



State of West Virginia

Charleston 25305

G. THOMAS BATTLE
STATE TAX COMMISSIONER

June 30, 1964

110-13

Honorable Joe F. Burdett
Secretary of State
State of West Virginia
Capitol Building
Charleston, West Virginia

Dear Mr. Burdett:

Enclosed are two (2) copies of regulations issued by the State Tax Department regarding the Business and Occupation Tax. These regulations are designated Series I of Chapter 11-13 of the West Virginia Administrative Regulations.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by this Department on June 30, 1964.

Very truly yours,

G. Thomas Battle
State Tax Commissioner

GTB/LRT/jb

Enclosures (2)

cc: Mr. Louis R. Tabit, Director
Business and Occupation Tax Division

Filed in Office of the Secretary of State
of West Virginia June 30, 1964
JOE F. BURDETT
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-13
(1964)

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6-30-64

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX COMMISSIONER

BUSINESS AND OCCUPATION TAX

Chapter 11, Article 13, West Virginia Code of 1931, as amended

and

PRIVILEGE TAX ON CERTAIN CARRIER CORPORATIONS

(TRANSPORTATION PRIVILEGE TAX)

Chapter 11, Article 12A, West Virginia Code of 1931, as amended

G. Thomas Battle
State Tax Commissioner

Effective: August 30, 1964

F O R E W A R D

The regulations contained herein are designed to assist the taxpayer in reporting accurately the Business and Occupation Tax or Transportation Privilege Tax. They are intended to be general in character and it is not to be assumed that they cover every situation which might arise with respect to the taxability of persons subject to these laws. If a question arises, direct communication with the Department is urged.

The filing of tax returns and the reporting of the true liability are the sole responsibility of the taxpayer and it is the intention of the Tax Commissioner to assist the taxpayer with rules and regulations and specific rulings when requested.

G. Thomas Battle
State Tax Commissioner

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-13
(1964)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-13
Series I
(1964)

Subject: BUSINESS AND OCCUPATION TAX. This is a tax levied for the privilege of engaging in business in West Virginia. The tax is measured by the application of rates against values of products, gross proceeds of sales, or gross income according to the classification of the business activity in which the taxpayer is engaged. Despite the commonly applied erroneous name "Gross Sales Tax", it is not a sales tax. Neither is it a transaction tax in the sense that once it is paid on a particular article or service or activity it need not again be paid. It is not, strictly speaking, an income tax, although in most instances, the gross income is the measure of the tax. Under the production and manufacturing classifications the measure of the tax is the value of the article produced or manufactured as shown by the gross proceeds derived from the sale thereof, provided the proceeds of sale are indicative of the true value of the article. If more than one person engages in a single activity or transaction, as in the case of the contractor and subcontractor, each must pay a tax measured by his entire income regardless of the tax paid by the other.

Section 1 GENERAL.

BOT 1.01 Scope.--These regulations establish general operating rules and procedures in the office of the Business and Occupation Tax Division.

BOT 1.02 Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 13, Section 22.

BOT 1.03 Effective Date.--These regulations are promulgated on June 30, 1964 and become effective on sixty days thereafter. *Aug 24, 1964*

BOT 1.04 Filing Date.--These regulations were filed in the Office of the Secretary of State on June 30, 1964.

BOT 1.05 Certification.--These regulations are certified authentic by the State Tax Commissioner by certification number I.

Section 2. DEFINITIONS.

BOT 2.01 "Person" or the term "company", herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

BOT 2.02 "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 same as the tax period in lieu of the calendar year.

BOT 2.03 "Sale", "sales" or "selling" includes any transfer of the ownership of, or title to, property, whether for money or in exchange for other property.

BOT 2.04 "Taxpayer" means any person liable for any tax hereunder.

BOT 2.05 "Gross income" means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.

BOT 2.06 "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

BOT 2.07 The terms "gross income" and "gross proceeds of sales" shall not be construed to include (1) cash discounts allowed and

taken on sales; (2) the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; (3) the amount allowed as "trade-in value" for any article accepted as part payment for any article sold; or (4) excise taxes imposed by this state.

BOT 2.08 "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall 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. "Business" shall include the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer.

BOT 2.09 "Service business or calling" shall include all non-professional 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 by section two-a of this article.

BOT 2.10 "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 tax imposed by this article or by article twelve-a of this chapter; (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.

BOT 2.11 "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, or for the alteration, improvement or development of real property.

Section 3. GENERAL INSTRUCTIONS.

BOT 3.01 General Instructions to Taxpayers. Two forms are provided for use in filing Business and Occupation Tax returns: (1) Form 302-B4, estimated quarterly return and (2) Form 301-B7, annual return.

Form 302-B4, estimated quarterly return, is to be used if the tax liability is more than one hundred dollars (\$100.00) per annum. These returns must be filed within one month following the close of

each quarter. Persons filing returns on a quarterly basis are required to file three estimated quarterly returns and an annual return. The annual return is filed at the close of the tax year and replaces the fourth quarterly return. It provides a medium for making such adjustments on the quarterly estimates as may be necessary. An exemption of \$12.50 for each quarter is allowed.

If the tax liability for the year is less than \$100.00, the taxpayer is required to file only an annual return, Form 301-B7.

On the annual tax return, Form 301-B7, the total gross income for the whole year must be shown. From the total taxes due the annual exemption of \$50.00 is deducted. If estimated quarterly returns were filed for the first three quarters of the year, payments made on the quarterly returns are listed on the annual form and claimed as credits on the total liability for the year. The balance of taxes due, as shown on the annual return, must be paid within one month after the end of the tax year.

The statute grants each "person" an annual exemption of \$50.00 and 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 carried on actively for the whole year. If a business is operated for a part of a tax year, the exemption is reduced in proportion: \$12.50 for a

quarter, \$4.16 for a month, or 14 cents a day for the period actually engaged in business.

At any time a taxpayer sells or discontinues a business, a final tax return must be filed within thirty days after sale or discontinuance. The return must show the date of sales and the name and address of the purchaser.

Foreign corporations licensed to do business in West Virginia and domestic corporations are required to file a return regardless of the fact that no business is transacted in the State. No corporation may receive a dissolution of charter or make an orderly withdrawal from this State without first filing a final return and paying the tax due thereon.

