve H from the responsibility for collecting and from the responsibility of paying West Virginia consumers sales tax on the purchase.

(5) V also purchased (for $300) a color television set from H. V intends to make personal use of the set; therefore, the amount of this sale must be

reported under the retail classification by H. Inasmuch as the sale of the television set was not a sale for the purpose of resale, V will not prepare a consumers sales tax exemption certificate.

(6) G, who owns and operates a grocery store, occasionally makes sale of groceries to a State hospital which is near his place of business. These sales are wholesale sales for business and occupation tax purposes. All sales of tangible personal property made to the State, its institutions or political subdivisions are sales at wholesale. This would include sales to boards of education, municipalities, counties, penal institutions, et cetera.

(q) The term "contracting" shall include the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof. The term "contracting" shall also include the alteration improvement or development of real property.

(1) A person performing any activity described in the preceding paragraph shall report this gross income therefrom under the contracting classification of the business and occupation tax return and shall

receive no deduction from gross income on account of any expenses incurred. All income derived from said activity shall be reported under the contracting classification, and the form of contract entered into by the parties shall not be determinative of taxable classification.

(2) The term "prime contractor" means a person engaged in the business of performing for others, contracts for the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the entire work or for a specific portion thereof.

(3) The word "subcontractor" means a person engaged in the business of performing a like or similar service for persons other than consumers, either for the entire work or for a specific portion thereof.

(4) The terms "prime contractor" and "subcontractor" include persons performing labor and services in respect to the moving of earth or clearing of land, razing or moving of existing buildings or structures even though such services may not be done in connection with a contract involving the constructing, repairing, or altering of a new or existing building or structure.

(5) The term "buildings or structures" means and includes, but is not limited to, everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general and ordinary sense, but also tanks, fences, conduits, culverts, railroad tracks, overhead and underground transmission systems, tunnels, monuments, retaining walls, bridges, trestles, parking lots and pavement for foot or vehicular traffic.

(6) The term "contracting, repairing, decorating or improving" of a new or existing building or structure or any part thereof, in addition to its ordinary meaning, includes the installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virture of such installation.

(r) The term "speculative builder" means and includes one who constructs improvements upon real property owned by him for sale or rental. The gross income derived by the speculative builder from the sale of real property upon which the speculative builder has constructed improvements shall be reported under the retail classification on the business and occupation tax form. The sales price is the measure of the tax.

Section 2. Imposition of Privilege Tax.

2.01. This is a tax for the act or privilege of engaging in business activities. The tax is measured by the application of rates against value of products, gross proceeds of sale or gross income of the business, as the case may be.

(a) All persons engaging in business activities in this State are subject to the business and occupation tax unless specifically exempted by statute or by these rules and regulations. (As to exemptions, see § 3.

(b) Certain occupations and business activities are classified, and such classifications are significant inasmuch as the tax liability varies because of the different rates established for the types of business activities engaged in by the taxpayer. The business activity usually determines the taxable classification, and where different business activities are conducted, the taxpayer is liable for tax under each taxable classification involved.

(c) The various business classifications and tax rates applicable thereto are presented below. For a definitive treatment of each particular business classification, see §§ 2A through 2k of these rules and regulations.

Business Classifcations	Rate of Tax
Production of coal	Three and five-tenths percent
Limestone or sandstone quarried or mined	Two and two-tenths percent

Production of oil	Four and thirty-four one-hundredths percent
Production of blast furnace slag	Four and thirty-four one-hundredths percent
Production of natural gas, in of the value of $5,000	Eight and sixty-three one-hundredths percent
Production of sand, gravel or other mineral product not quarried or mined	Four and thirty-four one-hundredths percent
Production of timber	Two and two-tenths percent

Business Classification	Rate of Tax
Production of other natural resource products	Two and eighty-six one-hundredths percent
Manufacturing, compounding or preparing for sale	Eighty-eight one-hundredths of one percent
Selling at retail	Fifty-five one-hundredths of one percent
Selling at wholesale	Twenty-seven one-hundredths of one percent
Street and interurban and electric railways	One and four-tenths percent
Water companies	Four and four-tenths percent
Electric light and power companies on sales and demand charges for domestic purposes and commercial lighting	Five and seventy-two hundredths percent

Business Classification	Rate of Tax
Electric light and power companies on sales and demand charges for all other purposes	Four and twenty-nine hundredths percent
Natural gas companies	Four and twenty-nine hundredths percent
Toll bridge companies	Four and twenty-nine hundredths percent

All other public service or utility businesses	Two and eighty-six hundredths percent
Contracting If the contract was entered into on or after July 1, 1965, and prior to April 1, 1971.	Two percent
Contracting If the contract was entered into on or after April, 1, 1971.	Two and two-tenths percent

Business Classifications	Rate of Tax
Amusements, dance hall, skating rink, moving picture theater, etc.	Seventy-one one-hundredths of one percent
Service business or calling not otherwise specifically taxed	One and fifteen one-hundredths percent
Rental of real or tangible personal property	One and fifteen one-hundredths percent
Small loan and industrial loans Such tax shall apply only to gross income received prior to April 1, 1971. As to the taxation of gross income received ty small loan and industrial loan businesses on and after April 1, 1971, see §2k of these rules and regulations.	One and five one-hundredths percent
Banking and other financial businesses Tax applies to all income received on and after April 1, 1971.	One and fifteen one-hundredths percent

2.02. Determination of Values, General.

(a) The following rules for determining the taxable value of natural resource products or articles manufactured within the State shall apply equally to producers and manufacturers engaged in such activities within the State. The values determined under these rules will be uniformly applied in computing the taxes imposed by the statute.

(b) The term "value of products", includes the value of by-products, and except as provided herein, shall be determined by gross proceeds of sales whether such sales are at wholesale or at retail, to which shall be added all subsidies and bonuses received with respect to the production, manufacture, or sale thereof. Under the production and manufacturing classifications of the business and occupation tax, the value of products extracted or manufactured shall be determined by the gross proceeds of sales in every instance in which a bona fide sale of products is made, and whether sold at wholesale or at retail.

(c) If any person who is liable for any tax under the production classification (see § 2A of these rules and regulations) or the manufacturing classification (see § 2B of these rules and regulations) ships or transports his products or any part thereof out of this State without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the State shall be the basis for the assessment of the tax, except in

those instances in which another measure of the tax is expressly provided.

(d) In determining the value of natural resources or manufactured products delivered to purchasers, there may be deducted from the gross proceeds of sales so much thereof as the taxpayer can show to be outgoing freight charges from the point at which the shipment originates in this State to the point of delivery. Freight charges, to be deductible, must actually be paid by the manufacturer or producer. However, no deduction will be allowed for expenses incurred by the taxpayer through the use of his own equipment in transporting items produced or manufactured.

2.03. Determination of Values, Manufacturing. -- There are certain instances in which persons who manufacture, process or prepare products for sale are not readily able to determine the value of said products for purposes of the business and occupation tax. In these instances, the following rules for determining taxable value shall apply.

(a) Transportation outside the State without sale thereof. If any person manufactures, compounds or prepares for sale, within this State, products or articles which are shipped or transported outside this State without making sale of such products or articles, the value of the products in the condition in which they exist immediately before transportation outside the State shall be the basis for the assessment of tax imposed under the manufacturing classification (see West Virginia Code

§ 11-13-2b and § 2B of these rules and regulations) of the business and occupation tax law. Whenever the situation, as described in the preceding sentence, arises, the taxpayer, to determine the value of said products for purposes of this tax, shall apply the following rules in the order stated.

(1) The value of such products shall be determined by the actual gross proceeds of the subsequent sale of the products, whether such sale is at wholesale or at retail, as if such sale had been made at the time of shipment. This method shall apply only if the subsequent sale is made before the close of the taxable year in which the products were manufactured.

(2) If there is no subsequent sale of such products before the close of the taxable year, the taxpayer shall determine the value of such products by applying the gross proceeds of other sales of similar products of like quality and character, and in similar quantities by the taxpayer. If the taxpayer has made other sales of such products during the taxable year, he must apply the average price received per unit on such sales in determining value under this subsection. If the taxpayer employs the method of determination of value as set forth in this subsection, and when subse-

quent sale of such products is made in a later year, the taxpayer shall use that sales price or cost plus markup, whichever is higher, as the value of such products manufactured in future years if no sale is made of such products manufactured in future years.

(3) In the absence of sales of similar products as a guide to value, value may be determined upon a cost basis. In such cases there shall be included every item of cost attributable to the particular article manufactured, including direct and indirect overhead costs. There shall be added to this total manufacturing cost the average markup realized by the taxpayer on all products manufactured.

(b) Transported outside the State with sale thereof. If any person manufactures, compounds or prepares for sale, within this State, products or articles which are shipped or transported outside this State as a result of a bona fide sale of such products or articles, the value of such products or articles shall be determined in accordance with the following rules.

(1) The actual gross proceeds of such sale, whether such sale was at retail or wholesale, to which shall be added all subsidies and bonuses received with respect to the manufacture or sale of the

product, shall be the value of such product for purposes of the business and occupation tax. The full amount received from such sale shall be reported under the manufacturing classification of the business and occupation tax return.

(2) In determining value as set forth and defined in subsection (1) above, the taxpayer shall be permitted to deduct from gross proceeds of sale the amount actually paid by him to transport the products outside the State, but no deduction will be allowed for expenses incurred by him through the use of his own equipment in transporting items manufactured.

(c) Sales to affiliates. In determining value in regard to sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the vendor and vendee is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the following rules shall be applied in the order stated.

(1) Whenever sales are made to affiliates, the value shall correspond to the gross proceeds from the sale of similar products of like quality and character and in similar quantities between persons of no common interest.

(2) If there are no sales between parties of no common interest by which the taxpayer may value his sales to affiliates, the value shall correspond to the gross proceeds from sales by the taxpayer to nonrelated purchasers of similar products of like quality and character and in similar quantities and shall include all subsidies and bonuses.

(3) In the absence of sales of similar products as a guide to value, such value may be determined by a cost basis. In such cases there shall be included every item of cost attributable to the particular article manufactured, including direct and indirect overhead costs. There shall be added to this total manufacturing cost the average markup realized by the taxpayer on all products manufactured, compounded or prepared for sale.

(d) Manufactured products consumed by the manufacturer.

(1) Whenever a person manufactures, compounds or prepares final completed products, and such products are commercially consumed or used by such person, a value must then be reported under the manufacturing classification for purposes of the business and occupation tax. This is to effect equality of business and occupation tax liability between manufacturers who sell their entire output

and those who use all or a portion of their output themselves. In other words, the tax liability is based upon the total value of the manufactured products, and it is immaterial that a portion or the whole of the output may be used by the manufacturer and is not sold.

(2) The article or product manufactured by the taxpayer and consumed in his business, to be taxable under the manufacturing classification of the business and occupation tax act, must be a final completed product which is not subject to additional preparing, processing or compounding by the same manufacturer.

(3) In other words, a manufactured product which is used to become a component part of another product manufactured by the same manufacturer and which, of course, loses its identity therein, is not subject to the rule imposed by this subsection. To illustrate: Certain chemical compounds are manufactured or prepared and are consumed by the same manufacturer in the process of manufacturing a completely new or final completed chemical substance. In this instance the originally manufactured chemical compound which is consumed in and becomes a part of the new substance is not

required to have a value placed thereon for purpose of this tax; for tax is exacted therefrom when a value is placed on the new substance. Chemicals used in processing include chemical substances which are manufactured by the taxpayer to unite with other chemical substances or which produce a chemical reaction therewith, as contrasted with merely a physical change therein.

(4) However, if a manufactured product which is to become a component part of another product and lose its identity therein is shipped outside the State for additional processing, a value must be placed on each product and reported under the manufacturing classification. (For apportionment of sales price of such article, see § 2B of these rules.)

(5) A final completed product which is manufactured by the taxpayer and used or consumed in his business must have a value placed thereon and must be reported under the manufacturing classification for tax purposes. Such product would be one which does not become a component part of another product or one which does not lose its identity. To illustrate: Saws, jigs, cutting tools, etc. that are manufactured by a furniture manufacturer are

final completed products subject to tax. Partially manufactured products sold within or without the State are final completed products subject to this tax. The taxpayer is relieved from placing a value on and reporting for tax purposes only those products manufactured within West Virginia which become component parts of other products within West Virginia and lose their identity in the other products.

(6) In those cases where a person partially or wholly consumes or makes use of his final completed manufactured, compounded or prepared products, a value must be placed on such products, in accordance with the following rules in the order stated. In all instances where products or articles are consumed by the manufacturer and are consumed at a point distant from the place of manufacturing, no freight charges paid by the manufacturer will be allowed as a deduction in determining value under these rules, unless consideration has been given such charges in the method by which the values were determined.

(A) The value of the article consumed or used shall be determined according to the selling

price at the place of use or consumption of similar products of like quality and character.

(B) In the absence of sales of similar products as a guide to value, value shall be determined by applying to the consumed product the average prices at which sales are made during the taxable year to customers of the manufacturer.

(C) In the absence of sales to customers as a guide to value, such value may be determined upon a cost basis, in which case there shall be included every item of cost attributable to that particular article, including all direct and indirect overhead costs and by adding thereto the average markup realized by the manufacturer on his products.

2.04. Determination of Values, Production of Natural Resources.

(a) It is provided that under the production classification of the business and occupation tax law (see West Virginia Code ch. 11, art. 13, sec. 2(a) and §_____ of these rules and regulations) the value of natural resource products produced shall be determined by the gross proceeds of sales in every instance in which a bona fide sale of such products is made, and whether sold

at wholesale or at retail. In determining the value of natural resource products delivered to purchasers, there may be deducted from the gross proceeds of sales so much thereof as the taxpayer can prove to be actual outgoing freight charges (paid by him) from the point at which the shipment originates in this State to the point of delivery. However, no deduction is permitted for expenses incurred by him through the use of his own equipment in transporting items produced.

(b) There are certain instances in which persons who produce natural resource products are not readily able to determine the value of said products for purposes of the business and occupation tax. In these instances the rules which follow are to be applied. Whenever possible, and unless otherwise provided in these rules, the value of natural resource products produced within the State shall be determined by the actual gross proceeds derived from the sale thereof (whether at retail or at wholesale) by the producer.

(c) Transportation outside the State without sale thereof. If any person produces within this State natural resource products which are shipped or transported outside this State without making sale of such products, the value of the natural resource products in the condition in which they exist immediately before transportation outside the State shall be the basis for the assessment of tax imposed under the production classification of

the business and occupation tax law (see West Virginia Code § 11-13-2A of these rules and regulations). Whenever the situation, as described in the preceding sentence, arises, the taxpayer, to determine the value of his natural resource products for purposes of this tax, shall apply the following rules in the order stated.

(1) The value of such natural resource products shall be determined by the actual gross proceeds of the subsequent sale of the products, whether such sale is at wholesale or at retail, as if such sale had been made at the time of shipment. This method shall apply only if the subsequent sale is made before the close of the taxable year in which the natural resource products were produced.

(2) If there is no subsequent sale of such products before the close of the taxable year, the taxpayer shall determine the value of such products by applying the gross proceeds of other sales of similar products of like quality and character, and in similar quantities by the taxpayer. If the taxpayer has made other sales of such products during the taxable year, he must apply the average price received per unit on such sales in determining value under this subsection. If the taxpayer employs the method of determination of value

as set forth in this subsection, and when subsequent sale of such products is made in a later year, the taxpayer shall use that sales price or cost plus markup, whichever is higher, as the value of such products manufactured in future years if no sale is made of such products manufactured in future years.

(3) In the absence of sales of similar natural resource products as a guide to value, value may be determined upon a cost basis. In such cases there shall be included every item of cost attributable to the particular natural resource product produced, including direct and indirect overhead costs. There shall be added to this total production cost the average markup realized by this taxpayer on all natural resource products produced.

(d) Transportation outside the State with sale thereof. If any person severs, extracts, reduces to possession or produces for sale, profit or commercial use, within this State, any natural resource products which are shipped or transported outside this State as a result of a sale of such products, the value of such natural resource products shall be determined in accordance with the following rules.

(1) The actual gross proceeds of such sale, whether such sale was at retail or at wholesale, to which shall be added all subsidies and bonuses received with respect to the production or sale of the product, shall be the value of such product for purposes of the business and occupation tax. The full amount received from such sale shall be reported under the production classification on the business and occupation tax return.

(2) In determining value as set forth and defined in subsection (1) above, the taxpayer shall be permitted to deduct from gross proceeds of sale the amount actually paid by him to transport the products outside the State, but no deduction will be allowed for expenses incurred by him through the use of his own equipment in transporting natural resources produced.

(e) Sales to affiliates. In determining value in regard sales from one to another of affiliated companies or persons, or under other circumstances where the relationship between the vendor and vendee is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the following rules shall be applied in the order stated.

(1) Whenever sales are made to affiliates, the value shall correspond to the gross proceeds from the

sale of similar products of like quality and character and in similar quantities between persons of no common interest.

(2) If there are no sales between parties of no common interest by which the taxpayer may value his sales to affiliates, the value shall correspond to the gross proceeds from sales by the taxpayer to nonrelated purchasers of similar products of like quality and character and in similar quantities and shall include all subsidies and bonuses.

(3) In the absence of sales of similar natural resource products as a guide to value, such value may be determined by a cost basis. In such cases there shall be included every item of cost attributable to the particular natural resource product produced, including direct and indirect overhead costs. There shall be added to this total production cost the average markup realized by the taxpayer on all natural resource products produced.

(f) Natural resource products consumed by the producer. Whenever a person produces natural resource products, and such products are commercially consumed or used by such person, a value must be placed upon the consumed natural resource products. This value must then be reported under the production classi-

fication for purposes of the business and occupation tax. In other words, the tax liability is based upon the total value of the produced natural resources, and it is immaterial that a portion or the whole of the output may be used by the producer and is not sold. Whenever natural resource products produced within the State are used or consumed by the producer in his business, whether within or without the State, the value of such products shall be determined by the following rules in the order stated. In all instances where natural resources are consumed by the producer at a point distant from the place of production, no freight charges paid by the producer will be allowed as a deduction in determining value under these rules, unless due consideration has been given such changes in the method by which the values were determined.

(1) The value of the natural resource product consumed or used shall be determined according to the selling price at the place of use or consumption of similar products of like quality and character by other taxpayers.

(2) In the absence of sales of similar natural resource products as a guide to value, value shall be determined by applying to the used or consumed product the average prices at which sales are made during the taxable year to customers of the producer.

(3) In the absence of sales to customers as a guide to value, such value may be determined upon a cost basis, in which case there shall be included every item of cost attributable to that particular natural resource product, including all direct and indirect overhead costs and by adding thereto the average markup realized by the producer on his natural resource products.

2.05. Manufacturing and Selling Articles Within the State. Persons who manufacture, compound or prepare, within the State, products or articles for sale, profit or commercial use and make sale of the same within the State, must place a value on said products or articles and report the same under the manufacturing classification on the business and occupation tax return. Said value shall be determined in accordance with the following rules.

(a) Sales at Wholesale.

(1) If any person manufactures, compounds or prepares, within this State, products or articles and makes sale thereof at wholesale within this State, the entire gross proceeds derived therefrom shall be reported under the manufacturing classification on the business and occupation tax return.

(2) No amount derived from such wholesale sales shall be reported under the wholesale sales classification on the business and occupation tax return.

(b) Sales at Retail.

(1) If any person manufactures, compounds or prepares, within this State, products or articles and makes sale thereof at retail within this State, the sales value of such products shall be reported under the manufacturing classification on the business and occupation tax return.

(2) The entire gross proceeds derived from such retail sale shall also be reported under the retail sales classification of the business and occupation tax return.

2.06. Producing and Selling Natural Resource Products Within the State. Persons who produce, within the State, natural resource products and make sale of the same wihin the State, must place a value on the natural resource products and report the same under the production classification on the business and occupation tax return. Said value shall be determined in accordance with the following rules.

(a) Sales at Wholesale.

(1) If any person produces, within this State, natural resource products and makes sale thereof at wholesale within this State, the entire gross proceeds derived therefrom shall be reported under the production classification on the business and occupation tax return.

(2) No amount derived from such sale at wholesale shall be reported under the wholesale sales classification on the business and occupation tax return.

(b) Sales at Retail.

(1) If any person produces, within this State, natural resource products and makes sale thereof at retail within this State, the sales value of such products shall be reported under the production classification on the business and occupation tax return.

(2) The entire gross proceeds derived from the sale at retail shall also be reported under the retail sales classification on the business and occupation tax return.

Section 2a. Production of Natural Resource Products.

2a.01. Producers of Natural Resource Products. -- For purposes of these rules and regulations, the word "producer" shall mean and include, but not be limited to, every person who engages in the business of severing, extracting, mining, quarrying, reducing to possession and producing for sale, profit or commercial use any natural resource products from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services. A person who produces natural resource products for use or consumption in his own business whether located within or without the State is a producer for the purposes of the business and occupation tax.

(a) Persons who are producers, as described in the preceding paragraph, shall report the gross proceeds derived therefrom under the applicable production classification on the business and occupation tax return. If it is not possible for the producer to determine gross proceeds of sale, he must determine the value of his produced natural resource products by employing one of the rules set forth in § 2 of these rules and regulations. The measure of the business and occupation tax shall be the value (said value, whenever possible, shall be determined by gross proceeds of sale) of the entire production within this State, regardless of the place of sale or the fact that delivery may be made to points outside this State.

(b) A person who produces natural resource products and does not make sale of the same but uses or consumes said resources in his business shall report the value of such resources under the applicable production classification on the business and occupation tax return. In determining the value of the natural resource products, the taxpayer must adhere to § 2 of these rules and regulations.

(c) Where the relationship between the producer of the natural resource products and the purchaser thereof is such that the gross proceeds derived from the sale are not indicative of the true value of the natural resources, the taxpayer shall determine value by application of one of the rules set forth in section 2 of these rules and regulations.

2a.02. Producing Natural Resource Products for Others

(a) A "contract miner" shall mean and include a person who has no title to or ownership in the natural resource products which he is producing for others. Persons performing under contract, either as prime contractors or subcontractors, the necessary labor or mechanical services for others who are engaged in the business of producing natural resources, are performing a service for the producer and are therefore taxable under the service classification rather than the production classification. All gross income received by the contract miner from the producer for such service is taxable under the business and occupation tax law.

(b) The producer of the natural resource products that are extracted by the contract miner is taxable under the production classification on the business and occupation tax form.

2a.03. Determination of Producer and Contract Miner.

(a) Generally, a producer is one who has title to or an economic interest in mineral deposits or standing timber, and a contract miner is one who does not possess an economic interest but performs services for producers by contract. This contractual relationship will not affect the status of the parties in regard business and occupation tax liability. For example, a person who has no ownership, title in or right by contract or lease in the mineral deposit or standing timber does not possess an economic interest merely because through a contractual relation he possesses an economic advantage derived from production. In other words, an agreement between the owner of an economic interest and another entitling the latter to purchase or process the product upon production or entitling the latter to compensation for producing, extracting or cutting does not convey an economic interest.

(b) If a dispute should arise as to which party is the producer and which is the contract miner, the Tax Department shall consider, in addition to the substance of the agreement between the parties, other elements which shall include, but not be limited to the following;

(1) Which person is entitled to claim a depletion allowance for federal income tax purposes.

(2) Is the person mining, cutting or extracting the natural resource product obligated to pay a royalty to another.

(3) By lease or contract, does one person have the exclusive right to sever, mine, cut or extract the natural resource product.

(4) Does the contract between the parties contain an exclusive and mandatory sales/purchase agreement.

2a.04. Preparing Natural Resource Products for Others. -- Any person who makes charges to the producer or to another for preparing natural resource products for sale or use is deemed to be engaged in a service activity and shall report all gross income from such activity under the service classification on the business and occupation tax return. Such person preparing the products in this instance is not deemed a manufacturer for he has no title to or ownership in the products but is only performing a service on products owned by another. As to the applicability of the business and occupation tax statute to persons who prepare their own natural resource products, see § 2B of these rules and regulations.

2a.05. Royalties Derived from Natural Resources.

(a) Persons who receive payments, as royalties, from producers of natural resource products are not deemed to be producers thereof but shall report all payments under the rental and royalty classification on the business and occupation tax return. The fact that the payment is called by a name other than royalty shall not alter the taxation of such payment if the recipient thereof has furnished real property which has a situs in this State and which includes minerals in place, or any interest therein, for hire, loan, lease or otherwise.

(b) Lessees, sublessees or other denominated lessees are producers of all the natural resources produced, regardless of any payment, in kind or otherwise, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties.

2a.06. Treatment of Freight Charges Incurred by Producers.

(a) In certain instances, producers of natural resource products are permitted to deduct outgoing freight charges from the gross proceeds of sales to arrive at taxable value under the applicable production classification.

(b) In order to determine the value within the State and at the place where production ends, there may be deducted from gross proceeds of sales certain outgoing freight charges actually paid by the producer, but no deduction will be allowed for expenses incurred by him through the use of his own equipment in transporting items produced.

(c) In all instances where products are used or consumed by the producer at a point distant from the place of production, outgoing freight charges paid by the producer will not be allowed as a deduction, unless due consideration has been given to them also in the method by which the values were determined.

(d) Generally, freight charges to be deductible from gross proceeds of sales must be paid by the producer to a common carrier to deliver natural resources to a bona fide purchaser. To illustrate: Coal, at the place where production ends, has a value of ten dollars ($10.00) per ton. If a purchaser buys the coal at the mine for said price, the producer will report under the coal production classification the gross proceeds of sale, $10.00. However, if the purchaser buys the same coal delivered at eleven dollars ($11.00) per ton, and the producer pays a common

carrier to make such delivery, the producer may deduct such freight charges ($1.00) from the gross proceeds of sale ($11.00) reported under the coal production classification to arrive at the taxable value ($10.00) under said classification.

(e) If the producer of natural resource products sells his products to a purchaser and agrees to deliver such products in his own equipment for a fee, said fee may be deducted from the gross proceeds of sale in arriving at taxable value under the production classification. However, the amount of deduction must be reported either under the service classification or under the annual tax on incomes of certain carriers (West Virginia Code ch. 11, art. 12A), depending upon the type of delivery.

(f) Producers may not deduct expenses incurred in the transportation of coal or other natural resource products from the mining operation to the tipple or preparation plant; for producers usually retain title to the product from the mining operation to the tipple or preparation plant and remain vested with title until the product has been processed.

(g) If hauling or transportation charges are incurred by the producer and have been absorbed by the producer, such charges are outgoing freight charges and are deductible from gross proceeds of sale to arrive at taxable value.

(h) A contract miner may not deduct any transportation charges incurred by him for hauling or transporting natural resource products whether in his equipment or in equipment of another.

(i) The severance and production of natural gas shall be valued for purposes of the business and occupation tax at tre well-mouth of such severance and production immediately preceding transportation and transmission. In order to arrive at the well-mouth value of such severance and production, transportation or transmission expenses incurred by producers of natural gas shall be allowed as a deduction from the gross proceeds of the sale of such gas. For these purposes, one of the following alternative methods shall be used for obtaining the well mouth value of the severance and production of natural gas.

(1) From the gross proceeds of the sale of the production of natural gas, there shall be allowed a deduction in the amount of the costs of transportation or transmission of such gas through the system of the producer from the well-mouth point of severance and production to the point of sale, limited to actual costs of transportation or transmission incurred without reference to items unrelated to such transportation or transmission such as general administration, overhead, or return on investment. Such deduction must be supported by schedules and statements of cost by the producer and will be subject to review and audit, and possible assessment or refund as a result of such audit, by the Tax Department.

(2) As an alternative to the method presented at paragraph (1), supra, the well-mouth value of such severance and production may be determined by the average purchase price of natural gas from the same pool or field, or, in the event no gas is purchased from the same pool or field, by the average purchase price of natural gas from the most proximate pool or field and of the same quality and charateristics as that severed and produced, provided that in either case such purchase price accurately represents the well-mouth value of the gas severed and produced. This determination shall be supported by a statement of the pool or field from which the gas severed and produced is obtained, and a statement of the pool or field from which the gas purchased is obtained, and shall be subject to review and audit, and possible assessment or refund as a result of audit, by the department.

(3) As an alternative to the methods presented at paragraph (1) and at paragraph (2), supra, the well-mouth value of such severance and production may be determined by a deduction of transportation and transmission costs in the amount of 15% of the gross proceeds of the natural gas severed and

produced. This deduction shall be supported by a statement of the gross proceeds of sale of the natural gas severed and produced, and a computation of the deduction therefrom, and shall be subject to review and audit, and possible assessment or refund of audit, by the department.

(j) Producers, other than utilities, must report under the service classification the difference between the gross proceeds of sale from the gas and the taxable well-mouth value reported under the natural gas production classification.

2a.07. Problems and Solutions Relating to the Production of Natural Resources.

(a) Presented below are several examples, problems and solutions thereto regarding the proper taxation of natural resource production. For certain problems and examples, there are prepared tax returns attached hereto to further clarify the situations which may arise.

(b) Even though these problems and examples deal primarily with coal production, the principles and rules stated in these situations are equally applicable to producers of all other natural resource products.

(c) Example 1.

(1) A owns land within West Virginia from which he mines coal. A sells his produced natural resources to B Power Company. A must report the value of such natural resources, as determined by the gross proceeds of sale, under the coal production classification of the business and occupation tax form. Therfore, A reports the full amount received from B under production and computes his tax liability thereon.

(2) A is not required to report income under either the retail or wholesale classification even though the sale to B may be deemed a wholesale sale for purposes of definition only. It is provided that

any person who is a producer and makes sale of his produced natural resources to other producers, wholesalers, jobbers, retailers, manufacturers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed under the wholesale or retail classifications. See page ___ of these rules and regulations.

(d) Example 2.

(1) A owns land within West Virginia and produces coal therefrom. In 1972, A produced 55,000 tons of which 40,000 tons were sold to B Power Company at ten dollars ($10.00) per ton and 12,000 tons were transported without sale to a coal broker (or selling agent) without the State. The broker does not take title to the natural resource product and consequently has no ownership therein. The remaining 3,000 tons were sold, at the mine, to individuals for home consumption at twelve dollars ($12.00) per ton. The coal broker subsequently, and before the close of the taxable year 1972, makes sale of the coal at thirteen ($13.00) per ton.

(2) A, on the 1972 business and occupation tax return, must report the gross proceeds of the sale

(40,000 tons @ $10.00/ton = $400,000) to B under the coal production classification.

(3) A must also report the amount of the sale made by the broker (12,000 tons @ $13.00/ton = $156,000) under the production classification. Inasmuch as the fee or commission retained by the broker is an expense of doing business to A, A receives no deduction or exclusion from gross income for the amount retained by the broker.

(4) In the transactions described in the previous two paragraphs of this example, A is not required to report the gross income accruing therefrom under either the retail or wholesale classifications on the business and occupation tax return.

(5) The sales of coal made by A to individuals for household consumption are deemed to be sales at retail. Therefore, under the production classification, A must report gross income of $36,000 (3,000 tons @ $12.00/ton = $36,000); for the amount of the tax under the production classification shall be equal to the value of the articles produced as shown by the gross proceeds derived by the sale thereof by the producer. A must also report this amount ($36,000) under the retail classification; for the statute provides that any

person taxable under the production classification and engaging in the business of selling his natural resources at retail in this State shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed by the retail classification for the privilege of engaging in the business of selling such natural resources at retail in this State. In other words, A is engaging in multiple business activities (production and sales at retail) and is taxable under each.

(6) A complete 1972 business and occupation tax return for A under this example is presented ~~at the next page herein~~ in Appendix B and reflects gross income of $592,000 under production ($400,000 + $156,000 + $36,000 = $592,000) and $36,000 under the retail classification.

Section 2a.07(d)

WEST VIRGINIA BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED

12-3456789

A COAL COMPANY
413 Reidy Street
Monongah, West Virginia 26554

THE FIRST LINE OF THIS SECTION IS YOUR ACCOUNT IDENTIFICATION NUMBER. PLEASE REFERENCE ACCOUNT NUMBER ON CORRESPONDENCE.

PLEASE CHANGE NAME AND ADDRESS IF NOT CORRECT.

INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

This return covers one of the following periods:

a. The calendar year ending December 31, 1972 b. Or, The fiscal year ending _____ 19____

c. Or, If you began business within the previous twelve (12) months,
Or, If this is a final return, the period from _____ 19____ to _____, 19____

State Exact Date Business Began 6/1/47

If you purchased this business in the past twelve (12) months, give the previous owner's full name and address:

During the period covered by this return, did you:

a. Quit Business? No Exact date _____

b. Sell or otherwise dispose of your business? No Exact date _____

c. If business was sold, give exact name and address of new owner _____

Where are your records kept? (Post Office) Same as above

Principal place of business in West Virginia " " "

NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL) Mining and selling coal.

GIVE NAME AND ADDRESS OF ANY ADDITIONAL BUSINESS(ES) OPERATED IN W. VA. BY THE REPORTING TAXPAYER

NEED TO VOID OR CORRECT THE INFORMATION ON THIS PAGE? YOU MUST FULLY COMPUTE GROSS TAX ON LINE 1 AND THEREAFTER EXECUTE SCHEDULE III ON PAGE 2.