Penalty accrues at the rate of 5 percent for the first month of delinquency and 1 percent for each succeeding month of delinquency.

BOT 3.02 Extensions of Time for Filing Annual Returns. Under the statute the Tax Commissioner, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable time within which to make the same as may, by him, be deemed advisable. Extensions are not granted for the filing of quarterly returns.

Any taxpayer desiring an extension of time for filing his annual return must address such request in writing to the Tax Commissioner.

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 desired. The taxpayer will then be advised in writing as to whether or not such extension is granted.

Such extensions will not be granted as a means of delaying payment and should be requested only when unusual circumstances make it impossible to prepare the annual return before the due date.

BOT 3.03 Penalty. Under the statute if any taxpayer fails to make the return required by this article, or makes his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of the tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent of the tax for the first month, or fraction thereof, of delinquency and one percent for each succeeding month, or fraction thereof, of delinquency: Provided, however, that if such failure is due to reasonable cause, the Tax Commissioner may waive or remit in whole or in part these penalties.

If failure to pay is due to fraud or intent to evade this law and the rules and regulations promulgated thereunder, there shall be added an additional penalty of twenty-five percent of the amount of tax, exclusive of penalties.

The application of penalty is illustrated below:

An annual taxpayer's net amount of tax due is one hundred dollars for the tax period ended December 31, 1964. The tax is not paid until May 15, 1965. Five percent of the tax is to be 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. Applying the rate of eight percent to the net amount of tax due, one hundred dollars, results in penalty due in the amount of eight dollars. It is to be noted that penalty is not applied for the month of January in which the taxpayer is permitted to file his return for the period ended December 31.

BOT 3.04 Books and Records. The Tax Commissioner is not concerned with the system of bookkeeping or accounting of any taxpayer. However, records must be so kept that every business transaction may be readily verified when examination of such records is made. Records of West Virginia business should be kept within the State when practicable. Where records must be kept out of state, the taxpayer shall, upon being notified by the Tax Commissioner that an examination is to be made, make accessible such records to the Tax Commissioner or his representatives. The taxpayer may either transport promptly the required records to West Virginia and notify the Tax Commissioner that such are available for audit; or if the taxpayer's out-of-state records are not transported to West Virginia, the taxpayer may notify

the Tax Commissioner of the time and place that such records will be available for examination out of state. The Tax Commissioner, after examining such records of the taxpayer or after making other investigation, may assess additional tax that such examination or investigation shows to be due. The Commissioner will notify the taxpayer in writing of such assessment.

Section 4. EXEMPTIONS AND DEDUCTIONS.

BOT 4.01 Persons Exempt From The 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) Persons engaged in the business of banking: Provided, however, that said exemption shall not extend to that part of the gross income of such persons which is received for the use of real property owned, other than the banking house or

building in which the business of the bank is transacted, whether such income be in the form of rentals or royalties.

- (c) Non-profit cemetery companies organized and operated for the exclusive benefit of their members.
- (d) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit.
- (e) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes.
- (f) Production credit associations, organized under the provisions of the federal "Farm Credit Act of 1933":
Provided, however, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of the Code of West Virginia, one thousand nine hundred thirty-one, as amended.
- (g) Building and loan associations and federal savings and loan associations.
- (h) Sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or of selling stocks, bonds or other evidences of indebtedness.

- (i) Persons engaging or continuing in the business of railroad, railroad car, express, pipe line, telephone and telegraph companies, airlines, water carriers by steamboat or steamship and motor carriers which are taxed under Chapter 11, Article 12 A.
- (j) Persons engaging or continuing in the business of rendering a professional service. Under the definition of "Service business or calling", BOT 2.09, only non-professional services are taxable.

The fact that the Business and Occupation Tax Law specifically exempts certain classes of business does not mean the person operating the business is exempt from the tax on income received from an activity which is not necessarily a part of the class of business which is exempt. For instance, a charitable organization, while not subject to the tax on dues or other donated income, is subject to the tax on gross income of a commercial enterprise conducted and designed for profit, such as a cafeteria, soft drink stand, etc., to which non-members are admitted, even though all profit goes to the organization for the furtherance of its benevolent purposes.

BOT 4.02 Exemptions and Deductions.

- (a) Bad Debts. Taxpayers reporting on a cash basis may not

deduct bad debts from the measure of the Business and Occupation Tax. Those reporting on an accrual basis may, except as hereinafter provided, deduct bad debts from gross receipts for the year in which the debts are ascertained to be worthless and are charged off. The amount to be deducted is net bad debts. Net bad debts are charge offs minus recoveries. The deduction of net bad debts is not allowed to persons subject to tax under the production classification, Section 2a, or under the manufacturing, compounding or preparing for sale classifications, Section 2b of the Business and Occupation Tax Law, because the value of the entire production or entire product manufactured, compounded or prepared is the measure of the tax under the aforesaid sections.

- (b) Cash Discounts. Cash sales discounts allowed and taken may be deducted. Discounts earned on commercial paper are not deductible. Purchase cash discounts need not be reported for purposes of the tax.
- (c) Returned Goods. The proceeds of sale of goods, wares or merchandise returned by customers may be deducted when the sale price is refunded either in cash or by credits and when the sale price has been included in gross income reported in column two of the tax return.

- (d) Trade-Ins. The amount allowed as "trade-in value" for any article accepted as part payment for any article sold.
- (e) Interstate Sales. Proceeds of out-of-state sales of merchandise made by retailers and wholesalers and delivered from points in West Virginia to out-of-state points may be deducted. In order to obtain such exemptions there must be attached to the tax return a detailed list of all such sales showing the shipping point, the name of the consignee, the delivery point and the date of shipment. If a sale to an out-of-state customer is consummated in West Virginia and out-of-state delivery is for the convenience of the customer and is incidental to the sale, such sale is considered intrastate and must be reported for purposes of the tax.