1. GROSS TAX (FROM SCHEDULE A)		$ 20,918 -
2. Tax Credit for Industrial Expansion (Schedule C or Approved Credit Form must be attached)	$	
a. Available Annual Credit		
b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)		- 0 -
3. Adjusted Tax (Line 1 less Line 2)		20,918 -
4. Less Exemption at $50 Annually; $12.50 Per Quarter; $4.16 Per Month or 14 Cents Per Day NOTE: This Exemption is Allowed Only for the Period Actually Engaged in Business		50 -
5. Net Amount of Tax (Line 3 less Line 4)		20,868 -
6. Less Payments Remitted Under Quarterly Estimated Returns as follows: 1st Quarter 4,900. 2nd Quarter 5,300. 3rd Quarter 5,100 TOTAL		15,300 -
7. Balance of Tax Due (Line 5 less Line 6)		5,568 -
8. Add: Penalty of 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		- 0 -
9. Total Tax and Penalty Due (Add Line 7 and Line 8)		5,568 -

THIS RETURN WITH PAYMENT TO COVER TAX DUE MUST BE RECEIVED WITHIN ONE MONTH FROM END OF PERIOD COVERED THEREBY AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE

Section 2a.07(d)

SCHEDULE A
COMPUTATION OF GROSS TAX

Line	Class	Column 1 Business Classification	Column 2 Gross Amount	Column 3 Exemptions (See Schedule B)	Column 4 Taxable Income	Tax Rate (Per Cent)	Column 5 Tax	Line
1	A	PRODUCTION COAL	592,000 -	- 0 -	592,000 -	3.50	20,720	1
2	A	SAND, GRAVEL, OR OTHER MINERAL PRODUCT NOT QUARRIED OR MINED				4.34		2
3	A	OIL, BLAST FURNACE SLAG				4.34		3
4	A	NATURAL GAS IN EXCESS OF $5,000.00 ANNUAL EXEMPTION				8.63		4
5	A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A	TIMBER				2.20		6
7	A	OTHER NATURAL RESOURCE PRODUCTS				2.86		7
8	B	MANUFACTURED, COMPOUNDED OR PREPARED FOR SALE PRODUCTS				.55		8
9	C	SELLING TANGIBLE PROPERTY, RETAILERS	36,000 -	- 0 -	36,000 -	.55	198 -	9
10	C	WHOLESALERS				.27		10
11	D	ELECTRIC LIGHT AND POWER COMPANIES, SALES & DEMAND CHARGES, DOMESTIC PURPOSES AND COMMERCIAL LIGHTING				5.72		11
12	D	WATER COMPANIES				4.40		12
13	D	ELECTRIC LIGHT & POWER COMPANIES, ALL OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES				4.29		13
14	D	NATURAL GAS COMPANIES, TOLL BRIDGES				4.29		14
15	D	ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.86		15
16	E	CONTRACTING (ENTERED INTO PRIOR TO APRIL 1, 1971)				2.00		16
17	E	CONTRACTING (ENTERED INTO ON OR AFTER APRIL 1, 1971)				2.20		17
18	G	AMUSEMENT				.71		18
19	H	SERVICE OR CALLING AND ALL OTHER BUSINESS				1.15		19
20	I	RENTALS, ROYALTIES, FEES OR OTHERWISE				1.15		20
21	K	BANKING AND OTHER FINANCIAL BUSINESS				1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE 1 OF THIS RETURN							20,918 -	

SCHEDULE B
EXEMPTIONS

CLASSIFICATIONS	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS

SIGNATURE REQUIRED

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS RETURN (INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS) AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT, AND COMPLETE.

Signature of Officer _____ Date _____

Signature of Preparer other than Taxpayer _____ Date _____

(e) Example 3.

(1) X, a manufacturer of chemicals, owns land within West Vrginia which contains coal deposits. X contracts for the production of such coal with B. The contract between X and B provides that B will produce the coal and deliver the same to X and in payment for such service, X will pay B one dollar ($1.00) per ton.

(2) In the year 1972, B mines and delivers to X 750,000 tons of coal of which X consumes 700,000 tons in its manufacturing process. Of the remaining tonnage, X sells 40,000 tons to a wholesaler at $12.00 per ton and sell 10,000 tons to an affiliated company at $3.00 per ton. X pays B $750,000 for the service performed by B in 1972.

(3) X is the producer of the natural resource product, and B is a contract miner; for X owns the coal in place and is entitled to immediate possession upon extraction thereof by B, whereas B has no economic interest in the mineral and may only sever for X and deliver the product to X for a stipulated fee. Therefore, X must report the gross income of the coal under the production classification, and B must report his fee under the service classification.

(4) Since X is a producer of a natural resource product which he uses or consumes in his business, he must determine the value of said production (700,000 tons) under the applicable rule set forth in § 2 of these rules and report the same as taxable income under the coal production classification on the business and occupation tax form. ~~(See pages __ through __ of these rules.)~~ The provision of section 2 of these rules which applies to the determination of value of natural resource products used or consumed by the producer provides that such rules shall be applied in the order stated. Rule (1), page __, cannot be used by X under this example since the selling price at the place of use is unknown; therefore, to determine the value of the 700,000 consumed tons of coal, X may apply rule (2) on page __. Said rule makes use of the average prices at which sales are made to customers during the year. The average price in this instance would be based on the sale of the 40,000 tons made to the wholesaler which was at $12.00 per ton. Therefore, for the used or consumed natural resource products, X must report $8,400,000 ($12.00 X 700,000 = $8,400,000) as the value thereof under the coal production classification on the business and occupation tax return.

(5) The 10,000 tons sold to an affiliate must also be reported under the production class. However, the selling price ($3.00/ton) was not indicative to the true value of the products. Therefore, X must apply the applicable rule set forth in § 2 of these rules. (See pages __ and __ herein.) Since the selling price to the affiliate was not at true value, this sale was not used in determining the value of the products used or consumed by X (see the preceding paragraph). In order to determine the proper value of the products sold to the affiliate, X will apply rule (1) on page __. Said rule provides that whenever sales are made to affiliates, the value shall correspond to the gross proceeds from sales to nonrelated purchasers of similar products of like quality and character. In this example, a sale was make to a nonrelated purchaser (the wholesaler) at $12.00 per ton. Therefore, X must place a value of $12.00/ton on that tonnage sold to the affiliate and report the resultant amount (10,000 tons @ $12.00/ton = $120,000) under the coal production classification.

(6) The gross proceeds of sale derived from the sale to the wholesaler (40,000 tons @ $12.00/ton =

$480,000) will also be included under the production classification.

(7) For purposes of this example, the 1972 business and occupation tax return of X will reflect taxable income of $9,000,000 under the coal production classification. This taxable amount ($9,000,000) is a total of the value of consumed products ($8,400,000), the value of the products sold to the affiliate ($120,000) and the gross proceeds of the sale to the wholesaler ($480,000).

(8) B, who performed services for X, is a contract miner and will report his fee ($750,000) under the service classification.

(f) Example 4.

(1) A, the owner of land, leases said land to B who desires to mine the coal therefrom. B agrees to pay A a royalty of .30¢ on each ton of coal mined by B.

(2) In the year 1972, B extracts 50,000 tons of coal and pays A his royalty of $15,000 (50,000 tons @ .30¢/ton = $15,000). B sells the tonnage to a manufacturer for $450,000.

(3) Inasmuch as B is producing natural resource products under a lease which gives him the exclusive right to sever or mine the mineral deposits and

which obligates him to pay to the owner of the deposits in place a royalty after severance, B is the producer of the natural resources and is not a contract miner. Therefore, B must report the gross proceeds of sale ($450,000) under the production classification on the tax return.

4 (3) A, the royalty recipient, must report his income ($15,000) under the royalty and rental classification.

5 (4) If at a later date, B subleases to C and C agrees to pay B a royalty of .40¢ per ton, C becomes the producer and reports accordingly and A and B are royalty recipients liable under the royalty classification.

6 (5) If at a later date, C contracts with D whereby D will mine the coal and deliver it to C at a stipulated fee per ton, C remains the producer; A and B remain as royalty recipients and D becomes a contract miner who will report his fee under the service classification.

Start here

(g) Example 5.

(1) CB, a coal broker, purchases from P, a producer, 500,000 tons of coal. The gross proceeds derived from this sale are not, of course, reported by P under either the retail or wholesale classes

inasmuch as this was a sale made by a producer to a jobber, CB.

(2) CB sells one-half of the tonnage to XY, who is also a jobber or wholesaler. CB must report the gross proceeds from such sale under the wholesale classification.

(3) The remainder of CB's tonnage is screened, graded, washed and oiled by MN for a fee paid by CB. MN will report his fee under the service classification for he is preparing products for sale which are owned by another. CB, however, has become a manufacturer for this prepared portion of his tonnage and upon sale thereof at wholesale, he will be required to report the gross proceeds derived therefrom under the manufacturing classification. If CB sells this manufactured tonnage to affiliates, ships it without the State without sale thereof or consumes it in his business, he must determine the value of said tonnage in accordance with § 2 of these rules as any other manufacturer would.

(h) Example 6.

(1) A, a landowner, leases his land to B for the purpose of drilling for oil. The lease provides that B will pay A a one-eighth royalty in cash or in kind.

(2) The well is successful and produces 80,000 barrels of oil. B is a producer; therefore, he must pay business and occupation tax under the oil production classification on the gross proceeds of sale or value of the entire production. B receives no deduction for any amount in cash or in kind paid to A as a royalty. A, of course, reports his royalty under the royalty classification.

(3) If at a later date, A makes sale of his royalty in kind (barrels of oil), he must report the gross proceeds from said sale under the retail or wholesale classification, depending on whether the sale was at retail or wholesale.

(i) Example 7.

(1) A owns timber on the stump and cuts and sells the same to a manufacuter for $500,000.

(2) A person who owns timber on the stump and who produces by cutting the timber and who sells the same at wholesale, e.g. to a manufacturer, shall report the entire gross proceeds derived from such wholesale sale only under the timber production classification of the business and occupation tax form, regardless of whether such timber is sold on the ground or delivered to the mill.

(3) Another section of standing timber which was also owned by A was cut by him for his own use. This timber is prepared for sale by A by his sawing, cutting, etc., it himself into lumber. A person who owns timber on the stump and who produces by cutting the timber and who manufactures or prepares for sale the timber by cutting it into lumber shall report the gross proceeds derived from the sale of such lumber under the manufacturing classification on the business and occupation tax form. If it is not possible to ascertain the gross proceeds from the sale of the lumber, A must refer to § 2 of these rules and determine the value of such lumber in accordance therewith.

(4) The value of the timber on the ground after severance which was consumed by A in the manufacture of lumber must also be valued in accordance with § 2 and reported under the timber production classification of the business and occupation tax form.

(5) If A severs and uses his own timber in the manufacture of pulp, the rules as stated hereinbefore are equally applicable.

(6) For purposes of this example, we will assume that A values the timber on the ground (which he later

consumes in the manufacture of lumber), in accordance with the applicable rule set forth in § 2, at $60,000. A later sells the manufactured lumber, at wholesale, for $150,000.

(7) For a payment of $20,000, A agrees to cut timber owned by another. A never takes title to this section of timber but only performs a service for the owner thereof by severing the same. Therefore, A shall report this payment under the service classification. The owner who hired A to sever this timber is the producer thereof.

(8) A also purchases severed timber and manufactures or prepares for sale such severed timber into lumber. A must report the gross proceeds derived from the sale of the lumber manufactured from purchased severed timber under the manufacturing classification. In this instance, A received $40,000 from the sale of the lumber manufactured from purchased severed timber. A's prepared 1972 business and occupation tax return is presented ~~at the pages immediately following.~~ in Appendix C.

(9) Under the timber production classification, A will report gross income of $560,000: $500,000 received for cutting and selling his own timber to a manufacturer, and $60,000 as the value of his timber

WEST VIRGINIA BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED

23-4567890
A Timber Company
Kingwood
West Virginia 30001

WHEN THE FIRST LINE OF THIS SECTION IS YOUR ACCOUNT IDENTIFICATION NUMBER, PLEASE REMARKS ACCOUNT NUMBER ON CORRESPONDENCE.

PLEASE CHANGE NAME AND ADDRESS IF NOT CORRECT.

INDIVIDUAL	X
CORPORATION	
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

This return covers one of the following periods:

a. The calendar year ending December 31, 1972 b. Or, The fiscal year ending _____ 19____

c. Or, If you began business within the previous twelve (12) months,
Or, If this is a final return, the period from _____ 19____ to _____ 19____

State Exact Date Business Began 5/1/62

If you purchased this business in the past twelve (12) months, give the previous owner's full name and address:

During the period covered by this return, did you:

a. Quit Business? No Exact date _____

b. Sell or otherwise dispose of your business? No Exact date _____

c. If business was sold, give exact name and address of new owner _____

Where are your records kept? (Post Office) Kingwood, West Virginia

Principal place of business in West Virginia Same as above

NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL) Own and cut timber and sell lumber and related products.

GIVE NAME AND ADDRESS OF ANY ADDITIONAL BUSINESS(ES) OPERATED IN W. VA. BY THE REPORTING TAXPAYER

BEFORE YOU COMPLETE THE REMAINDER OF THIS PAGE YOU MUST FULLY COMPUTE GROSS TAX (SCHEDULE A) AND ITEMIZE EXEMPTIONS (SCHEDULE B) ON PAGE 2.

1. Gross Tax (FROM SCHEDULE A)		$ 14,222 -
2. Tax Credit for Industrial Expansion (Schedule C or Approved Credit Form must be attached) a. Available Annual Credit: $ b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)		- 0 -
3. Assessed Tax (Line 1 less Line 2)		14,222 -
4. Less Exemption of $50 Annually; $12.50 Per Quarter; $4.16 Per Month or 14 Cents Per Day NOTE: This Exemption is Allowed Only for the Period Actually Engaged in Business		50 -
5. Amount of Tax (Line 3 less Line 4)		14,172 -
6. Less Payment Remittances Made on Quarterly Estimated Returns as Follows: 1st Quarter 4,000. 2nd Quarter 4,000. 3rd Quarter 3,100. TOTAL 11,100		11,100 -
7. Balance of Tax Due (Line 5 less Line 6)		3,072 -
8. Add: Penalty at 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		- 0 -
9. Total Amount and Penalty Due (Add Line 7 and Line 8)		3,072 -

THIS RETURN WITH PAYMENT TO COVER TAX DUE MUST BE RECEIVED WITHIN ONE MONTH FROM END OF PERIOD COVERED THEREBY AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE.

Section 2a.07(i)

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	CLASS	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	TAX RATE %	COLUMN 6 TAX	LINE
1	A	PRODUCTION COAL				3.50		1
2	A	SAND, GRAVEL, OR OTHER MINERAL PRODUCT NOT QUARRIED OR MINED				4.34		2
3	A	COKE - BEST FURNACE SLAG				4.34		3
4	A	NATURAL GAS IN EXCESS OF $3,000.00 ANNUAL EXEMPTION				8.62		4
5	A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A	TIMBER	560,000 -	- 0 -	560,000 -	2.20	12,320 -	6
7	A	OTHER NATURAL RESOURCE PRODUCTS				2.86		7
8	B	MANUFACTURED COMPOUNDED OR PREPARED FOR SALE PRODUCTS	190,000 -	- 0 -	190,000 -	.88	1,672 -	8
9	C	SELLING TANGIBLE PROPERTY (RETAILING)				.55		9
10	C	WHOLESALING				.27		10
11	D	ELECTRIC LIGHT AND POWER COMPANIES SALES & DEMAND CHARGES DOMESTIC PURPOSES AND COMMERCIAL LIGHTING				5.72		11
12	D	WATER COMPANIES				4.60		12
13	D	ELECTRIC LIGHT & POWER COMPANIES SALES OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES				4.29		13
14	D	NATURAL GAS COMPANIES, TOLL BRIDGES				4.29		14
15	D	ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.86		15
16	E	CONTRACTING ENTERED INTO PRIOR TO APRIL 1, 1971				2.00		16
17	E	CONTRACTING ENTERED INTO ON OR AFTER APRIL 1, 1971				2.20		17
18	G	AMUSEMENT				.71		18
19	H	SERVICE OR CALLING AND ALL OTHER BUSINESS	20,000 -	- 0 -	20,000 -	1.15	230 -	19
20	I	RENTALS, ROYALTIES, FEES OR OTHERWISE				1.15		20
21	K	BANKING AND OTHER FINANCIAL BUSINESS				1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE 1 OF THIS RETURN							14,222 -	

SCHEDULE B
EXEMPTIONS

CLASSIFICATIONS	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS

SIGNATURE REQUIRED

* PENALTIES OF PERJURY [illegible] DECLARE THAT I HAVE EXAMINED THIS RETURN, INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE.

Officer — Accounting Officer — Title

on the ground which he later consumed in his own manufacturing process.

(10) Under the manufacturing classification, A will report gross income of $190,000: $150,000 received from the wholesale sale of lumber which he manufactured from his own timber, and $40,000 received from the wholesale sale of lumber which he manufactured from purchased severed timber.

(11) Under the service classification, A will report $20,000: the amount he received from another for severing timber owned by another.

(j) Example 8.

(1) A B is a producer of natural gas within West Virginia. The entire output of natural gas from A B's well is purchased at the well mouth by a public utility for $25,000. On his business and occupation tax return, under the natural gas production classification, A B will report $25,000 as gross income. The law permits, from natural gas production, an exemption or exclusion of $5,000. Therefore, A B will report $20,000 as taxable income under the natural gas production classification.

(2) Same situation as above except A B is required, in order to sell his gas, to construct a transmission

line from his well to the purchaser's gathering system. Where the natural gas is delivered into the purchaser's system, the purchaser pays A B $32,000 as delivered price. A B, to determine well-mouth value to be reported under the natural gas production classification, is permitted to deduct the $5,000 exclusion and fifteen percent (15%) of the delivered price (15% X $32,000 = $4,800). Therefore, A B's deductions, which total $9,800, are applied against his gross receipts to arrive at his taxable value ($32,000 less $9,800 = $22,200) to be reported under the natural gas production classification. However, A B must report the amount of this transmission deduction ($4,800) under the service classification on the business and occupation tax return.

(3) For the purposes of the production of natural gas, multiple co-owners of natural gas in place, lessees thereof, or others being vested with title to part or all of the gas, as personal property, immediately after production, shall be deemed to be a "group or combination acting as a unit" and one "person". Therefore, this "person" shall be eligible for one $5,000 exemption only.

Section 2a.07(j)

Section 2b. Manufacturing, Compounding or Preparing Products; Processing of Food Excepted.

2b.01. Manufacturers of Products.

(a) For purposes of these rules and regulations, the word "manufacturer" shall mean and include, but not be limited to, every person engaging within this State in the business of manufacturing, compounding or preparing for sale, profit or commercial use any article, substance or commodity. The term "to manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale, profit or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles. It means producing articles from raw materials or prepared materials by giving these matters new forms, qualities, properties, or combinations. It includes such activities as making, fabricating, processing, refining, mixing, compounding, etc. The term to manufacture does not include activities which are merely incidental to nonmanufacturing activities. Therefore, the following do not constitute manufacturing, compounding, or preparing for sale: cooking and serving of food by a restaurant, repairing and reconditioning of tangible personal property owned by others, etc.

(b) The phrase "manufacturing, compounding or preparing for sale" means every person who, from his own materials or ingredients manufactures for sale, or for commercial or industrial use any article, substance or commodity either directly, or by contracting with others for the necessary labor and machanical services.

(c) Persons who manufacture shall report the gross proceeds derived therefrom under the manufacturing classification on the business and occupation tax returns. If it is not possible for the manufacturer to determine gross proceeds of sale, he must determine the value of his products by employing the applicable rule set forth in § 2 of these rules and regulations. The measure of the business and occupation tax shall be the value (said value, whenever possible, shall be determined by gross proceeds of sale) of the entire production within this State, regardless of the place of sale or the fact that delivery may be made to points outside this State.

(d) A person who manufactures final completed products and does not make sale of the same but uses or consumes said products in his business shall report the value of such products under the manufacturing classification on the business and occupation tax return. In determining the value of such final completed products, the taxpayer must adhere to § 2 of these rules.

(e) Where the relationship between the manufacturer of products and the purchaser thereof is such that the gross pro-

ceeds of sale are not indicative of the true value of the manufactured articles, the taxpayer shall determine value by application of the proper rule set forth in § 2 of these rules and regulations.

(f) Persons engaged in the business of manufacturing, compounding or preparing for sale, profit or commercial use, any article, substance or commodity and the same is sold at retail shall report the gross proceeds derived from such sale under the retail classification, and the value of the same shall be also reported under the manufacturing classification.

(g) Where a person manufactures, compounds or prepares for sale, profit or commercial use, products, substances or commodities and makes sale of the same at wholesale, such person shall report the gross income derived from the sale at wholesale under the manufacturing classification only.

2b.02. Manufacturing Products for Others.

(a) The term "manufacturing for others" means the performance of labor and mechanical services upon materials belonging to others so that as a result thereof a new, different or useful article of tangible personal property is produced.

(b) Persons engaged in the business of manufacturing, compounding or preparing for sale, profit or commercial use, any article, substance or commodity, title to which is vested in another, and the article, substance or commodity is returned, not sold, by the person performing the manufacturing service to the owner, the person performing the service shall report the gross income derived therefrom under the service classification on the business and occupation tax form. In this case, the person performing the manufacturing service is not vested with title to the goods; therefore, he reports his gross income under the service classification. The owner of these goods, for whom the manufacturing service was performed, must report the income from such goods under the manufacturing classification of the business and occupation tax return; for he is manufacturing through the activities of others.

(c) Persons performing manufacturing services for others often add materials to make a desired product for the owner. In those cases where the person rendering a manufacturing service furnishes or sells tangible personal property to complete the article for the owner, the gross income derived from the rendi-

tion of the service is taxable under the service classification and the gross income derived from furnishing or selling tangible personalty is taxable under the retail or wholesale classifications, as the case may be.

2b.03. Manufacturing Electric Power.

If any person produces electric power within this State and is not deemed taxable under the public service or public utility section of the business and occupation tax law on such electric power, such person is a manufacturer of electric power and shall report gross income derived therefrom under the manufacturing classification. In other words, the manufacture of electric power which is not taxable under the public utilities classification is taxable under the manufacturing classification.

2b.04. Dressing and Processing of Food.

(a) Persons who dress and process food which is to be sold on a wholesale basis by such person shall not be considered as manufacturing or compounding for the purposes of the business and occupation tax law. The sale of these food products on a wholesale basis shall be subject to the tax imposed under the wholesale classification only.

(b) The term "dressing and processing" shall mean slaughtering, butchering and breaking down of poultry, meat, fish, fowl and other foods into composite parts but does not include the preparation of these parts into new or different products or substances. To illustrate: slaughtering and butchering swine into pork chops, pork roasts, pork liver, pork brains, etc. will qualify as dressing and processing of food. If composite parts of the swine are mixed, ground or cooked and have other ingredients, such as condiments, added thereto, to make a new or different product, such as pork sausage, such procedure is more than merely dressing and processing of food and the income therefrom is subject to the manufacturing classification. Therefore, preparation of luncheon meats, such as, bologna, salami, ham salad spread, liverwurst, etc., must be reported under the manufacturing classification when sold by the person who prepared the same.

(c) The paring, slicing and cutting of apples, peaches and other fruits or vegetables into composite parts will qualify as

dressing and processing of food. If these items are canned or frozen and do not become new or different items or lose their identity therein, the sale of such will be reported under the wholesale classification rather than the manufacturing classification. However, these items will not qualify under this rule if made in to applesauce, peach pies, apple butter, etc.

(d) Any food item which is dressed and processed and is sold at retail is treated as a manufactured product, and the income therefrom must be reported under the retail classification and the manufacturing classification. Persons who dress and process food are relieved from reporting the sale of such food under the manufacturing classification only if such food is sold on a wholesale basis.

2b.05. Partially Manufacturing Within and Without this State.

(a) In those instances in which the same person partially manufactures products within this State and partially manufactures such products outside this State, only a portion of the gross proceeds of sale of such products is taxable under the business and occupation tax law.

(b) To determine that portion of the sale price that is applicable to business and occupation tax, under the manufacturing classification, the taxpayer, at his option, shall elect and apply one of the following methods of apportionment:

(1) That proportion of the sale price of the manufactured product that the payroll cost of manufacturing such product within West Virginia bears to the entire payroll cost of manufacturing such product.

(2) The proportion of the sale price of the manufactured product that the cost of operations to manufacture such products within West Virginia bears to the entire cost to manufacture such products.

(3) A taxpayer is not permitted to report one partially manufactured product under the payroll cost option and another partially manufactured product under the manufacturing cost option within the same taxable year. Once an option or method is chosen, said option shall apply to all of the

taxpayer's manufactured articles or products for that particular taxable year.

(4) If option (1) is elected by the taxpayer, only direct payroll costs are to be considered in the formula to compute the percentage of sales price attributable to this State. Direct payroll costs do not include the value of or expense of employee benefits, such as, pension plans, insurance programs, employer contribution of FICA taxes, etc.

(5) If option (2) is elected by the taxpayer, only manufacturing costs are to be computed. Selling expenses, administrative expenses, advertising expenses, etc., whether incurred within or without West Virginia, are not subject to computation in arriving at apportionment under such option; nor are research expenses, home office overhead, marketing expenses, etc.

2b.06. Treatment of Freight Charges Incurred by Manufacturers.

(a) In certain instances, persons who manufacture, compound or prepare products within West Virginia are permitted to deduct outgoing freight charges from the gross proceeds of sales to arrive at taxable value under the manufacturing classification on the business and occupation tax form.

(b) To determine the value of manufactured articles within the State, there may be deducted from gross proceeds of sale certain outgoing freight charges actually paid by the manufacturer, but no deduction will be allowed for expenses incurred by him through use of his own equipment in transporting items manufactured.

(c) In all instances where manufactured products are used or consumed by the manufacturer at a point distant from the place of manufacture, outgoing freight charges paid by the manufacturer will not be allowed as a deduction, unless due consideration has been given to them also in the method by which values were determined.

(d) Generally, freight charges to be deductible from gross proceeds of sale must be paid by the manufacturer to a common carrier to deliver manufactured products to a bona fide purchaser. To illustrate: Glassware, at the place where manufacturing ends, has a value of twenty-five dollars ($25.00) per gross. If a purchaser buys the glassware at the glass plant for

said price, the manufacturer will report under the manufacturing classification the gross proceeds of sale, $25.00. However, if the purchaser buys the same glassware delivered at twenty-seven dollars ($27.00) per gross, and the manufacturer pays a common carrier to make such delivery, the manufacturer may deduct such freight charges (2.00) from the gross proceeds of sale ($27.00) reported under the manufacturing classification to arrive at the taxable value ($25.00) under said classification.

(e) If the manufacturer sells his articles to a purchaser and agrees to deliver such articles in his own equipment for a fee, said fee may be deducted from gross proceeds of sale in arriving at taxable value under the manufacturing classification. However, the amount of deduction must be reported either under the service classification or under the annual tax on incomes of certain carriers (West Virginia Code ch. 11, art. 12A), depending upon the type of delivery.

(f) If hauling or transportation charges are incurred by the manufacturer and have been absorbed by the manufacturer, such charges are outgoing freight charges and are deductible from gross proceeds of sale to arrive at taxable value.

2b.07. Problems and Solutions Relating to the Manufacturing, Compounding or Preparing of Products, Articles, Substances or Commodities. -- Presented below are several examples, problems and solutions thereto regarding the proper taxation of manufacturing activities. For certain problems and examples, there are prepared tax returns attached hereto to further clarify the situations which may arise.

(a) Example 1.

(1) A B manufactures clothing within West Virginia and sells the same, at wholesale, for $300,000. A B will report this sale at wholesale under the manufacturing classification only. Persons who manufacture and sell their manufactured products at wholesale or for delivery outside this State shall report the gross proceeds derived therefrom under the manufacturing class and not under the retail or wholesale classification.

(2) A B also sells some of his manufactured product at a retail factory outlet and derives $15,000 from such sales. A B will report this amount ($15,000) under the retail classification and will also report such amount under the manufacturing classification. A B receives no deduction from the gross proceeds of sales at retail to arrive at manufactured value, for the retail sales were made at the factory where production ended.

(b) Example 2.

(1) C D, the owner of materials and fabrics, contracts with A B to have A B manufacture sweaters from the goods. The contract stipulates that A B will manufacture 25,000 sweaters from C D's goods for a fee of $135,000, and that A B will furnish any thread or buttons necessary to complete the garments. A B is to invoice C D separately for any tangible personal property furnished by A B.

(2) A B completes the manufacturing service and delivers the sweaters to C D and invoices C D for $4,000 for materials furnished.

(3) A B will report $135,000 under the service classification and $4,000 under the wholesale classification. The $135,000 is not reported under the manufacturing classification by A B since he was performing services upon materials belonging to another. The sale of the furnished tangible personal property is reported at wholesale rather than at retail for the sale was made to a manufacturer (C D).

(4) C D sells a portion of these sweaters at wholesale for $400,000. This amount must be reported by C D under the manufacturing classification, regardless of the place of sale, and he may deduct therefrom

any outgoing freight charges paid to a common carrier to deliver these groods to the purchaser.

(5) The remainder of the sweaters are sold at retail by C D for $100,000. Of such retail sales, $80,000 worth occurred outside this State and $20,000 worth within this State. Therefore, C D must report only $20,000 under the retail classification for those retail sales within West Virginia and must place a sales value on this portion of the goods and report the same under the manufacturing classification. C D will determine such value in accordance with the applicable rule set forth in §2 of these rules.

(6) The $80,000 of retail sales which occurred outside this State are not reportable under the retail classification, but a sales value must be placed on this portion of the goods and must be reported under the manufacturing classification in accordance with §2 of these rules. These are sales of manufactured products for delivery outside this State and are reportable under manufacturing only. It is assumed that the taxpayer had no outgoing freight charges, in this example, and that the value of his articles was reflected by the gross proceeds of sales; therefore, he will

report the $100,000 (of total retail sales) under the manufacturing classification.

(7) C D's business and occupation tax return will reflect $500,000 reported under the manufacturing classification and $20,000 under the retail classification. Prepared tax returns for A B and C D are presented, ~~commencing with the next page here-~~ ~~in~~ in Appendix D.

D

WEST VIRGINIA BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED

34-5678900

AB Garment Co.
P.O. Box 69
Clarksburg, West Virginia 27141

THE FIRST LINE OF THIS SECTION IS YOUR ACCOUNT IDENTIFICATION NUMBER. PLEASE REFERENCE ACCOUNT NUMBER ON CORRESPONDENCE.

PLEASE CHANGE NAME AND ADDRESS IF NOT CORRECT.

INDIVIDUAL	
CORPORATION	
PARTNERSHIP	X
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

This return covers one of the following periods:

a. The calendar year ending December 31, 1972 b. Or, The fiscal year ending _____ 19____

c. Or, If you began business within the previous twelve (12) months,
Or, If this is a final return, the period from _____, 19____ to _____, 19____

State Exact Date Business Began January 1, 1968

If you purchased this business in the past twelve (12) months, give the previous owner's full name and address:

During the period covered by this return, did you:

a. Quit business? No Exact date _____

b. Sell or otherwise dispose of your business? No Exact date _____

c. If business was sold, give exact name and address of new owner _____

Where are your records kept? (Post Office) Same address as above

Principal place of business in West Virginia _____

NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL) Manufacture clothing for others, by using their materials and goods.

GIVE NAME AND ADDRESS OF ANY ADDITIONAL BUSINESS(ES) OPERATED IN W. VA. BY THE REPORTING TAXPAYER

BEFORE YOU COMPLETE THE REMAINDER OF THIS PAGE, YOU MUST FULLY COMPUTE GROSS TAX (SCHEDULE A) AND ITEMIZE EXEMPTIONS (SCHEDULE B) ON PAGE 2.

1. GROSS TAX (FROM SCHEDULE A)		$ 1,563.30
2. Tax Credit for Industrial Expansion (Schedule C or Approved Credit Form must be attached)	$	
a. Available Annual Credit		
b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)		- 0 -
3. Adjusted Tax (Line 1 less Line 2)		1,563.30
4. Less Exemption of $50 Annually, $12.50 Per Quarter, $4.16 Per Month or 14 Cents Per Day NOTE: This Exemption is Allowed Only for the Period Actually Engaged in Business		50.00
5. Net Amount of Tax (Line 3 less Line 4)		1,513.30
6. Less Payment Remittance Made on Quarterly Estimated Returns or Returns: 1st Quarter 315.00 2nd Quarter 305.00 3rd Quarter 292.00 TOTAL		912.00
7. Balance of Tax Due (Line 5 less Line 6)		601.30
8. Add: Penalty of 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		- 0 -
9. Total Tax and Penalty Due (Add Line 7 and Line 8)		601.30

THIS RETURN WITH PAYMENT TO COVER TAX DUE MUST BE RECEIVED WITHIN ONE MONTH FROM END OF PERIOD COVERED THEREBY AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE

Section 2b.07(b)

D

SCHEDULE A - GENERAL BUSINESS TAX
COMPUTATION OF GROSS TAX

LINE	CODE	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	RATE %	COLUMN 6 TAX	LINE
1		PRODUCTION, COAL				3.50		1
2	A	SAND, GRAVEL OR OTHER MINERAL PRODUCT NOT QUARRIED OR MINED				4.34		2
3	A	OIL, BLAST FURNACE SLAG				4.34		3
4	A	NATURAL GAS (IN EXCESS OF $5,000.00 ANNUAL EXEMPTION)				8.63		4
5	A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A	TIMBER				2.20		6
7	A	OTHER NATURAL RESOURCE PRODUCTS				2.86		7
8	B	MANUFACTURED, COMPOUNDED OR PREPARED FOR SALE PRODUCTS				.88		8
9	C	SELLING TANGIBLE PROPERTY-RETAILERS				.55		9
10	C	WHOLESALERS	4,000 -	- 0 -	4,000 -	.27	10 80	10
11	D	ELECTRIC LIGHT AND POWER COMPANIES (SALES & DEMAND CHARGES, DOMESTIC PURPOSES AND COMMERCIAL LIGHTING)				5.72		11
12	D	WATER COMPANIES				4.60		12
13	D	ELECTRIC LIGHT & POWER COMPANIES (ALL OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES)				4.29		13
14	D	NATURAL GAS COMPANIES, TOLL BRIDGES				4.29		14
15	D	ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.86		15
16	E	CONTRACTING (ENTERED INTO PRIOR TO APRIL 1, 1971)				2.00		16
17	E	CONTRACTING (ENTERED INTO ON OR AFTER APRIL 1, 1971)				2.20		17
18	G	AMUSEMENT				.71		18
19	H	SERVICE OR CALLING AND ALL OTHER BUSINESS	135,000 -	- 0 -	135,000 -	1.15	1,552 50	19
20	I	RENTALS, ROYALTIES, FEES OR FRANCHISE				1.15		20
21	K	BANKING AND OTHER FINANCIAL BUSINESS		-		1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE 1 OF THIS RETURN							1,563 30	

SCHEDULE B
EXEMPTIONS

CLASSIFICATIONS	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS

SIGNATURE REQUIRED

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS RETURN (INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS) AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT, AND COMPLETE.

(Name) (Signature of Officer) Title

D

WEST VIRGINIA BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED

55-7654321

C D Sweater Co., Inc.
22 Lake St.
Chicago, Ill.
721400

THE FIRST LINE OF THIS SECTION IS YOUR ACCOUNT IDENTIFICATION NUMBER. PLEASE REFERENCE ACCOUNT NUMBER ON CORRESPONDENCE.

PLEASE CHANGE NAME AND ADDRESS IF NOT CORRECT.

INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

This return covers one of the following periods:

a. The calendar year ending December 31, 1972 b. Or, The fiscal year ending _____ 19 ____

c. Or, If you began business within the previous twelve (12) months,
Or, If this is a final return, the period from _____, 19____ to _____, 19____

State Exact Date Business Began July 1, 1903

If you purchased this business in the past twelve (12) months, give the previous owner's full name and address

During the period covered by this return, did you:

a. Quit business? No Exact date _____

b. Sell or otherwise dispose of your business? No Exact date _____

c. If business was sold, give exact name and address of new owner _____

Where are your records kept? (Post Office) Same as above

Principal place of business in West Virginia P. O. Box 22, Wheeling, W. Va. 20817

NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL) Manufacture clothing and sell clothing at retail and wholesale.