This exemption does not apply to out-of-state shipments made by persons subject to tax under the production classification, Section 2a, or under the manufacturing, compounding or preparing for sale classifications, Section 2b, of the Business and Occupation Tax Law. Persons subject to tax under the production or manufacturing, compounding or preparing for sale classifications are producing, manufacturing, compounding or preparing for sale products within West Virginia for sale without West Virginia and

the measure of the tax is the value of the entire production or entire product manufactured, compounded or prepared for sale, profit or commercial use in West Virginia, regardless of the place of sale or the fact that the delivery may be made to points outside the state. This exemption does not apply to persons subject to tax under the service classification, Section 2h, of the Business and Occupation Tax Law, for the performance of service or labor in West Virginia for non-residents of West Virginia. The measure of the tax in such case is the value of the service or repair performed in West Virginia even though the article serviced or repaired may be delivered subsequently to a point without West Virginia. This exemption does not apply to the interstate sales of motor vehicles or house trailers (mobile homes). The exemption of interstate sales of motor vehicles or house trailers (mobile homes) is set forth in Business and Occupation Tax Regulation 6.28.

- (f) Freight Charges. Prepaid outgoing freight charges, if such deliveries are not made in the taxpayer's own equipment, may be deducted. Only those persons engaged in business taxable under Section 2a, Section 2b, and Section 2c of the Business and Occupation Tax Law are

entitled to the deduction of prepaid outgoing freight charges. Incoming freight charges, such as freight on an automobile from Detroit to the point of sale in West Virginia, whether separately invoiced or not, may not be deducted.

(g) Excise Taxes - Federal and State.

I. Federal Excise Taxes

1. Manufacturers' federal excise tax paid on gasoline, diesel fuel and lubricants, both oil and grease, may be deducted from the gross income subject to tax.

(a) Gasoline and Diesel Fuel:	<u>Period</u>	<u>Federal Tax Per Gallon</u>
	Prior to 10/1/59	.03
	10/1/59 to present	.04
(b) Lubricants:		
	Oil - per gallon	.06
	Grease - per pound	.06

Persons claiming deductions for federal excise taxes on gasoline, diesel fuel, and lubricants must itemize on the Annual Business and Occupation Tax Return, page two, Schedule C, the number of gallons of gasoline, diesel fuel or oil sold and/or the number of pounds of grease sold.

Deductions claimed for federal excise taxes on gasoline, diesel fuel and lubricants will be disallowed in those cases where the taxpayer fails to provide the necessary information as set forth hereinabove.

2. Manufacturers' federal excise tax, except those allowed in paragraph 1 above, may not be deducted from the gross income subject to tax. Examples: Federal excise tax on automobiles, tires, tobaccos, cigars, cigarettes, matches, etc., may not be deducted.
3. Federal excise tax on the retail sale of certain tangible personal property is considered as a consumer's tax and, if separately invoiced, may be deducted from the gross income subject to tax. The current federal excise tax on the retail sale of certain tangible personal property is ten percent (10%) of the retail price. Example of certain tangible personal property subject to this excise tax: furs, luggage, cosmetics and jewelry.
4. Federal excise admission tax may be deducted from the gross income subject to tax. Reference: Internal Revenue Code of 1954, as amended.

II. State Excise Taxes

The taxpayer may deduct the following state excise taxes from the gross income subject to tax.

1. State excise tax paid on gasoline and diesel fuel may be deducted from the gross income subject to tax.

State Gasoline and Diesel Fuel Tax <u>Period</u>	State Tax <u>Per Gallon</u>
6/9/55 to 3/31/59	.06
4/1/59 to present	.07

2. State Cigarette Tax <u>Period</u>	State Tax <u>Per Carton</u>	State Tax <u>Per Pack</u>
7/1/56 to 6/30/61	.50	.05
7/1/61 to present	.60	.06

3. State Beer Barrel Tax

31 gallon barrel	5.50
Case (24 containers) 16 oz. containers	.53328
Per 16 oz. container	.0222
Case (24 containers) 12 oz. containers	.40
Per 12 oz. container	.01667

4. State Soft Drink Tax

Per case (24 containers) 16 oz. or under	.24
Per gallon	.08
Per one-half gallon	.04
Per container--33 oz. to 48 oz.	.03
Per container--17 oz. to 32 oz.	.02
Per container-- 1 oz. to 16 oz.	.01
Kool Aid--per package	.01
Soft Drink Syrup--per gallon	.80

Persons claiming deductions for state excise taxes on gasoline, diesel fuel, cigarettes, beer and soft drinks must itemize on the Annual Business and Occupation Tax Return, page two, Schedule C, the number of gallons of gasoline and diesel fuel sold and/or the quantity of cigarettes, beer and soft drinks sold.

Deductions claimed for state excise taxes on gasoline, diesel fuel, cigarettes, beer and soft drinks will be disallowed in those cases where the taxpayer fails to provide the necessary information as set forth hereinabove.

In all cases where the taxpayer claims deductions or exemptions, adequate records must be maintained to establish and support the deductions and exemptions claimed.

The Annual Business and Occupation Tax Return, page one, column three, must be completed showing the gross amount of deductions and/or exemptions claimed. The deductions and/or exemptions claimed on page one, column three, must be itemized in the space as provided on page two and/or page three of the Annual Return. If the space, as provided in the Annual Return, is insufficient to itemize the deductions and/or exemptions claimed, the taxpayer must submit additional information on a separate sheet which is to be attached to the Annual Return and made a part thereof.

(Amended: Effective, January 1, 1963)

BOT 4.03 Exemptions - 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 aforesaid provisions of the code.

(d) Municipal and Sanitary District Sewage Works. Sewage works in the State of West Virginia which 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 aforesaid provisions of the Code.

(e) Credit Unions. Persons engaged in the business of a credit union and organized in compliance with the provisions of Chapter 31, Article 10, West Virginia Code of 1931, as amended, entitled, "Credit Unions", 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 aforesaid provisions

of the Code.

(f) 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.

(g) 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. This is an exemption provided by specific statute and is only available to those corporations that have complied with all the requirements as set forth in the aforecited provisions of the Code.

(Effective, January 1, 1964)

Section 5. ASSESSMENT AND REFUND.

BOT 5.01 Assessment of Tax. If the Tax Commissioner believes that the tax imposed by this article is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which

is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor.

BOT 5.02 Petition for Reassessment. 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 Commissioner 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.

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.