GIVE NAME AND ADDRESS OF ANY ADDITIONAL BUSINESS(ES) OPERATED IN W. VA. BY THE REPORTING TAXPAYER

BEFORE YOU COMPLETE THE REMAINDER OF THIS PAGE, YOU MUST FIRST COMPUTE GROSS TAX (SCHEDULE A) AND ITEMIZE EXEMPTIONS (SCHEDULE B) ON PAGE 2.

1. GROSS TAX (FROM SCHEDULE A)		$ 4,510 -
2. Tax Credit for Industrial Expansion (Schedule C or Approved Credit Form must be attached)	$	
a. Available Annual Credit		
b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)		- 0 -
3. Adjusted Tax (Line 1 less Line 2)		4,510 -
4. Less Exemption of $50 Annually; $12.50 Per Quarter; $4.16 Per Month or 14 Cents Per Day NOTE: This Exemption is Allowed Only for the Period Actually Engaged in Business		50 -
5. Net Amount of Tax (Line 3 less Line 4)		4,460 -
6. Less Payment Remittance made on Quarterly Estimated Returns as follows: 1st Quarter 1,421 - 2nd Quarter 1,009 - 3rd Quarter 1,410 - TOTAL		3,840 -
7. Balance of Tax Due (Line 5 less Line 6)		620 -
8. Add: Penalty of 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		- 0 -
9. Total Tax and Penalty Due (Add Line 7 and Line 8)		620 -

THIS RETURN WITH PAYMENT TO COVER TAX DUE MUST BE RECEIVED WITHIN ONE MONTH FROM END OF PERIOD COVERED THEREBY AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE

Section 2b.07(b)

D

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	CODE	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	TAX RATE %	COLUMN 6 TAX	LINE
1		PRODUCTION, COAL				2.50		1
2	A	SAND, GRAVEL OR OTHER MINERAL PRODUCT NOT QUARRIED OR MINED				4.34		2
3	A	OIL, BLAST FURNACE SLAG				4.34		3
4	A	NATURAL GAS IN EXCESS OF $5,000.00 ANNUAL EXEMPTION)				8.63		4
5	A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A	TIMBER				2.20		6
7	A	OTHER NATURAL RESOURCE PRODUCTS				2.86		7
8	B	MANUFACTURED, COMPOUNDED OR PREPARED FOR SALE PRODUCTS	500,000 -	- 0 -	500,000 -	.88	4,400 -	8
9	C	SELLING TANGIBLE PROPERTY, RETAILERS	20,000 -	- 0 -	20,000 -	.55	110 -	9
10	C	WHOLESALERS				.27		10
11	D	ELECTRIC LIGHT AND POWER COMPANIES (SALES & DEMAND CHARGES, DOMESTIC PURPOSES AND COMMERCIAL LIGHTING)				5.72		11
12	D	WATER COMPANIES				4.40		12
13	D	ELECTRIC LIGHT & POWER COMPANIES (ALL OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES)				4.29		13
14	D	NATURAL GAS COMPANIES, TOLL BRIDGES				4.29		14
15	D	ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.86		15
16	E	CONTRACTING (ENTERED INTO PRIOR TO APRIL 1, 1971)				2.00		16
17	E	CONTRACTING (ENTERED INTO ON OR AFTER APRIL 1, 1971)				2.20		17
18	G	AMUSEMENT				.71		18
19	H	SERVICE OR CALLING AND ALL OTHER BUSINESS				1.15		19
20	I	RENTALS, ROYALTIES, FEES OR OTHERWISE				1.15		20
21	K	BANKING AND OTHER FINANCIAL BUSINESS				1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE1 OF THIS RETURN							4,510 -	

SCHEDULE B
EXEMPTIONS

CLASSIFICATIONS	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS

SIGNATURE REQUIRED

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS RETURN (INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS) AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT, AND COMPLETE.

(Name) (Signature of Officer) (Title)

(c) Example 3.

(1) XY, a coal broker, purchases coal from Kentucky and has it transported to his tipple and preparation plant within West Virginia. XY purchased 100,000 tons at five dollars ($5.00) per ton. The coal is tippled, prepared, screened, graded, washed, etc. by XY and sold by him for delivery outside this State for eight dollars ($8.00) per ton, or a total of $800,000. In the purchase contract, it is stipulated that XY will pay all outgoing freight charges to deliver such coal. The freight charges (in the amount of $10,000) were paid by XY to a railroad, which is, of course, a common carrier.

(2) XY will report the gross proceeds of sale ($800,000) of the coal described in the preceding paragraph less the prepaid outgoing freight charges ($10,000) as taxable income ($790,000) under the manufacturing classification; for the activities of screening, grading, washing, etc., are deemed to be preparing articles for sale, which activities come under the manufacturing classification. Inasmuch as this was a sale made of manufactured products for delivery outside this State, The taxpayer has no responsibility to

report the gross proceeds therefrom under either the retail or wholesale classes.

(3) During the taxable period, XY tippled, prepared, screened, graded, etc., coal, title to which was vested in others, for a fee of two dollars ($2.00) per ton. Gross income from this activity, performing manufacturing services on goods owned by others, amounted to $350,000. Inasmuch as title to this coal was vested in others, XY is deemed to be performing activites taxable under the service classification and will report accordingly.

(4) The taxpayer purchased West Virginia coal and other natural resource products which he sold for $600,000. XY performed no activities on these products and sold the same in the condition in which they were purchased. The sale of such products occurred outside of West Virginia. The transaction was negotiated and consummated without this State, and it was provided that title passed to the purchaser only upon delivery.

(5) On the transaction described in the preceding paragraph, XY is not subject to West Virginia business and occupation tax. He did not produce, manufacture or prepare the goods for sale. The goods were purchased by him within West Virginia

and sold by him outside West Virginia in the form in which he purchased them. Therefore, XY performed no activities within West Virginia subject to the business and occupation tax. In this situation the burden of proof is on the taxpayer to show that the sale was consummated without this State and therefore not subject to tax. A detailed list of all such transactions must be maintained by the taxpayer and must show the shipping point, the purchaser's name, the delivery point, the mode of delivery and the date of shipment.

(6) Exemption for sales consummated outside this State does not apply to persons subject to tax under the production classification (§2A of these rules) or under the manufacturing, compounding or preparing for sale classification (§2B of these rules). Persons subject to tax under the production classification or the manufacturing, compounding or preparing for sale classification are producing, manufacturing, compounding or preparing for sale products within West Virginia for sale without West Virginia and are taxable on the privileges engaged in within the State. The measure of the tax is the value of the entire production or

entire product manufactured within West Virginia, regardless of the place of sale or the fact that the delivery may be made to points outside the State.

(7) A prepared tax return for XY's activities in this example follows ~~at the next page herein.~~ in Appendix E

Section 2b.07(c)

E

WEST VIRGINIA · BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED

21-3243546

XY, Inc.
P. O. Box 77
Bluefield, W. Va.
20881

IF THE FIRST LINE OF THIS SECTION IS YOUR ACCOUNT IDENTIFICATION NUMBER, PLEASE REFERENCE ACCOUNT NUMBER ON CORRESPONDENCE.

PLEASE CHANGE NAME AND ADDRESS IF NOT CORRECT.

INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

This return covers one of the following periods:

a. The calendar year ending December 31, 1972 b. Or, The fiscal year ending _____ 19 ____

c. Or, If you began business within the previous twelve (12) months,
Or, If this is a final return, the period from _____, 19____ to _____, 19____

State Exact Date Business Began 2/10/42

If you purchased this business in the past twelve (12) months, give the previous owner's full name and address:

During the period covered by this return, did you:

a. Quit business? No Exact date _____

b. Sell or otherwise dispose of your business? No Exact date _____

c. If business was sold, give exact name and address of new owner _____

Where are your records kept? (Post Office) Same as above

Principal place of business in West Virginia _____

NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL) Buy and sell coal and handle and prepare coal for us and for others.

GIVE NAME AND ADDRESS OF ANY ADDITIONAL BUSINESS(ES) OPERATED IN W. VA. BY THE REPORTING TAXPAYER

BEFORE YOU COMPLETE THE REMAINDER OF THIS PAGE, YOU MUST FULLY COMPLETE GROSS TAX SCHEDULE (A) AND ITEMIZE EXEMPTIONS (CONTINUE TO ON PAGE 2)

1. GROSS TAX (FROM SCHEDULE A)		$ 10,977 -
2. Tax Credit for Industrial Expansion (Schedule C or approved Credit Form must be attached)	$	
a. Available Annual Credit		
b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)		- 0 -
3. Adjusted Tax (Line 1 less Line 2)		10,977 -
4. Less Exemption at $50 Annually; $12.50 Per Quarter; $4.16 Per Month or 14 Cents Per Day NOTE: This Exemption is Allowed Only for the Period Actually Engaged in Business		50 -
5. Net Amount of Tax (Line 3 less Line 4)		10,927 -
6. Less Payment Prepayments Made on Quarterly Estimated Returns as follows: 1st Quarter 2,150 - 2nd Quarter 1,700 - 3rd Quarter 2,950 - TOTAL		7,800 -
7. Balance of Tax Due (Line 5 less Line 6)		3,127 -
8. Add: Penalty of 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		- 0 -
9. Total Tax and Penalty Due (Add Line 7 and Line 8)		3,127 -

THIS RETURN WITH PAYMENT TO COVER TAX DUE MUST BE RECEIVED WITHIN ONE MONTH FROM END OF PERIOD COVERED THEREBY AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE.

Section 2b.07(c)

E

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	CODE	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	TAX RATE PER CENT	COLUMN 6 TAX	LINE
1		PRODUCTION: COAL				2.50		1
2	A	SAND, GRAVEL, OR OTHER MINERAL PRODUCT NOT QUARRIED OR MINED				4.34		2
3	A	OIL, BLAST FURNACE SLAG				4.34		3
4	A	NATURAL GAS IN EXCESS OF $1,000,000 (ANNUAL EXEMPTION)				8.63		4
5	A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A	TIMBER				2.20		6
7	A	OTHER NATURAL RESOURCE PRODUCTS				2.86		7
8	B	MANUFACTURED, COMPOUNDED OR PREPARED FOR SALE PRODUCTS	800,000 -	10,000 -	790,000 -	.88	6,952 -	8
9	C	SELLING TANGIBLE PROPERTY, RETAILING				.55		9
10	C	WHOLESALERS				.27		10
11	D	ELECTRIC LIGHT AND POWER COMPANIES (SALES & DEMAND CHARGES DOMESTIC PURPOSES AND COMMERCIAL LIGHTING)				5.72		11
12	D	WATER COMPANIES				4.60		12
13	D	ELECTRIC LIGHT & POWER COMPANIES (ALL OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES)				4.29		13
14	D	NATURAL GAS COMPANIES, TOLL BRIDGES				4.29		14
15	D	ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.86		15
16	E	CONTRACTING (ENTERED INTO PRIOR TO APRIL 1, 1971)				2.00		16
17	E	CONTRACTING (ENTERED INTO ON OR AFTER APRIL 1, 1971)				2.20		17
18	G	AMUSEMENT				.71		18
19	H	SERVICE OR CALLING AND ALL OTHER BUSINESS	350,000 -	- 0 -	350,000 -	1.15	4,025 -	19
20	I	RENTALS, ROYALTIES, FEES OR OTHERWISE				1.15		20
21	K	BANKING AND OTHER FINANCIAL BUSINESS				1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE 1 OF THIS RETURN							10,977 -	

SCHEDULE B
EXEMPTIONS

CLASSIFICATIONS	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS
Manufacturing	$10,000 -	Outgoing freight charges paid by us to a common carrier (RR) to deliver coal to a purchaser.

SIGNATURE REQUIRED

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS RETURN INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT, AND COMPLETE.

(Name) (Position of Officer) (Title)

(d) Example 4.

(1) At a West Virginia site, EF manufactures component parts for radios and television sets and ships said parts to its assemble factory outside this State where additional manufacturing is performed to make radios and televisions ready for sale. Therefore, the same person (EF) is partially manufacturing a product within this State and partially manufacturing such product outside this State.

(2) Whereas the business and occupation tax law can reach only those activities or privileges which occurred within this State, the taxpayer must elect a method of apportionment to determine his West Virginia gross income from manufacturing. (See pages __ and __ of this section, § 2B of these rules.) The taxpayer elects to use, in this example, the payroll method of apportionment.

(3) The payroll cost of manufacturing the parts within West Virginia totaled $100,000. The entire payroll cost of manufacturing the radio and television sets was $500,000, including the West Virginia payroll. Therefore, the West Virginia payroll cost is twenty percent (20%). In computing payroll cost, only direct payroll cost in

manufacturing the item in question is included. No other expenses are included.

(4) Assuming that EF sells the radios and television sets for $1,600,000, its West Virginia gross income reported under the manufacturing classification is $320,000 (20% X $1,600,000 = $320,000).

(5) Persons who perform a manufacturing service on goods owned by another must report their entire gross income derived from such activity under the service classification and are not permitted to employ an apportionment method. The rule stated in the preceding sentence shall apply even if the owner (manufacturer) of the goods ships the same outside the State for additional manufacturing or preparing. Only the owner-manufacturer is entitled to prorate his income under one of the apportionment methods.

(6) If the owner-manufacturer pays another to perform services on his goods within West Virginia and ships said goods outside the State for additional processing, the owner-manufacturer must elect the cost of operations method of apportionment. He is not eligible to use the payroll method since he has no West Virginia payroll in re these particular goods (the goods were partially manufactured by another).

start here

(e) Example 5.

(1) ST manufactures chemicals and related items within the State of West Virginia. In order to manufacture house paint, ST must manufacture certain chemical compounds which become component parts of the paint and which lose their identity therein. These manufactured chemical compounds consumed by the manufacturer within West Virginia are not subject to the business and occupation tax in that such compounds become component parts of the product, lose their identity therein and increase the taxable value of the product (house paint) manufactured within West Virginia which is reported under this tax act.

(2) ST ships a portion of the chemical compound to its operation outside of the State. ST must place a manufactured value on this portion of the compound and report the same under the manufacturing classification on the business and occupation tax return; for this product becomes a final completed product for purposes of this tax once it is shipped outside the State, with or without sale thereof. Any manufactured product which is shipped outside this State, whether for consumption or use or for sale, becomes a final completed product subject to this tax.

(3) ST consumes a portion of its manufactured paint to paint its factory. A value, in accordance with §2 of these rules, must be placed on the consumed product and reported under the manufacturing classification of the business and occupation tax return. In this situation, the taxpayer is consuming final completed products. Final completed products manufactured within this State are taxable under the manufacturing classification, regardless of where consumed or used by the manufacturer.

(f) Example 6.

(1) F & T, a partnership, is a toy manufacturer within this State and makes some sales at retail from its showroom at the factory.

(2) For purposes of this example, it will be assumed that F & T reports $10,000,000 under the manufacturing classification and $1,000,000 under the retail classification.

(3) The partnership decides to expand and has constructed an addition to the present plant. The new addition costs $4,000,000 and is placed in service in 1972. The equipment and machinery placed in the new addition cost $1,000,000 and is also placed in use in 1972. A new warehouse

facility is built at a cost of $750,000 and is not placed in service until 1973.

(3) Of the new equipment and machinery, $99,000 thereof has a useful life of three (3) years; $201,000 thereof has a useful life of five (5) years; $300,000 thereof has a useful life six (6) years, and the remaining $400,000 thereof has a useful life of ten (10) years.

(4) The partnership must also replace two of its existing machines for $55,000 and must purchase three new trucks for $32,000 to handle the additional output. Since its new warehouse will not be completed on schedule, the partnership takes a one year lease on a warehouse for $6,000.

(5) In order to determine the amount of its industrial expansion credit for 1972, the partnership must not consider the $99,000 worth of machinery which has a useful life of three (3) years. Only property which has a useful life of four (4) years or more qualifies for the credit. The partnership may not use the replacement machinery ($55,000) for purposes of the credit. Property purchased for industrial expansion does not include replacement property. The expenditure for the new trucks will not qualify inasmuch as motor vehicles do not

qualify as property purchased for industrial expansion. The rental expense for the warehouse does not qualify as property purchased for industrial expansion; for property acquired by lease to qualify must be for a term of ten (10) years or longer.

(6) The warehouse under construction does not qualify for the credit in 1972 since the facility will not be placed in service until 1973. Inasmuch as the land on which the expanded manufacturing facility was constructed was purchased before July 25, 1969, the cost of said land does not qualify.

(7) To determine its allowable credit, F & T must total its qualified investment and apply the applicable percentage as based on the useful life of each separate qualified property. Those items that qualify are: The construction expenses of the expanded facility ($4,000,000), and the machinery and equipment which have a useful life of four (4) years or more ($901,000).

(8) The credit is computed on a schedule provided by the Tax Department and must be attached to the business and occupation tax return of the claimant.

(9) The credit, in this particular example, equals $46,670 for the year 1972. The credit may be claimed for a period of ten (10) consecutive taxable years, commencing with the year the qualified property is placed in service (1972) and continuing through the 1981 taxable year. The credit for the warehouse facility must be separately computed when placed in use. The credit for the warehouse facility, separately computed on the schedule provided by the Tax Department, will also run for ten (10) consecutive taxable years.

(10) However, it is to be noted, that a warehouse facility does not qualify for the industrial expansion credit for a taxpayer who is enlarging his existing West Virginia operation unless the construction of the warehouse facility maintains or increases the taxpayer's level of employment within West Virginia.

(11) If for any taxable year the claimed credit exceeds fifty percent (50%) of the amount of business and occupation tax due before application of the credit, the amount of credit in excess of fifty percent (50%) of the tax may not be claimed and is forever lost. No carryover or carryback of such

unused credit is permitted. See the prepared return and schedule for F & T which follow ~~at the next page herein.~~ in Appendix F.

F

WEST VIRGINIA BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED

44-3117831

F & T Toy Company
P. O. Box 21
Martinsburg, W. Va. 27746

THE FIRST LINE OF THIS SECTION IS YOUR ACCOUNT IDENTIFICATION NUMBER. PLEASE REFERENCE ACCOUNT NUMBER ON CORRESPONDENCE.

PLEASE CHANGE NAME AND ADDRESS IF NOT CORRECT.

INDIVIDUAL	
CORPORATION	
PARTNERSHIP	X
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

This return covers one of the following periods:

a. The calendar year ending December 31, 1972 b. Or, The Fiscal year ending _____ 19____

c. Or, If you began business within the previous twelve (12) months,
Or, If this is a final return, the period from _____, 19____ to _____, 19____

State Exact Date Business began _____

If you purchased this business in the past twelve (12) months, give the previous owner's full name and address _____

During the period covered by this return, did you:

a. Quit Business? No Exact date _____

b. Sell or otherwise dispose of your business? No Exact date _____

c. If business was sold, give exact name and address of new owner _____

Where are your records kept? (Post Office) Same as above

Principal place of business in West Virginia _____

NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL) We make toys

GIVE NAME AND ADDRESS OF ANY ADDITIONAL BUSINESS(ES) OPERATED IN W. VA. BY THE REPORTING TAXPAYER

BEFORE YOU COMPLETE THE REMAINDER OF THIS PAGE, YOU MUST FULLY COMPUTE GROSS TAX. (SCHEDULE A) AND ITEMIZE EXEMPTIONS (SCHEDULE B) ON PAGE 2.

1. GROSS TAX (FROM SCHEDULE A)		$ 93,500 -
2. Tax Credit for Industrial Expansion (Schedule C or Approved Credit Form must be attached) a. Available Annual Credit $ b. Allowed Credit (Enter Line 2a or 50% of Line 1, whichever is less)		46,670 -
3. Adjusted Tax (Line 1 less Line 2)		46,830 -
4. Less Exemption of $50 Annually; $12.50 Per Quarter; $4.16 Per Month or 14 Cents Per Day NOTE: This Exemption is Allowed Only for the Period Actually Engaged in Business		50 -
5. Net Amount of Tax (Line 3 less Line 4)		46,780 -
6. Less Payments Heretofore Made on Quarterly Estimated Returns as follows: 1st Quarter 10,000 2nd Quarter 22,000 3rd Quarter 10,000 TOTAL 42,000		42,000 -
7. Balance of Tax Due (Line 5 less Line 6)		4,780 -
8. Add: Penalty of 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		- 0 -
9. Total Tax and Penalty Due (Add Line 7 and Line 8)		4,780 -

THIS RETURN WITH PAYMENT TO COVER TAX DUE MUST BE RECEIVED WITHIN ONE MONTH FROM END OF PERIOD COVERED THEREBY AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE

Section 2b.07(f)

F

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	CODE	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	TAX RATE	COLUMN 6 TAX	LINE
1		PRODUCTION, COAL				3.50		1
2	A	SAND, GRAVEL, OR OTHER MINERAL PRODUCT NOT QUARRIED OR MINED				4.34		2
3	A	OIL, BLAST FURNACE SLAG				4.34		3
4	A	NATURAL GAS (IN EXCESS OF $5,000,000 ANNUAL EXEMPTION)				8.63		4
5	A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A	TIMBER				2.20		6
7	A	OTHER NATURAL RESOURCE PRODUCTS				2.86		7
8	B	MANUFACTURED, COMPOUNDED OR PREPARED FOR SALE PRODUCTS	10,000,000 -	- 0 -	10,000,000 -	.88	88,000 -	8
9	C	SELLING TANGIBLE PROPERTY: RETAILERS	1,000,000 -	- 0 -	1,000,000 -	.55	5,500 -	9
10	C	WHOLESALERS				.27		10
11	D	ELECTRIC LIGHT AND POWER COMPANIES (SALES & DEMAND CHARGES, DOMESTIC PURPOSES AND COMMERCIAL LIGHTING)				5.72		11
12	D	WATER COMPANIES				4.40		12
13	D	ELECTRIC LIGHT & POWER COMPANIES (ALL OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES)				4.29		13
14	D	NATURAL GAS COMPANIES, TOLL BRIDGES				4.29		14
15	D	ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.86		15
16	E	CONTRACTING (ENTERED INTO PRIOR TO APRIL 1, 1971)				2.00		16
17	E	CONTRACTING (ENTERED INTO ON OR AFTER APRIL 1, 1971)				2.20		17
18	G	AMUSEMENT				.71		18
19	H	SERVICE OR CALLING AND ALL OTHER BUSINESS				1.15		19
20	I	RENTALS, ROYALTIES, FEES OR OTHERWISE				1.15		20
21	K	BANKING AND OTHER FINANCIAL BUSINESS				1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE1 OF THIS RETURN							93,500 -	

SCHEDULE B
EXEMPTIONS

CLASSIFICATIONS	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS

SIGNATURE REQUIRED

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS RETURN (INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS) AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT, AND COMPLETE.

_____ _____ _____
(Name) (Signature of Officer) (Title)

Section 2b.07(f)

F

STATE OF WEST VIRGINIA

BUSINESS AND OCCUPATION TAX

SCHEDULE C

"QUALIFIED INVESTMENT" FOR TAX CREDIT
FOR INDUSTRIAL EXPANSION

NOTE: Carefully read all instructions before completing this schedule. All required supporting materials must be submitted with this schedule.

I. TOTAL NET EXPENDITURE $_____

II. COMPUTATION OF "QUALIFIED INVESTMENT"

	(Column 1) Net Cost	(Column 2) Allowable Cost Percentage	(Column 3) Qualified Investment
a. Property With Useful Life of 4-6 Years	$ 201,000 -	33 1/3%	$ 67,000 -
b. Property With Useful Life of 6-8 Years	$ 300,000 -	66 2/3%	$ 200,000 -
c. Property With Useful Life of 8 Years or More	$ 4,400,000 -	100%	$ 4,400,000 -
d. Total Qualified Investment			$ 4,667,000 -

III. COMPUTATION OF TAX CREDIT

a. Total Potential Credit (10% of Part II, line d) ..... $ 466,700 -

b. Available Annual Credit (10% of Part III, line a) ..... $ 46,670 -

(Enter line b "Available Annual Credit" on page 1, line 2a of the business and occupation tax annual return.)

Name: F & T Toy Company
P. O. Box 21

Address: Martinsburg, W. Va. 25401

Account Identification Number: 44-3117831

By: Frank Fritz, Pres.
(Title)

Date: Jan. 11, 1973

Section 2b.07(f)

F.

"ITEMIZATION OF PROPERTY PURCHASED FOR INDUSTRIAL EXPANSION"

F & T TOY COMPANY
(Name of Facility)

August 5, 1972
(Date Placed in Service)

ITEM	PURPOSE	NET COST/USEFUL LIFE (YEARS)		
		4 to 6	6 to 8	8 or more
a. Newly Purchased Land: (List each separate item)	- 0 -			
b. Building Construction: (List each separate item)	Addition constructed to present manufacturing facility cost of $4,000,000.			50 years
c. Building Services: (List each separate item)				
d. Processing Services & Equipment (List each separate item)	$201,000 of size 2X cutting machines.	5		
e. Outbuildings & Property Improvements: (List each separate item)	$300,000 of Model 3B7 grinders and sanders.		6	
f. Miscelleneous: (List each separate item)	$400,000 of Model 24 stamps jigs and presses.			10
TOTAL:	$4,901,000 -			

Section 2c. Selling Tangible Property; Exempt Sales.

2c.01. Every person who engages or continues within this State in the business of selling any tangible property whatsoever, real or personal, is subject to the business and occupation tax and shall report the gross income therefrom under either the retail or wholesale classification, depending upon the type of sale. Any vendor who receives income from extending credit to vendees or from the repetitive carrying of accounts in connection with the sale of any tangible personal property shall report such income under the service classification on the business and occupation tax form. See section 1a.01 of these rules and regulations.

2c.02. It is important that the taxpayer maintain books and records to accurately reflect the distinction between sales at retail and sales at wholesale. The rates of tax for these two classifications are different. If the books and records do not make a readily identifiable distinction, the Tax Department, upon audit, will consider that all sales were made at retail and the burden of proof will be on the taxpayer to show otherwise.

2c.03. Sales at Wholesale.

(a) "Selling at wholesale" and "wholesale sales" shall mean and include:

(1) sales of any tangible personal property for the purpose of resale (by the vendee) in the form of tangible personal property;

(2) sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the business and occupation tax or the annual tax on incomes of certain carriers (West Virginia Code ch. 11, art. 12A);

(3) sales of any tangible personal property to the United States, its agencies and instrumentalities or to this State and its institutions or political subdivisions.

(b) Sales of tangible personal property made to purchasers who are going to resell said property in the form of tangible personalty are sales at wholesale by the vendor, regardless of where the purchaser resells such property. To illustrate: A West Virginia distributor sells kitchen products (pots, pans, knives, etc.) to a vendee who intends to resell such products without this State. The distributor shall report the gross income from such sale under the wholesale classification; for it is immaterial that the vendee intends to make sale of the property outside

this State. To qualify as a wholesale sale for the taxable status of the vendor, it is only necessary that the vendor be apprised by the vendee that he (the vendee) is purchasing tangible personalty to be resold in the form of tangible personalty.

(c) Sales of tangible personal property which property is not resold in the same form by the vendee are also sales at wholesale if the vendee directly uses or consumes such property in a business or activity which is subject to this tax or the annual tax on incomes of certain carriers. To illustrate: A vendor sells pens, paper, etc., to a West Virginia manufacturer who will consume such products in the conduct of his manufacturing operation. Said sale is deemed to be at wholesale for purposes of the vendor's business and occupation tax liability for the purchaser intends to use the purchased goods in a business activity subject to West Virginia business and occupation tax. If the vendor had made such sale to an Ohio manufacturer who has no business activity within this State subject to this State's business and occupation tax, such sale, for the vendor's tax status, is at retail and not at wholesale.

2c.04. Sales at Retail.

(a) All sales made to ultimate consumers and sales that are not wholesale sales are sales made at retail, and the gross income therefrom must be reported under the retail classification of the business and occupation tax form.

(b) An ultimate consumer is one who purchases goods for his own personal use and who does not resell such goods in the form of tangible personal property and who does not consume such goods in the conduct of a business subject to this State's business and occupation tax or annual tax on incomes of certain carriers.

(c) All sales of real estate (such as by a speculative builder) are sales at retail and must be reported accordingly. On sales of realty, the status of the purchaser or the intention or use made of the property by the purchaser is of no consequence to the vendor's tax status. To illustrate: A speculative builder constructs apartment buildings which he later sells to a West Virginia municipality, such sale must be reported at retail on the tax return of the speculative builder.

(d) Casual sales of real estate (see §1, page __, of these rules) are not taxable to the vendor.

(e) Sales of tangible personal property made by vendors to persons engaging in exempt business activities (agriculture, horticulture, grazing) are not exempt sales and the gross income derived from such sales must be reported by the vendor under the retail classification. This rule results from the fact that the

purchaser (farmer, etc.) is not engaged in a business subject to the business and occupation tax.

(f) All sales made through vending machines are sales at retail. The term "vending machines" means and includes only those machines which, through the insertion of a coin of a specified amount, will return to the vendee a predetermined specific article of merchandise. It includes, but is not limited to, machines which vend cigarettes, toilet articles, sandwiches, beverages, candies, confections, et cetera.

2c.05. Exempt Sales.

(a) Sales by any person engaging in the business of horticulture, agriculture or grazing are not taxable under either the wholesale or retail classification. These sales, to be exempt from business and occupation tax, must be made by the taxpayer of products he has grown and produced in the business of horticulture, agriculture or grazing and not of products which he purchases from others. To illustrate: A florist who purchases flowers and shrubbery from a horticulturist and resells the same to the public is deemed to be making sales at retail and such sales do not fall within this exemption. The sales made by the horticulturist (one who grows his own) to the florist are not taxable sales and, of course, come within this exemption. If the florist grows any of his own stock and makes sale of the same, he is not taxable on such sales.

(b) The exemption contained herein does not extend to all business activities of the person making exempt sales but is limited to sales of his own products. The gross income from any other business activities of such person must be reported under the applicable classification on the business and occupation tax return. To illustrate: A farmer who leases or rents his equipment to other farmers must report his gross rental income under the rental classification. Also, persons who manufacture, compound or prepare their own products (before sale thereof) into new, useful or different products become liable under the manu-

facturing classification on the tax return. For example, A raises dairy cows and produces milk therefrom which he sells to supermarkets. The sale of such milk is an exempt sale since the milk was produced by A from his own herd. (Pasteurization and homogenization are not manufacturing processes under this tax.) If A, rather than selling a portion of his milk, makes butter, cheese and ice cream from such milk, he is engaged in the business of manufacturing and must report the gross income from such products under the manufacturing classification.

(c) Sales of stocks, bonds or other evidences of indebtedness are not sales at either wholesale or retail and are therefore exempt from such classifications. However, income, fees or commissions derived from buying and selling the same for others must be reported under the appropriate classification.

Section 2d. Public Service or Utility Business.

2d.01. Certain persons engaged within this State in any public service or utility business are taxable on such business and shall report the gross income from such business activities under the appropriate classification on the business and occupation tax form. Only gross income derived from the supplying of public services shall be reported under the public service classifications. All income received by a public service or public utility taxpayer from activities other than the supplying of public services shall be reported under the appropriate classification on the business and occupation tax return. For example, a light and power company engaged in operating a genarating plant and system for distribution of electrical energy for sale, may also be engaged in selling various electrical appliances at retail. Such company would be taxable under the electric light and power company classification with respect to the sale of electric energy and also taxable under the retail classification with respect to the sale of electric appliances.

2d.02. There are certain persons who are not subject to the tax imposed under the public utility section even though such persons may be subject to the control of this State's Public Service Commission. These statutorily exempt persons are railroads, railroad car companies, express companies, pipeline companies, motor carriers, telephone and telegraph companies and water carriers by steamboat or steamship. Municipally-owned

water companies and municipally-owned electric distributions systems are not subject to the tax imposed under this section.

Section 2e. Contracting.

2e.01. The business of contracting is taxable under the business and occupation tax law and the gross income derived therefrom must be reported under the contracting classification. See section 1a. of these rules as to definition of "contracting", "prime contractor", "subcontractor", "buildings or structures", " contracting, repairing, decorating or improving" and "speculative builder".

2e.02. The rate of tax applied against gross income under the contracting classification is dependent upon the date on which the contract was entered into. For example, gross income received in 1972 by a contractor for work done as result of a contract entered into on January 1, 1968, is taxable at the rate of two percent (2%). Gross income received from contracts entered into on or after April 1, 1971, is taxable at the rate of two and two-tenths percent (2.2%).

2e.03. Prime and Subcontractors, Taxable on Gross Income with no Deductions Therefrom. -- A prime contractor, one who furnishes work or both materials and work under a written or oral contract, for the construction, alteration, repair, decoration or improvement of a new or existing building or structure or any part thereof, or for the alteration, improvement or development of realty, must report his gross income under the contracting classification without any deduction on account of any expenses incurred. If the prime contractor executes a contract with another for a portion of the job or project, the prime contractor receives no deduction from gross income on account of any payments made to the subcontractor. The subcontractor will also be taxable on his gross income under the contracting classification.

2e.04. Contracts Entered Into With Governments. -- Gross income received by a person for contracting activities performed for the State of West Virginia, the federal government or any of their instrumentalities, agencies, boards, commissions or political subdivisions, etc., is taxable and shall be reported under the contracting classification. The fact that the owner is a governmental unit does not relieve the contractor, subcontractor, suppliers or any other person from liability for business and occupation tax on the full amount of gross income.

2e.05. Form of Contract.

(a) Persons engaged in the contracting business shall report the entire gross income under the contracting classification, regardless of whether the contract is a turnkey contract, lump sum contract, per unit contract, cost plus fixed fee contract, or other contracts having a similar basis. Gross income received from a contracting activity must be reported under the contracting classification and the manner of performance, basis of determining cost, fee or income or form of contract shall not alter the definition of contractor or of contracting and shall not change the taxability of such income from the contracting classification to another classification. A contracting activity remains a contracting activity regardless of what the parties may name it and regardless of the manner in which the parties may make payment and perform the work.

(b) The measure of the tax under the contracting classification is gross income and includes all items of cost where the contractor has incurred a liability. The cost of materials and labor can only be exempted from the measure of the tax in those cases where the contractor is not liable to vendors or workmen for payment. In those cases where the contractor contends that he has not incurred a business and occupation tax liability because he acted solely as agent for the owner, the burden of proving the alleged principal-agency relationship shall be upon the contractor.

2e.06. Separate Contracts for Labor and Materials.

(a) In cases where the contractor enters into a separate contract for the furnishing of materials by the contractor and a separate contract for erection of such materials by the contractor, the gross income from both contracts is taxable under the contracting classification, unless it can be proved by the contractor that passage of title of the materials was not dependent upon the erection of the materials by the contractor and that the sale of such materials is, in fact, a separate and distinct transaction, taxable under the business and occupation tax law, as a retail or wholesale sale, as the case may be. The contract to furnish materials shall not be considered a separate and distinct transaction from the contract to erect the same, unless it is established by the contractor to be a complete arm's length transaction with no dependency existing between the contract for materials and the contract for erection. The burden of proving any alleged arm's length transaction shall be upon the contractor.