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. The petition shall contain: (a) a caption in the following form:

"TO THE STATE TAX COMMISSIONER

Petition for Reassessment by _____";

(b) a statement of the amount of the deficiency or liability, as

the case may be, determined by the Commissioner, the nature of the tax, the period for which determined; (c) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency. Each assignment of error shall be numbered; (d) clear and concise statements of facts upon which the petitioner relies as sustaining the assignments of error; (e) a prayer, setting forth the relief sought; (f) the signature of the petitioner; (g) a verification by the petitioner; (h) a copy of the assessment shall be appended to the original of the petition.

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.

BOT 5.03 Place of Hearing. 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.

BOT 5.04 Continuances. 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 good ground 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 Commissioner deems adequate.

BOT 5.05 Absence of Petitioner or His Counsel. The unexcused 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.

BOT 5.06 Hearing. The hearing may be conducted by an examiner. The term "Commissioner" when used in the regulations dealing with the conduct of the hearing shall mean the examiner.

The petitioner may be represented by counsel. The rules of evidence followed by the courts of this State shall be applicable to such hearings.

BOT 5.07 Argument and Briefs. Petitioner will be given an opportunity for argument within time limits fixed by the Commissioner following submission of evidence. The Commissioner will accept briefs in lieu of argument. Briefs must be filed within ten (10) days after the hearing.

BOT 5.08 Transcript of Proceedings. If, in the opinion of the Commissioner, a transcript of the hearing is deemed necessary, the

hearing shall be reported and a transcript thereof shall be made.

If the petitioner desires a transcript be made of the hearing, he shall advise the Commissioner at least ten days prior to the hearing date and bear the expense of the same.

BOT 5.09 Appeal to Circuit Court. An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, 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 Commissioner of his determination as provided in section seven-b.

The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the Tax Commissioner. In such appeal a certified copy of the Tax Commissioner's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the Tax Commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the Tax Commissioner to the supreme court of appeals of this State.

BOT 5.10 Refund. Under the provisions of Chapter 11, Article 1, Section 2a, West Virginia Code of 1931, as amended, any person

claiming to be aggrieved through being required unlawfully to pay the tax may, within three years from the date of such payment, and not after, file with the State Tax Commissioner a petition in writing, duly verified, setting forth therein the facts in support of the alleged claim for refund. In the filing of a petition for refund, the taxpayer shall append thereto amended tax returns for the period involved and any other evidence in support thereof. Upon receipt of the petition, amended tax returns and any other supporting evidence, the Commissioner shall review the same and make a determination. If, in the Commissioner's opinion, the taxpayer is entitled to a refund, the taxpayer may, at his option, request the issuance of a credit memorandum to be applied to his future tax liability or may request the issuance of a state warrant.

Section 6 BUSINESS CLASSIFICATIONS.

BOT 6.01 Sand and Gravel. Persons engaged in the business of producing sand and gravel for sale or consumption either directly or through the activity of others, shall, in addition to being liable under Section (2a) of the law, designated production classification, be deemed manufacturers and are liable under Section (2b) of the law, designated manufacturing classification. The gross proceeds from the sale of the production shall be reported under Item B on the Business and Occupation Tax form, and the value of

the sand or gravel produced at 20¢ per net ton shall also be reported under Item A-2 on the Business and Occupation Tax form.

Other activities are to be reported under the classification on the Business and Occupation Tax form in which they fall as set forth below:

Persons engaged in the business of selling tangible property shall report the gross income of such sales under Item C-1, retail classification, or Item C-2, wholesale classification, depending on whether the sales are retail or wholesale. A producer who sells his sand and gravel at retail in West Virginia must report the gross proceeds derived from the sale of such sand and gravel under Item C-1, retail classification, in addition to the amount reported under Item A-2, production classification, and the value of the sand and gravel reported under Item B, manufacturing classification. However, a producer who sells his sand and gravel to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to report the value of the sand and gravel under Item C-2, wholesale classification.

Persons engaged in any service business or calling not otherwise specifically classified under the Business and Occupation Tax Law, shall report the gross income of such business under Item H, service classification. Such income will include that from service,

alterations, repairs, delivery charges for local deliveries made by the taxpayer, and other miscellaneous charges or receipts.

BOT 6.02 Oil. Persons engaged in the business of producing oil within this State for sale, profit, or commercial use, are liable for the tax levied under Section (2a) of the law, designated production classification, and shall report under Item A-3 on the Business and Occupation Tax form, the gross proceeds derived from the sale of the oil by the producer.

Other activities are to be reported under the classification on the Business and Occupation Tax form in which they fall as set forth below:

Persons engaged in the business of selling tangible property shall report the gross income of such sales under Item C-1, retail classification or Item C-2, wholesale classification, depending on whether the sales are retail or wholesale. A producer who sells his oil at retail in West Virginia shall report the gross proceeds derived from the sale of such oil under Item C-1, retail classification, in addition to the value of the oil reported under A-3, production classification. However, a producer who sells his oil to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to report the value

of the oil under Item C-2, wholesale classification.

Persons engaged in any service business or calling not otherwise specifically classified under the Business and Occupation Tax Law, shall report the gross income of such business under Item H, service classification. Such income will include that from service, alterations, repairs, delivery charges for local deliveries made by the taxpayer, and other miscellaneous charges or receipts.

BOT 6.03 Natural Gas. Persons engaged in the business of producing natural gas within this State for sale, profit, or commercial use are liable for the tax levied under Section (2a) of the law, designated production classification, and shall report under Item A-4 on the Business and Occupation Tax form an amount equal to the well-mouth value of the natural gas produced, to be determined as follows: For all gas produced (except as provided hereinbelow) the well-mouth value shall be the price received at the point of delivery less ten percent (10%) of such price which is to be considered as the average value of transportation from the well-mouth to the point of delivery. There shall be no deduction for royalties, selling commissions or other expenses, or losses on account of bad debts or other causes. The tax on production is applicable whether the gas produced is delivered or used within or without the State of West Virginia.

In case of utilities and other producers gathering and delivering natural gas through their own systems, the well-mouth value of such gas produced shall be determined by the weighted average field purchase price paid for gas by the utility or other producers to independent producers in West Virginia less ten percent (10%) of such purchase price which is to be considered as the average value of transportation from the well-mouth to the point of delivery for use, provided that such purchase price represents the true value of the gas purchased. Where ten percent (10%) of such purchase price does not represent the value of transportation, the Tax Commissioner may, upon review, revise the transportation allowance to more accurately reflect the actual value of transportation.

Where purchases are made between affiliated businesses, or under circumstances where the relation between the buyer and seller is such that the purchase price paid is not indicative of the true value, the Tax Commissioner shall determine the well-mouth value to be reported for Business and Occupation Tax purposes and such well-mouth value is to correspond as nearly as possible to the weighted average field purchase price of similar gas produced and sold between non-affiliated businesses in that particular area.

Producers, other than utilities, must report under the service classification, Item H, the difference between the actual gross

receipts derived from the sale of gas and the well-mouth value reported under Item A-4.

Other activities are to be reported under the classifications as set forth below:

(1) Persons engaged in the business of selling tangible property, other than their own production, shall report the gross income of such sales under Item C-1, retail classification, or Item C-2, wholesale classification, depending on whether the sale is at retail or wholesale. Producers of natural gas making utility sales of their gas are referred to BOT 6.48, Natural Gas Utilities Producing All or Any Part of Their Gas Which is Sold as a Utility.

(2) Persons engaged in any service business or calling not otherwise specifically classified under the Business and Occupation Tax Law shall report the gross income of such business under Item H, service classification. Such income will include that derived from services, alterations, repairs, delivery charges for local deliveries made by the taxpayer, and other miscellaneous charges or receipts.

(Amended: Effective November 1, 1962)

BOT 6.04 Other Natural Resource Products. Persons engaged in the business of producing other natural resource products, either directly or through the activity of others, are liable for the tax levied under Section 2a of the law, designated production classification, and shall report under Item A-7 on the Business and

Occupation Tax form the sales value of the products without any deduction for royalties, selling commissions or other expenses, or losses on account of bad debts or other causes. Shipments made to points both inside and outside of West Virginia are to be included.

The sales value of other natural resource products used or consumed in manufacturing plants operated by the producer in West Virginia is to be reported under the production classification.

In all cases where a product is sold to affiliated companies at prices which do not reflect its true value, the sales value to be returned for tax purposes shall be the fair market price of the product sold.

The gross sales value, or proceeds of all goods manufactured by the taxpayer in manufacturing plants in West Virginia is to be reported under Item B, manufacturing classification. No deduction is allowed under the Business and Occupation Tax Law on account of the market value of the natural resource products used in manufacturing, upon which the tax has been computed under Item A-7.

Other activities are to be reported under the classification on the Business and Occupation Tax form in which they fall as set forth below:

Persons engaged in the business of selling tangible property shall report the gross income of such sales under Item C-1, the retail classification, or Item C-2, wholesale classification,

depending on whether the sales are retail or wholesale. A producer who sells his natural resource products at retail in West Virginia shall report the gross proceeds derived from the sale of such natural resource products under Item C-1, retail classification, in addition to the value of the natural resource products reported under Item A-7, production classification. However, a producer who sells his natural resource products to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to report the value of the natural resource products under Item C-2, wholesale classification.

BOT 6.05 Manufacturers and Producers of Natural Resources Who Operate Through Independent Contractors. Manufacturers and producers of natural resources who contract with independent contractors for all or part of their production or manufacturing processes are none the less responsible for Business and Occupation Tax measured by the sales value of the completed or partially completed products under Section 2a production classification, and Section 2b, manufacturing classification. In addition to tax under the production or manufacturing classification to be paid by the producer or manufacturer, the independent contractor shall pay tax under Section 2h service classification, on his gross income as

hereinbefore provided in these regulations.

BOT 6.06 Clay, Shale, Brick, China, and Pottery. Manufacturers of brick, pottery, china or other clay products producing and consuming clay or shale in their business, shall be deemed to be engaged in the business of producing clay or shale for sale, profit or commercial use and shall be required to make returns on account of the production of clay or shale based on a value equal to 5% of the sales value of the manufactured brick, china, pottery, or other products.

Thus, 100% of the gross receipts from the sale of the manufactured product should be reported on the Business and Occupation Tax form under Item B, manufacturing classification, and 5% of such gross receipts should be reported as "other natural resource products" under Item A-7, production classification.

A producer who sells his manufactured brick, china, pottery, or other products at retail in West Virginia shall report the gross proceeds derived from the sale of such brick, china, pottery, or other products under Item C-1, retail classification, in addition to the amount reported under Item A-7, production classification, and the value of the manufactured brick, china, pottery, or other products reported under Item B, manufacturing classification. However, a producer who sells his manufactured brick, china, pottery, or

other products to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to report the value of the sand and gravel under Item C-2, wholesale classification.

BOT 6.07 Bread and Ice. Persons engaged in the bakery business and in the business of manufacturing ice shall report the gross income from such activities on the Business and Occupation tax form as follows:

The total wholesale value of the manufactured products is to be reported under Item B, manufacturing classification.

In the event all or part of such manufactured products are sold at retail, the gross proceeds of such sales shall be reported under Item C-1, gross income of retailers, with no deduction whatsoever by reason of the amount reported or tax paid under Item B, manufacturing classification.

The gross sales value of products manufactured by the taxpayer and sold at wholesale are to be reported only under Item B, manufacturing classification.

BOT 6.08 Photoprinting, Photostating, Photography, Etc. Persons engaged in the business of photoprinting, photostating, photography, photoengraving, blueprinting, etc., are required to

report the gross income from such activities as follows:

Gross income from the developing of films, owned by others, is to be reported under Item H, service and all other business.

Gross income from making prints, photostats, blueprints, etc., shall be reported under Item B, manufacturing classification.

Persons who develop film owned by others and make prints therefrom shall, when a charge is made for the development process, report under Item H the gross income derived from developing said film and under Item B the wholesale value of the prints manufactured. In addition, if said prints are sold at retail, the gross proceeds derived from said retail sale must be reported under Item C-1, gross income from retailers.

Persons engaged in the photography business who take pictures, make prints and sell the finished product at retail shall report the wholesale value of said product under Item B and, in addition to this, shall report the gross proceeds derived from the sale under Item C-1, gross income of retailers.

A manufacturer who sells his manufactured product at wholesale is not required to report the value of the products under Item C-2, wholesale classification.