(b) A separate purchase order for the furnishing of work or labor and a separate purchase order for the furnishing of materials which constitute the contract(s) between the parties shall be treated in the same manner as set forth in the paragraph above.

SECTION 2f. RESERVED FOR FUTURE USE. Type this as is with #09 holding

Section 2g. Business of Operating Amusements.

2g.01. Any person who derives income from engaging in the business of operating amusements shall report such income under the amusement classification on the business and occupation tax form. Amusements shall include, but shall not be limited to, dance halls, theaters, skating rinks, moving picture shows, radio broadcasting stations, bowling alleys, golf courses, golf driving ranges, racetracks, carnivals, billiard parlors, etc. Any other place at which amusements are offered to the public shall constitute amusements for the purpose of this classification.

2g.02. Persons engaged in the business of radio broadcasting and who provide amusements or entertainment at the broadcasting station or at a public place for which an admission is charged shall report such income under the amusement classification. As to gross income derived by radio broadcasting stations from advertising activities, see §2H of these rules and regulation.

2g.03. Persons who derive income from amusement devices shall report such income under the amusement classification on the business and occupation tax return. The term "amusement devices" means and includes those devices which, through the insertion of a coin, will permit the patron to play a game or to see, hear or read something of interest to him. When such amusement devices are consigned to a location under an arrangement for a split of the gross income between the owner of the machines and the person operating the location, the owner of the devices is subject to

tax under the amusement classification upon the entire gross receipts from such games or devices and the operator of the location is subject to tax under the service classification upon his portion of the gross receipts.

2g.04. In the case of operators of places of amusement doing business on a percentage basis, the operator is liable for the business and occupation tax on the total amount of admissions regardless of whether, under the terms of the agreement, he is required to pay a percentage of the admissions as part of the cost of operating. Moving picture show operators who rent film on a percentage basis are required to report the total admissions without any deduction on account of the proportion of admissions paid out for the use of the film.

2g.05. Persons who operate places of amusement and who also sell tangible property in connection therewith; such as, sale of popcorn by theatre owner, shall report the gross income from such sales under the applicable sales classification on the business and occupation tax return.

2g.06. Also, persons engaged in the amusement business may be subject to tax under the rental classification on a certain portion of their gross income. This situtation occurs when amusement operators rent personal property such as lockers or bowling shoes to their patrons.

Section 2h. Service Business or Calling.

2h.01. Persons engaged in any service business or calling not otherwise specifically taxed under the business and occupation tax law shall report the gross income derived therefrom under the service classification on the business and occupation tax form.

(a) "Service business or calling" shall include all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible property, but shall not include the services rendered by an employee to his employer. This term shall include persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances or commodities which are owned by another or others, as well as persons engaged as independent contractors in producing natural resource products for persons required to pay the tax imposed under the production classification.

(b) Persons engaged in the business of television broadcasting and/or radio broadcasting and in the business of providing advertising services are taxable under the service classification for all gross income derived from the providing of such advertising services on and after April 1, 1975.

2h.02. Services to Personal Property.

(a) Where a person renders a service to personal property belonging to others, e.g. mechanics repairing another's automobile, the gross income derived from the work or labor performed in rendering the service shall be reported under the service classification.

(b) There are many cases where a person in rendering a service, sells tangible personal property, e.g. parts used in automotive repairs. In such instances, the gross income derived from the rendition of the service, usually labor charges, is taxable under the service classification and the gross income derived from the sale of tangible personal property is taxable under the retail or wholesale classification, as the case may be. However, in those cases where the taxpayer renders a service to personalty owned by another and sells personalty to such person to complete the repair of the article, the taxpayer may apportion the gross income between the classifications only if his books and records accurately reflect such separation and if the invoice presented to the customer shows such separation between the services and sales. If the taxpayer fails to maintain adequate records, the entire gross income will be taxed under the service classification and the burden will be upon the taxpayer to prove the proper segregation of receipts.

2h.03. Personal and Professional Services. -- Personal services and professional services are not exempt from the business and occupation tax, and the gross income from said services must be reported under the service classification.

2h.04. Problems, Solutions and Examples Relating to Service Businesses or Callings. -- Presented below are several examples, problems and solutions thereto regarding the proper taxation of service activities. It is to be noted that any person engaged in any service business or calling within this State not otherwise taxed under the business and occupation tax law is taxable under the service classification. In general service business or calling includes, but is not limited to, advertising agents, appraisers, architects, attorneys, barbers, beauticians, collection agents, court reporters, dentists, doctors, detectives, engineers, employment agents, funeral directors, janitors, kennel operators, laundries, teachers, school operators, laboratory operators, veterinarians, window cleaners, and others. It also includes persons engaged in the business of cleaning, repairing, improving, etc., the personal property of others. The term does not include persons who render services to others in the capacity of employees as distinguished from independent contractors. (See section 1a. of these rules.)

(a) Example 1.

(1) AB, a dentist, operating within West Virginia, has gross income derived from repairing teeth and furnishing dentures, bridge work, etc. All of AB's gross income is to be reported under the service classification; for persons such as dentists primarily render professional services and do not

make sales. The furnishing of dentures, bridge work, etc., is only indispensable to and in furtherance of the professional services rendered by the taxpayer.

(2) If AB should sell dentures to an individual without said dentures being indispensable to or in furtherance of professional dental services rendered to the individual, then such sale would qualify as a sale at retail or wholesale for purposes of this tax. This would certainly be an unusual situation and the burden of proof would be upon the taxpayer to show that such transaction was in no way connected to his primary business of rendering professional services.

(b) Example 2.

(1) CD is a funeral director within this State and commonly quotes a lump sum price for a standard funeral service, which includes the furnishing of a casket, services, care of the body, funeral coach, preparation of the grave site, flowers, etc. Where CD quotes a lump sum price such as $1,200, which includes both the sale of tangible personal property and the charge for rendition of services, he must separate his gross income and report each portion thereof under the applicable

classification. His books and records and invoices to customers must reflect the segregation of receipts or he will be required to report all income under the service classification.

(2) In the instant case, of the $1,200 lump sum fee, he invoices $500 as sales of property and $700 as his fee for services rendered. Therefore, he may report $500 under the retail classification and $700 under the service classification.

(c) Example 3.

(1) RE, a licensed real estate broker within this State, accepts a listing to sell an office building for the owner. Upon sale of the building, RE will receive seven percent (7%) of the selling price as his commission. RE employs XY, a licensed real estate salesman (not a broker). XY is to receive twenty percent (20%) of RE's commission for any realty he sells which is listed by the broker. XY finds a purchaser for the office building listed by the broker and the agreed upon sales price is $800,000. The broker's commission from the owner is $56,000 (7% X $800,000 = $56,000). The broker pays XY a commission of $11,200 (20% X $56,000 = $11,200).

(2) The broker will report his entire commission ($56,000) with no deductions whatsoever under the service classification. The real estate salesman (XY) is liable for business and occupation tax on his income only if he is an independent real estate salesman and does not enjoy an employer-employee relationship with a broker. Real estate salesmen licensed under Ch. 47, Art. 12 of the Code are subject to unique regulatory controls. Consequently, regardless of how they may be classified for other purposes, such licensed real estate salesmen are considered employees of brokers for purposes of the business and occupation tax and are not taxable on their activities in behalf of brokers.

Section 2i. Furnishing Property for Hire; Rental and Royalty.

2i.01. Any person engaged in the business of furnishing any real or tangible personal property, which has a tax situs in this State, or any interest therein for hire, loan, lease or otherwise, whether the return be in the form of rentals, royalties, fees or otherwise, shall report the gross income derived therefrom under the rental and royalty classification. The term tangible personal property as used herein shall not include money or public securities. The terms "rental and royalty classification", "rental classification" and "royalty classification", when used within these regulations, are synonymous.

2i.02.The owner or operator of a store or an establishment in which leased departments are conducted must include on his return the rental income received by him from the lessee. The lessee must then file a business and occupation tax return and pay tax under this applicable classification.

Section 2j. Small Loan and Industrial Loan Business.

2j.01. Persons engaged in the business of making loans of money, credit goods, or things in action, who because of such activity are required under the provisions of Chapter 47, Article 7A, West Virginia Code of 1931, as amended, to obtain a license from the West Virginia Commissioner of Banking, and persons engaged in business as an industrial loan company, shall report all gross income received before April 1, 1971, under the small loan and industrial loan classification. The measure of the tax for persons engaged in this type of business shall not include the return of capital or return of principal in making loans of money, credit goods or things in action.

2j.02. All gross income received by such persons, as described in the preceding paragraph, received on or after April 1, 1971, shall be reported under the banking classification on the business and occupation tax return. (See section 2k. of these rules and regulations.)

Section 2k. Banking and Other Financial Business.

2k.01. Any person who engages, within this State, in a banking or financial business shall report gross income derived therefrom under the banking classification on the business and occupation tax return. The preceding rule is applicable only to income received on and after April 1, 1971. For a definition of "banking business" or "financial organization", see section 1a., of these rules and regulations.

2k.02. The term "gross income" of a banking or financial business shall mean interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property.

2k.03. "Gross income" of a banking or a financial business shall not include:

(a) interest received on the obligations of the United States, its agencies and instrumentalities;

(b) interest received on the obligations of this or any other State, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia; or

(c) interest received on investments or loans primarily secrued by first mortgages or deeds of trust on residential property occupied by nontransients.

2k.04. All interest derived on activities exempt under (c) above, shall be reported separately, as to amounts, on the business and occupation tax return of a person taxable under the banking classification. In other words, a full disclosure must be made by such person as to the amount of exempt income he received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients. This exempt income must be explained in detail and separately shown on the exemptions schedule of the business and occupation tax return.

2k.05. Banks and other financial businesses shall report gross income and pay tax under the banking classification only. For example, a financial organization which makes retail sales of tangible personal property shall not report the gross proceeds from said sales under the retail classification but shall report said proceeds under the banking classification. Banking and financial businesses, unlike all other businesses, do not have to segregate their income or receipts into the various taxable classifications.

Section 3. Exemptions.

3.01. Annual Exemption From Tax. -- Each taxpayer shall be granted an exemption in every case of fifty dollars ($50.00) of tax computed under the business and occupation tax law. From the total taxes due the annual exemption of $50.00 is deducted. Inasmuch as the law grants each person an annual exemption of $50.00, only one annual exemption can be claimed even though such person may conduct more than one business. The entire annual exemption of $50.00 may be claimed only if business has been actively conducted for the entire year. If the business is operated for only a part of a tax year, the exemption must be reduced proportionately: $12.50 for a three-month period, $4.16 for a month, or .14¢ a day for the period actually engaged in business.

3.02. Businesses Exempt from Tax. -- The business and occupation tax law exempts from the tax the following businesses:

(a) Insurance companies which pay the State of West Virginia a tax upon premiums: Provided, however, 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 such company maintains its office or offices, in this State, whether such income be in the form of rentals or royalties.

(b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members.

(c) Fraternal societies, organizations and associations, which are organized and operated for the exclusive benefit of their members and not for profit. However, this exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such societies, organizations and associations which are licensed as private clubs under the provisions of West Virginia Code ch. 60, art. 7.

(d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes.

(e) Production credit associations, organized under the provisions of the federal "Farm Credit Act of 1933".

(f) Any credit union organized under the provisions of Chapter 31, or any other chapter of the West Virginia Code.

However, the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of Chapter 19, Article 4 of the West Virginia Code.

3.03. Business Exempt by Specific Statutes.

(a) Public Service Districts for Water and Sewage Services. Public service districts for water and sewage services organized in compliance with the provisions of Chapter 16, Article 13 A, West Virginia Code of 1931, as amended, entitled, "Public Service Districts for Water and Sewage Services", are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those public service districts that have complied with all the requirements as set forth in the aforecited provisions of the Code.

(b) Municipal Waterworks. -- Waterworks in the State of West Virginia which are organized and/or operated by a municipal corporation in compliance with the provisions of Chapter 8, Article 12, West Virginia Code of 1931, as amended, entitled, "Waterworks", are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those municipal waterworks that have complied with all the requirements as set forth in the aforecited provisions of the Code.

(c) Municipal Combined Waterworks and Sewage Systems. -- Waterworks and sewage systems in the State of West Virginia which are organized and/ or operated by a municipal corporation in compliance with the provisions of Chapter 8, Article 13, West Virginia Code of 1931, as amended, entitled, "Combined Waterworks and Sewage Systems", are exempt from the payment of the business

and occupation tax. This is an exemption provided by specific statute and is only available to those municipal waterworks and sewage systems that have complied with all the requirements as set forth in the aforecited provisions of the Code.

(d) Municipal and Sanitary District Sewage Works. -- Sewage works in the State of West Virginia are organized and/or operated by any municipal corporation and/or sanitary district in compliance with the provisions of Chapter 16, Article 13, West Virginia Code of 1931, as amended, entitled, "Sewage Works of Municipal Corporations and Sanitary Districts", are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those sewage works of municipal corporations and sanitary districts that have complied with all the requirements as set forth in the aforecited provisions of the Code.

(e) Horse Racing. -- Persons engaged in the business of horse racing and organized in compliance with the provisions of Chapter 19, Article 23, West Virginia Code of 1931, as amended, entitled, "Horse Racing", are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those persons that have complied with all the requirements as set forth in the aforecited provisions of the Code. However, those public conveniences, such as golf courses and other recreational activities and motel or hotel operations from which persons engaged in horse racing

derive income, are subject to the business and occupation tax under the appropriate classificatons.

(f) West Virginia Business Development Corporations. -- Business development corporations organized in compliance with the provisions of Chapter 31, Article 14, West Virginia Code of 1931, as amended, entitled, "West Virginia Business Development Corporations", are exempt from the payment of the business and occupation tax.

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SECTIONS 3a AND 3b RESERVED FOR FUTURE USE.

Section 3c. Business and Occupation Tax Credit for Industrial Expansion.

3c.01. A credit against business and occupation tax is allowed to certain industrial taxpayers who make qualified investment for industrial expansion.

3c.02. Definitions.

(a) The term "industrial taxpayer" means any person who exercises any privilege taxable under the manufacturing classification of the business and occupation tax law or any person who exercises any privilege taxable under the service classification of such law) providing that the business activity is manufacturing for another, which activity would be taxable under the manufacturing classification if title to the goods and materials were vested in the person performing the manufacturing service.

(b) The terms "qualified property" and "property purchased for industrial expansion" means real property and improvements thereto and tangible personal property constructed or purchased for use as a component part of a new or expanded business of an industrial taxpayer. Such property must be located within West Virginia. Such terms include only tangible personal property with respect to which depreciation or amortization is allowable in determining the industrial taxpayer's West Virginia personal income tax or West Virginia corporation net income tax. Said property must have a useful life at the time the property is placed in service of four (4) years or more.

(1) The terms defined within this paragraph (b) do not include replacement property, motor vehicles licensed by the department of motor vehicles, airplanes, off-premises transportation equipment or property which is used outside this State.

(2) The terms do not include property purchased prior to July 25, 1969, nor property the construction, reconstruction or erection of which began (or the contract therefor let) prior to July 25, 1969.

(3) Nor do the terms include property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer which property has been used by the vendor in such business in this State, or which property has been previously designated "property purchased for industrial expansion" and so used to qualify for the tax credit.

(c) "Property purchased for industrial expansion" shall include property acquired by lease for a term of ten (10) years or longer, if the leased property would otherwise qualify if purchased outright. Lease renewals, subleases or assignments are not considered "property purchased for industrial expansion".

(d) The term "cost" shall not include the value of any property given in trade or exchange for new property which qualifies for this industrial expansion credit. The "cost" of leased

property is one hundred percent (100%) of the rent reserved for the primary term of the lease but not to exceed twenty (20) years.

(e) The term "property acquired for multiple business use" shall mean qualified property placed in service by an industrial taxpayer as a component part of a new or expanded business together with some other business or occupation not qualifying for the credit. Property acquired for multiple business use must be apportioned between qualifying and nonqualifying business and occupations and the proportion allocated to qualifying businesses of industrial taxpayers shall be considered as "qualified investment" subject to the conditions and limitations of subsection (2) of these definitions.

3c.03. Computation of and Amount of Credit Allowable.

(a) The amount of credit allowed to industrial taxpayers shall be equal to ten percent (10%) of the cost of qualified investment made for industrial expansion and shall be applied over a ten (10) year period to reduce the business and occupation tax at the rate of one-tenth of the amount of such credit per taxable year. The credit shall commence with the taxable year that such qualified investment is first placed in service or use. In other words, the credit is limited to ten percent (one percent for each of ten consecutive taxable years) of the total qualified investment.

(b) The amount of credit employed in any taxable year may not reduce business and occupation tax liability by more than fifty percent (50%) of the tax computed before applying the credit.

(c) When making claim for credit for industrial expansion, the industrial taxpayer must explain in detail the purpose of the facility, the anticipated increased production, the anticipated additional employment generated, the products to be manufactured, the type of qualified property purchased and the cost thereof, etc. Failure to provide detailed information will result in the credit being disallowed.

3c.04. Qualified Investment. -- If the qualified property has a useful life of eight (8) years or more, the industrial taxpayer may consider one hundred percent (100%) of the cost of the property as qualified investment. If the useful life is six (6) years or more but less than (8) years, the industrial taxpayer may consider two-thirds (66 2/3%) of the cost of the property as qualified investment. If the qualified property has a useful life of four (4) years or more but less than six (6) years, the industrial taxpayer may consider one-third (33 1/3%) of the cost of the property as qualified investment. Property with a useful life of less than four (4) years, in determining the West Virginia personal or corporate income tax of the industrial taxpayer, does not qualify for purposes of the credit.

3c.05. Forfeiture of Unused Tax Credits.

(a) If during any taxable year, an industrial taxpayer disposes of or ceases to use property with respect to which a tax credit has been claimed, or ceases operation of such business before expiration of the useful life of the property, then the unused portion of such credit shall be forfeited for the taxable year in which such event occurs and for all ensuing years.

(b) If an industrial taxpayer trades in qualified property on a purchase of new qualified property, he loses the unused credit on the trade-in property but is permitted to compute the credit on the new qualified property. However, the cost of the new qualified property shall not include the value of that property traded in.

(c) No carryover shall be allowed for the amount of any unused portion of the credit; nor shall any credit be allowed against any tax liability for any year prior July 25, 1969, by reason of an assessment issuing within any period after such date, which assessment is, in whole or part, for any period prior to July 25, 1969.

Section 4. Compilation of Tax; Payment.

4.01. Every person liable for business and occupation taxes shall pay the same in quarterly estimated installments. Such estimated installments are due on or before the last day of the month following the taxable quarter. In other words, if a taxpayer keeps records and pays tax on a calendar year basis he will file three (3) quarterly estimated installments for his business and occupation taxes. The installment for the first quarter of the calendar year will be due on or before April 30; the installment for the second quarter of the calendar year will be due on or before July 31; and the installment for the third quarter of the calendar year will be due on or before October 31.

4.02. In estimating the amount of tax due for each quarter, the taxpayer may deduct one-fourth of the tax credit for industrial expansion allowable for the taxable year and one-fourth of the total annual exemption allowed for the year.

4.03. If a taxpayer can reasonably expect his tax liability to be less than $100.00 for the taxable year, he does not have to file quarterly estimated installments and may file only an annual return.

4.04. The Tax Department, if it deems it necessary to insure payment of the tax, may require the estimated quarterly installment and payment for periods of shorter duration than quarter year periods.

Section 5. Return and Remittance by Taxpayer.

5.01. Annual Return.

(a) Every taxpayer shall, on or before the expiration of one month after the end of the tax year, file a business and occupation tax return for the entire taxable year. Said return must show the gross proceeds of sales or gross income of business, trade or calling, and the taxpayer must compute the amount of tax chargeable against him. Such return must be signed by the taxpayer.

(b) For a taxpayer maintaining records and paying taxes on a calendar year basis, the annual return is due on or before January 31 of the following year. The annual return is filed at the close of the taxable year and replaces the fourth quarterly estimate. The annual return is a recompilation of the three quarterly estimates and the fourth quarter's business. It provides a medium for making such adjustments on the quarterly estimates as may be necessary.

5.02. Extension of Time.

(a) Any taxpayer desiring an extension of time for filing his annual business and occupation tax return must make such request in writing to the Tax Department. The request must be postmarked before the due date of the return and must state the reason for such request and the period of extension required. The taxpayer will then be advised in writing as to whether or not such extension is granted. No extension shall be granted for a period of time longer than ninety (90) days from the due date of the annual return.

(b) No extensions of time may be granted for the filing of quarterly return.

5.03. Penalties.

(a) If any taxpayer fails to file the business and occupation tax return or files his return but fails to remit in whole or part the proper amount of tax, there shall be added to the amount of unpaid tax, from the date such tax should have been paid, a penalty in the amount of five percent (5%) of the unpaid tax for the first month, or fraction thereof, of delinquency and one percent (1%) for each succeeding month, or fraction thereof of delinquency. To illustrate: A taxpayer's amount of tax due is one hundred dollars for the taxable year ending December 31, 1972. The tax is not paid until May 15, 1973. Inasmuch as the tax should have been paid on or before January 31, 1973 (due date of the return), a penalty of five percent of the unpaid tax is added for the month of February and one percent for each of the months of March, April and May, making the total penalty rate eight percent of the tax. Applying the penalty rate of eight percent to the net amount of tax due, one hundred dollars, results in penalty due of eight dollars.

(b) However, the Tax Commissioner may waive penalties upon a showing of reasonable cause by the taxpayer for his delinquency. Reasonable cause must be affirmatively pleaded, in writing, by the taxpayer and he must set forth in detail the reasons for his delinquency or failure. The Tax Commissioner's waiver will be in writing.

(c) Financial hardship such as a lack of funds at the time the return was due does not qualify as reasonable cause. Also, the past filing history of a taxpayer is not relevant when considering the issue of reasonable cause for a present delinquency. The fact that the taxpayer, in the past, filed all returns and paid all taxes timely is immaterial to the issue at hand.

(d) Reasonable cause does exist for late filing where the taxpayer, because of circumstances beyond his control, is prevented from filing timely. This results when natural disasters such as floods and fires occur; however, even in these situations, the taxpayer should notify the authorities of his problem and arrange an extension of time in which to file. However, events which occur after the due date of the return are not sufficient to constitute reasonable cause where they would have excused filing if such events had occurred before the due date.

Section 6. Assessment or Deficiency of Tax.

6.01. If any person refuses to make or file a return, or if the Tax Department has reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory return or assessment of the tax, the Department will proceed to obtain information on which to base the assessment of tax and may make such assessment against the taxpayer. An assessment of tax may result from any one of several situations. Some of these are listed below.

(a) The State has reason to believe the taxpayer has taxable activities within the boundaries of this State, but the taxpayer, after being given the opportunity, refuses or fails to file business and occupation tax return.

(b) Through an office audit or examination of the taxpayer's file, the State makes an adjustment to the business and occupation tax return which results in a deficiency.

(c) The State performs a field examination on the books and records of a taxpayer and increases the reported amount of gross income.

(d) At any time that the State believes that a taxpayer may have reported his income under an improper classification, underreported his income or failed to file his return.

6.02. "Estimated" assessments are those issued when the taxpayer has not filed returns or has otherwise failed to comply with provisions of the tax act. For example: John Doe files a

1969 business and occupation tax return and reports gross income of $20,000.00. In 1970, he fails to file a return and is deemed to be delinquent by the State. The State will then proceed to "estimate" the taxpayer's 1970 income from the best information available. Inasmuch as the taxpayer has failed to cooperate and the State has no information in regard to said taxpayer for 1970, the State will estimate the income to be not less than that last reported amount together with business growth and prepare an assessment on such basis. Obviously, it is not the intention of the State to actually collect an inflated sum, but said amount will be sufficiently large to gain the taxpayer's undivided attention and encourage him to come forth and settle his account.

Section 7. Petition for Reassessment.

7.01. If a person against whom an assessment has been made desires to contest the assessment, he is required to file a petition for reassessment. The petition for reassessment must be filed with the Tax Department personally or by certified mail within thirty days after service of the assessment. In the case of a jeopardy assessment the petition must be filed within twenty days. The original and one copy of such petition for reassessment shall be so filed.

7.02. If the taxpayer fails to file such petition for reassessment within the time required by law, the assessment shall be conclusive and the amount thereof shall be due and payable and not subject to judicial or administrative review.

7.03. The petition for reassessment shall be in writing and shall be complete in itself so as to fully state the issues. No telegram, telephone call or similar communication will be recognized as a petition.

7.04. The petition for reassessment shall contain (a) a statement of the amount of the deficiency or liability, as the case may be, determined by the Tax Department, the nature of the tax, the period for which determined; (b) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Tax Department in the determination of the deficiency. Each assignment of error shall be numbered; (c) clear and concise statements of facts upon which the peti-

tioner relies as sustaining the assignments of error; (d) a prayer, setting forth the relief sought; (e) the signature of the petitioner; (f) a verification by the petitioner; (g) a copy of the assessment shall be appended to the original of the petition.

7.05. In the case of jeopardy assessment a bond with corporate surety thereon in penalty double the amount of the assessment, conditioned upon the payment of all taxes, penalties and costs legally due, shall accompany the petition for reassessment.

Section 8. Hearing and Appeals.

8.01. Hearings upon petitions for reassessment shall be held at the State Capitol in Charleston, West Virginia, unless good cause be shown for conducting the hearing elsewhere within this State.

8.02. Hearings will not be delayed by a motion for continuance unless it is timely made and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as grounds for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the State deems adequate.

8.03. The unexpected absence of the petitioner or his counsel when a petition is called for hearing will not be the occasion for delay. The hearing shall proceed and the case be regarded as submitted on the part of the absent party or parties.

8.04. The petitioner may represent himself or be represented by some other person or persons of his choosing. A record of the hearing shall be made.

8.05. Petitioner will be given an opportunity for argument within time limits fixed by the Tax Department following submission of evidence. The Tax Department will accept briefs in lieu of argument. Briefs must be filed timely within the period prescribed by the hearing examiner.

8.06. An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged in, or in which the taxpayer resides, or in the Circuit Court of Kanawha County, within thirty days after he shall have received notice from the Tax Department of its determination.

Section 9. Refunds.

9.01. Under the provisions of West Virginia Code ch. 11, art. 1, sec. 2a, any person claiming to be aggrieved through being required unlawfully to pay any tax, may, within five years from the date of the filing of the return in respect of which the tax was imposed or within four years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within four years from the time the tax was paid, and not after, file with the Tax Department a petition in writing to have refunded to him any such tax, or any part thereof. The petition must set forth the facts in support of the claim for refund. In the filing of a petition for refund, the taxpayer shall attach thereto amended tax returns for the periods involved and all other evidences in support thereof. The Tax Department shall review the same and make a determination. The taxpayer will be notified in writing of the determination of the Department.

Section 10. Taxability of Specific Businesses.

10.01. Presented below are certain specific types of business activities and brief explanations as to the applicable business and occupation tax classification under which each should report gross income. If any taxpayer is in doubt as to the proper class or classes under which he is required to file, he should forward an inquiry to the Tax Department.

(a) Accountants. -- Persons who are certified public accountants, public accountants, bookkeepers or who provide accounting services to others for a consideration are taxable on the gross income derived from such activities under the service classification on the business and occupation tax form.

(b) Automobiles and other motor vehicles. -- Persons engaged in the business of selling automobiles and other motor vehicles shall report the gross receipts therefrom under the retail or wholesale classification, depending upon the type of sale. No deduction is allowed such persons for sales made to nonresidents of this State unless it can be conclusively established by the dealer that such sale was consummated outside the boundaries of West Virginia. Gross income received for repairing automobiles of others shall be reported under the service classification.

(c) Advertising agencies.

(1) Advertising agencies are primarily engaged in the business of rendering services, but may also make

sales of tangible personal property to their clients or others or make purchases of such articles as agents in behalf of their clients. Articles acquired or produced by advertising agencies may be for their own use in connection with the rendition of an advertising service or may be for resale as tangible personal property to their clients.

(2) The gross income received for advertising services, including commissions or discounts received upon articles purchased as agents in behalf of clients, is taxable under the service classification. Included in this classification are amounts attributable to sales of tangible personalty, unless charges for such articles are separately stated in billings rendered to clients.

(d) Barbers and beauticians. -- Gross income received from barbering and beautician services shall be reported under the service classification. Any gross income received from sales of tangible personal property such as hair tonic, hair spray, etc. shall be reported under the retail classification.

(e) Doors, windows and awnings. -- Persons engaged in the business of manufacturing doors, windows and awnings shall report the gross income from such activities under the manufacturing classification. Persons who manufacture and make sale of such

products at retail must also report the gross proceeds of sale under the retail classification. Persons who install these products must report the gross income derived therefrom under the contracting classification.

(f) Laundries and dry cleaners. -- Persons who derive gross income from a laundry or dry cleaning business shall report said income under the service classification.

(g) Hospitals. -- Generally, the gross income derived by hospitals for services rendered to patients shall be reported under the service classification. Some of the gross income derived from such business may be subject to tax under the retail or wholesale classification, as the case may be, if the rendition of the service involves the sale of tangible personal property.

(h) Hotels and motels. -- Gross income received by hotels and motels for the renting of rooms or sleeping quarters shall be reported under the service classification. A hotel, motel, boarding house, rooming house, apartment hotel, resort lodge, or tourist camp includes all establishments which are held out to the public as a hotel, public lodging house, or places where sleeping accommodations may be obtained whether with or without meals or facilities for preparing the same. The foregoing does not include establishments in the business of renting real estate, such as apartments, nor does it include hospitals, sanitariums, nursing homes, rest homes and similar institutions.

Gross income from meals sold to the public by hotels or motels, etc. shall be reported under the retail classification.

(i) Photography, photo printing, etc. -- Persons engaged in the business of photoprinting, photostating, photography, photo-engraving, blueprinting, etc., are required to report the gross income from such activities as follows:

(1) Gross income from the developing of films, owned by others, is to be reported under the service classification.

(2) Gross income from making prints, photostats, blueprints, etc., shall be reported under the manufacturing classificaton.

(3) Persons who develop film owned by others and make prints therefrom shall, when a charge is made for the development process, report under the service classification the gross income derived from developing said film and under the manufacturing classification the wholesale value of the prints manufactured.

(4) Persons engaged in the photography business who take pictures, make prints and sell the finished product at retail shall report the value of said product under manufacturing and, in addition to this, shall report the gross proceeds derived from the sale under the retail classification.

(j) Trading stamps. -- Persons engaged in the business of trading stamps and who have redemption centers or stores within this State shall report the gross income derived therefrom under the retail classification. Gross income received from the sale of trading stamps to merchants who will dispense said stamps to their customers shall be reported under the wholesale classification.

(k) Coin operated machines.

(1) Gross income received by an individual who is the owner of coin operated vending machines shall be reported under the retail classification. If the owner splits the gross income with the individual within whose establishment the vending machine is located, the operator of the establishment shall report his portion of the gross income under the service classification. The owner of the vending machines receives no deduction or exclusion from gross income for the portion paid to the establishment operator.

(2) Gross income received by an individual who is the owner of coin operated amusement devices shall be reported under the amusement classification. If the owner splits the gross income with the individual within whose establishment the amusement device is located, the operator of the establish-

ment shall report his portion of the gross income under the service classification. The owner of the amusement devices receives no deduction or exclusion from gross income for the portion paid to the establishment operator.

(l) Wall covering and floor covering. -- Persons engaged in the business of selling and installing wall covering and floor covering shall report the gross income therefrom in the following manner:

(1) If the sale of the product is separate and distinct from the agreement to install the product and separate charges are made for each, the vendor may report the sale under the retail or wholesale classification, as the case may be, and the installation under the contracting classification. The method by which the installation charge is computed will not alter the fact that such installation is contracting. See section 2e, of these rules.

Section 11. Doing Business Within and Without the State.

11.01. Persons domiciled outside this State who (a) lease tangible personal property to lessees in this State, or (b) perform construction or installation contracts in this State, or (c) render services to others herein, are doing business in this State, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in this State.

11.02. Persons domiciled outside the State who sale tangible personal property to persons in the State, may be doing business in the State, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in this State.

11.03. Persons domiciled in and having a place of business in this State, who (a) sell or lease personal property to buyers or lessees outside this State, or (b) perform construction or installation contracts outside this State, or (c) render services to others outside this State, are doing business both within and without this State. Whether or not such persons are subject to business and occupation tax under the law depends upon the kind of business and the manner in which it is transacted. The following general principles govern in determining tax liability or tax immunity under the business and occupation tax.

(a) When the business involves a construction or installation contract in this State, no deduction from the measure of the

tax is permitted, even though the contractor is domiciled outside this State and maintains a place of business outside this State which may contribute to the contract performed in this State.

(b) When the business involves a construction or installation contract outside this State, the tax does not apply to any part of the income derived therefrom (except such part of the income as may be applicable to the manufacturer in this State by the contractor of articles used or incorporated in such construction or installation), even though the contractor is domiciled in this State and maintains a place of business herein which may contribute to the contract performed outside this State.

(c) When the business involves a transaction taxable under the service classification, the tax does not apply upon any part of the gross income received for services incidentally rendered to persons in this State by a person who does not maintain a place of business in this State and who is not domiciled herein. However, the tax applies upon the income received for services incidentally rendered to persons outside this State by a person domiciled herein who does not maintain a place of business within the jurisdiction of the place of domicile of the person to whom the service is rendered.

(d) For example, persons domiciled herein, but having no place of business outside this State, are taxable upon the following types of income:

(1) An insurance agency upon commissions received for insurance placed without the State;

(2) An attorney upon fees received from persons without the State, even though a portion of his services were necessarily performed without the State;

(3) A collection agency upon income received from clients without the State or with respect to collections made from persons without the State;

(4) An accountant upon income received from persons for services performed without the State;

(5) An investment company upon income received from loans placed without the State;

(6) A commodity broker upon commissions received from persons without the State;

(7) An advertising agency upon income received from advertising solicited and secured from firms without the State;

(8) An employment agency upon income received for securing employees for firms without the State;

(9) A physician upon income received from the treatment of patients without the State.

(10) A purchasing agency upon commissions received from clients without the State or with respect to purchases made without the State.

(e) Conversely, persons engaged in business without the State, but having no place of business within the State, are not taxable with respect to the reverse of the above situations. It is assumed, of course, that such services, to avoid taxation, are rendered only incidentally to persons within this State.

(f) Persons engaged in a business taxable under the service classification and who maintain places of business both within and without this State which contribute to the performance of a service, shall apportion to this State that portion of gross income derived from services rendered by them in this State. Where it is not practical to determine such apportionment by separate accounting methods, the taxpayer shall apportion to this State that proportion of total income which the cost of doing business within this State bears to the total cost of doing business both within and without this State.

Ed. Note - Appendix A-F are included in this publication but are excluded from the computer data base at this time.