BOT 6.09 Awnings, Storm Doors and Storm Windows. Persons engaged in the business of manufacturing or preparing for sale,

selling and/or installing awnings, storm doors and storm windows shall report the gross income derived from these activities in the following manner:

(a) Manufacturing or Preparing for Sale. Where a person is engaged in the business of manufacturing or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or part, any article, the gross proceeds derived therefrom shall be reported under the manufacturing classification, Item B on the tax return. The measure of this tax is the value of the entire product manufactured or prepared in this state for sale, profit, or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(b) Manufacturing or Preparing for Sale and Retail Sale. Where a person is engaged in the business of manufacturing or preparing for sale a product as set forth in paragraph (a) above and also is engaged in business of selling at retail the product manufactured or prepared for sale, the manufacturer shall report the wholesale value of such product under the manufacturing classification, Item B on the tax return, and in addition, the gross income derived from the retail sale shall be reported under the retail classification, Item C-1 on the tax return.

(c) Manufacturing or Preparing for Sale and Wholesale Sale. Where a person is engaged in the business of manufacturing or

preparing for sale a product as set forth in paragraph (a) above and the product manufactured or prepared for sale is sold at wholesale, the manufacturer shall report the gross income derived therefrom only under the manufacturing classification, Item B on the tax return. The manufacturer is not required to report gross income under the wholesale classification, Item C-2 on the tax return.

(d) Retail and/or Wholesale Sale. Where a person is engaged in business of selling at retail and/or wholesale a product manufactured or prepared for sale by another, the gross income shall be reported under the retail classification, Item C-1, or under the wholesale classification, Item C-2, on the tax return, depending on whether the sale is a retail or wholesale sale as defined in BOT 6.14 and BOT 6.15 .

(e) Manufacturing or Preparing for Sale, Retail Sale, and Service. Where a person is engaged in the business of manufacturing or preparing for sale a product and sells the same at retail and installs the same for customers, the gross income derived therefrom shall be reported in the following manner:

1. For manufacturing or preparing for sale the product and selling same at retail, as set forth in paragraph (b) above;
2. For installing the product, the gross income derived from

labor charges shall be reported under service classification, Item H on the tax return, in addition to the manufacturing and retail classifications as set forth in paragraph (b) above.

When a person is engaged in business as set forth in paragraph (e) herein, the gross income shall be reported under three separate, distinct classifications, viz. manufacturing, retail and service.

(f) Retail or Wholesale Sale and Service. Where a person is engaged in business of selling at retail or wholesale the product and installing the same for customers, the gross income derived therefrom shall be reported in the following manner:

1. The gross income derived from sale at retail or wholesale of the product shall be reported as set forth in paragraph (d) above;
2. The gross income derived from labor charges for installing the product shall be reported under service classification, Item H on the tax return.

In those cases where a person sells at retail or wholesale the product and agrees to install the same, there shall appear on the invoice to the customer a breakdown showing the retail or wholesale price of the product and the labor charges for installing the same.

Where a person is engaged in business as set forth in paragraph (f) herein, the gross income shall be reported under two or three separate, distinct classifications, viz. retail, wholesale and service.

(g) Service. Where a person is engaged in the business of installing, repairing, servicing, reconditioning, etc., the product, the gross income derived therefrom shall be reported under the service classification, Item H on the tax return.

In those cases where a person reports gross income for Business and Occupation Tax purposes under the retail, wholesale and/or service classification(s), the Consumers' Sales and Service Tax must be charged to the customer on the total invoice price or the customer shall furnish a duly executed exemption certificate in lieu of the sales tax.

In every case, the person taxed hereunder shall keep adequate records for the purpose of segregating and reporting the gross income under the proper classifications.

This regulation shall apply to all types of awnings, storm doors and storm windows, whether the composition of same be wood, aluminum, canvas, etc.

This regulation shall not apply to siding, whether the composition of same be wood, aluminum, asbestos, etc.

(Effective January 1, 1964)

BOT 6.10 Tire Recappers and Retreaders. Persons engaged in purchasing used tire carcasses, recapping or retreading such carcasses and selling them are classified as manufacturers by this department.

Persons engaged in the business of recapping or retreading tires shall report the gross income from such activities on the Business and Occupation Tax form as follows:

- (a) If such tires are sold at wholesale, the taxpayer shall report the gross proceeds from such sales under Item B, manufacturing classification. In such cases, no amount is to be reported under Item C-2, gross income of wholesalers.
- (b) If the person manufacturing the tires sells the tires at retail he must report the wholesale value of such tires under Item B, manufacturing classification, and in addition to this, shall report the gross proceeds derived from the sale of such tires under Item C-1, gross income of retailers, without any deduction of amounts reported under Item B.

Persons recapping or retreading tires belonging to others and making a charge for such recapping or retreading are considered to be performing a service and shall report the gross proceeds from such business under Item H, service and all other business. If

the recapper keeps separate records for cost of material and for cost of installation, he may report the proceeds derived from the sale of the materials under Item C-1, gross income of retailers, or Item C-2, gross income of wholesalers, whichever applies, and the proceeds derived from the installation charges under Item H, the service classification.

BOT 6.11 Junk Dealers. Persons engaged in the business of preparing for sale and selling scrap metal, paper, rags, rubber, etc., are required to report the gross income from such activities on the Business and Occupation Tax form as follows:

Persons cutting, separating, grading or cleaning scrap metal, paper, rags, rubber, etc., are engaged in the business of preparing for sale and shall report the gross proceeds of sales of such materials prepared in West Virginia under Item B. The gross proceeds of the sales of such prepared materials sold in West Virginia at retail, with no deduction whatsoever by reason of the amount reported under Item B, shall also be reported under Item C-1.

The gross proceeds of sales made within West Virginia of materials which are not prepared for sale, as hereinbefore defined, must be reported under Item C-1, if the sale is at retail, or under Item C-2, if the sale is at wholesale.

Persons acting as brokers and selling materials for other

suppliers on a commission basis must report the gross commissions received from sales to West Virginia purchasers under Item H, irrespective of the fact that the supplier is located outside of this State.

Persons acting as brokers and obtaining orders from customers located outside of West Virginia for the shipment of materials to the out-of-state purchaser where such solicitation takes place outside of West Virginia are not liable for the tax on the commissions earned on such interstate sales.

BOT 6.12 Meat Packers and Livestock Slaughterers. Persons engaged in the slaughtering of livestock and/or meat packing, with the exception of persons dressing and processing poultry and turkeys, are liable for the tax levied under Section 2b of the Business and Occupation Tax Law, designated manufacturing classification, and shall report the gross income from such activities on the Business and Occupation Tax form as follows:

The total wholesale value of meat products manufactured or processed including livestock slaughtered and/or processed is to be reported under Item B, manufacturing classification.

In the event all or part of such manufactured or processed product is sold at retail, the gross proceeds of such sales are to be reported under Item C-1, gross income of retailers, with no

deduction whatsoever by reason of the amount reported or tax paid under Item B, manufacturing classification.

The gross sales value of products manufactured or processed by the taxpayer and sold at wholesale is to be reported only under Item B, manufacturing classification.

Gross income received from the sale of products not slaughtered or processed in any way by the taxpayer is to be reported under Item C-1, gross income of retailers, or Item C-2, gross income of wholesalers, depending on whether the sale is at retail or wholesale. Since Section 2c of the subject law exempts sales made by any person engaging or continuing in the business of agriculture and grazing, in the event, the taxpayer is the producer of the livestock sold he would not be liable for the tax with respect to such livestock sold on foot. The exemption referred to above does not, however, apply to producers slaughtering and/or processing their livestock (other than poultry and turkeys). The activity of slaughtering and processing such livestock (other than poultry and turkeys) is not the business of agriculture but is a business taxable under the subject law as set forth in the first, second, third, and fifth paragraphs of this regulation.

The 1951 Legislature amended Section 2b of the Business and Occupation Tax Law by adding the following provision:

"***However, the dressing and processing of poultry and turkeys by a person, firm or corporation, which poultry and turkeys are to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products, on a wholesale basis shall be subject to the same tax as is imposed on wholesalers or jobbers as provided in section two-c of this article."

From the effective date of this amendment, June 3, 1951, gross income from sales of poultry and turkeys dressed or processed by the taxpayer which are not produced by the taxpayer, is not to be reported under Item B, manufacturing classification, but is to be reported under Item C-1, gross income of retailers, or Item C-2, gross income of wholesalers, depending on whether the sale is at retail or wholesale. Items C-1 and C-2 do not apply to persons engaged in the business of agriculture; therefore, from the effective date of this amendment producers of poultry and turkeys are not liable for the tax with the respect to sales of poultry and turkeys produced by them. Before that date, however, the dressing and/or processing of poultry and turkeys, whether by the producer or by others, is an activity taxable under Item B, manufacturing classification.

BOT 6.13 Dairy Business. Persons engaged in the business of operating dairies shall report their gross income from such activity on the Business and Occupation Tax form as follows:

The total wholesale sales value of products manufactured or compounded shall be reported under Item B, manufacturing classification. Manufactured or compounded products include butter, cheese, buttermilk, orange drink, ice cream, etc. Milk which is merely pasteurized or homogenized is not considered a manufactured or compounded product.

If the manufactured or compounded products are sold at retail in West Virginia, the manufacturer shall report the gross proceeds derived from the sale of such products under Item C-1, retail classification, in addition to the wholesale value of the products reported under Item B, manufacturing classification. However, a manufacturer who sells his manufactured products at wholesale is not required to report the value of the products under Item C-2, wholesale classification.

The business of horticulture, agriculture, or grazing is not taxable under Section 2c of the Business and Occupation Tax Law, designated business of selling tangible property, but the exemption does not carry through to a processing enterprise. Persons compounding products from milk produced from their own herds are therefore

only taxable on the sale of the manufactured products as set forth in the second and third paragraphs above. The sale of milk produced from their own herds is not taxable.

Sales of milk or other products purchased from others which are not manufactured or compounded by the taxpayer are liable under Item C-1 or C-2, depending on whether the sale is retail or wholesale.

BOT 6.14 Retailers. Persons engaged in the business of selling tangible property, real or personal at retail, are liable for the tax levied under Section 2c of the law, designated business of selling tangible property, and shall report under Item C-1 on the Business and Occupation Tax form the gross income from the business. Only sales of tangible property including carrying charges are to be reported under this classification. Gross income received from other sources, such as the sale of service and rentals, is to be reported under Item H or Item I.

The business of horticulture, agriculture or grazing is not taxable under the Business and Occupation Tax Law. These three categories include florists growing their own stock, orchardists, and farmers. Any person purchasing the products of horticulture, agriculture or grazing for resale does not come within this exemption. For instance, florists who purchase their stock of flowers are required to report as retailers or wholesalers, but may take

exemption for the sale of plants and flowers of their own cultivation.

Other activities are to be reported under the classification on the Business and Occupation Tax form in which they fall as set forth below:

Persons engaged in the business of selling tangible property at retail and who also make sales at wholesale shall report the gross income of such wholesale sales under Item C-2, wholesale classification. "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 tax imposed by the Business and Occupation Tax Law or by the Transportation Privilege Tax Law; (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.

Persons engaged in any service business or calling not otherwise specifically classified under the Business and Occupation Tax Law, shall report the gross income of such business under Item H, service classification. Such income will include that from service, alterations, repairs, delivery charges for local deliveries made by the taxpayer, and other miscellaneous charges or receipts.

BOT 6.15 Wholesalers. Persons engaged in the business of selling tangible personal property at wholesale are liable for the tax levied under Section 2c of the law, designated business of selling tangible property, and shall report under Item C-2 on the Business and Occupation Tax form the gross income from the business. Only sales of tangible personal property including carrying charges are to be reported under this classification. Gross income from other sources such as the rendering of a service and rentals is to be reported under Item H or Item I.

"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 tax imposed by the Business and Occupation Tax Law or by the Transportation Privilege Tax Law; (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.

The business of horticulture, agriculture or grazing is not taxable under the Business and Occupation Tax Law. These three categories include florists growing their own stock orchardists,

and farmers. Any person purchasing the products of horticulture, agriculture or grazing for resale does not come within this exemption. For instance, florists who purchase their stock of flowers are required to report as retailers or wholesalers, but may take exemption for the sale of plants and flowers of their own cultivation.

Persons engaged in the business of selling tangible personal property at wholesale and who also make sales at retail shall report the gross income of such retail sales under Item C-1, retail classification.

BOT 6.16 Department Stores, Jewelry Stores, Appliance Stores and Similar Businesses. Persons engaged in the business of operating department stores, jewelrystores, appliance stores or similar businesses, in addition to making sales of tangible property, may also perform installation of such property for which a charge is made and may perform repairs on articles belonging to others. Such persons shall report the income from such activities on the Business and Occupation Tax form as follows:

Gross income from sales of tangible property including carrying charges is to be reported under Item C-1, retail classification, or Item C-2, wholesale classification, depending on whether the sale is at retail or wholesale.

Gross income from installation charges is to be reported under Item H, service classification.

Gross income from repair charges is to be reported under Item H, service classification. In the event tangible property is furnished in connection with the service charge, the material used may be reported under Item C-1 or C-2, and the labor charges reported under Item H. In order to report the service charges in this manner, however, the taxpayer must keep his records in such a way as to show separately the income received from the material sold, and the income received from the labor charges. If such records are not maintained, the entire amount of the charge to the customer must be reported under the service classification.

Gross receipts from sales and installation of electrical fixtures, plumbing fixtures, etc., under contract are to be reported under Item E, contracting classification. This will apply in all cases where installation of the material is performed by persons selling the material unless the job is considered "time and material", as set forth in the sixth paragraph. The contractor is not required to collect Consumers' Sales and Service Tax from customers for whom the work has been performed on a contract basis, nor is he required to pay Consumers' Tax on purchases of material which are to be incorporated in his contract work.

In the event electrical fixtures, plumbing fixtures, etc., are sold to a customer at the seller's established price and installation of such fixtures, etc., by the seller is to be performed at a stipulated price per hour and the billing to the customer itemizes the material and labor, the sale and installation is to be considered a "time and material job".

Gross receipts from "time and material" jobs are to be reported as follows:

- (a) Charges for materials are to be reported under Item C-1, retail classification, or Item C-2, wholesale classification, depending on whether the sale is at retail or wholesale.
- (b) Charges for labor are to be reported under Item H, service classification.

BOT 6.17 Florists and Nurserymen. Florists and nurserymen are not subject to the Business and Occupation Tax with respect to sales of plants, flowers, shrubs, etc., produced by them in this State.

Gross income from sales of products purchased and resold is to be reported on the Business and Occupation Tax form under Item C-1, retail classification, or Item C-2, wholesale classification, depending on whether the sale is at retail or wholesale.

The florist or nurseryman taking an order from a customer to be delivered by a second florist through the F.T.D. service is a retailer and the amount collected from the customer is to be reported under Item C-1, retail classification. The florist or nurseryman receiving the telegraphic instructions and delivering the order is making a sale for resale to the sending florist and the amount received by him is to be reported under Item C-2, wholesale classification.

Income received from orders taken by a florist located in West Virginia to be delivered through the F.T.D. service by a florist located outside of West Virginia to an out-of-state address may be claimed as an exemption for Business and Occupation Tax purposes. Sales delivered by a florist located in West Virginia to a West Virginia address pursuant to a F.T.D. request from an out-of-state florist must be reported for Business and Occupation Tax purposes.

BOT 6.18 Hatchery Business. Persons engaged in the hatchery business shall report the gross income from such activity on the Business and Occupation Tax form as follows:

Gross income from the sale of baby chicks hatched in West Virginia is to be reported under Item C-1, retail classification, or Item C-2, wholesale classification, depending on whether the sale is at retail or wholesale.

The Business and Occupation Tax Law exempts sales by persons engaging or continuing in the business of agriculture; therefore, hatcheries maintaining their own flocks will be exempt on sales of baby chicks hatched from eggs produced by such flock; provided, adequate records are kept to establish accurately the amount of exemption claimed.

BOT 6.19 Mortuaries. Persons engaged in the business of operating mortuaries shall report the gross income from such activities on the Business and Occupation Tax form as follows:

- (a) 50% of gross income under Item C-1, retail classification.
- (b) 50% of gross income under Item H, service classification.

Accommodation charges made to the customers for services rendered by others such as grave digging charges, etc., for which the customer is billed at cost and which are not part of the usual service rendered by the mortuary, need not be reported for purposes of the tax. In order to claim this exemption such charges must be shown separately on the invoice to the customer and must be accurately reflected in the records of the taxpayer.

BOT 6.20 Monuments and Memorials. Persons engaged in the business of selling monuments and memorials shall report their gross income, including all charges for services such as lettering, installation, etc., on the Business and Occupation Tax form as follows:

- (a) 85% of gross income under Item C-1, retail classification.
- (b) 15% of gross income under Item H, service classification.

BOT 6.21 Cemeteries or Memorial Parks. Persons engaged in the business of operating cemeteries or memorial parks, which usually includes the rendering of a service, e. g. "perpetual care", shall report the gross income from such activities on the Business and Occupation Tax form as follows:

- (a) 50% of gross income under Item C-1, retail classification.
- (b) 50% of gross income under Item H, service classification.

If the taxpayer can show by his records an exact breakdown of his charges, distinguishing the amount received from sales of tangible property from service charges, the actual gross income from sales of tangible property may be reported under Item C-1, retail classification, and the actual gross income from service charges under Item H, service classification, in lieu of the percentages allowed by the Commissioner as set forth in the preceding paragraph.

BOT 6.22 Sale of Motor Vehicles or House Trailers (Mobile Homes) to Residents and Non-Residents Taking Delivery Outside of West Virginia. The scope of this regulation is limited to sales by dealers in West Virginia of motor vehicles or house trailers (mobile homes) to:

(1) Residents of this State for use in this State but who take delivery outside of West Virginia; and

(2) Non-residents for use outside of this State and who take delivery outside of West Virginia.

In computing the Business and Occupation Tax liability of persons engaged in the business of selling motor vehicles or house trailers (mobile homes), no deduction is allowed by reason of sales made to non-residents for use outside this State but who take delivery in West Virginia. Furthermore, no deduction is allowed with respect to sales of motor vehicles or house trailers (mobile homes) made to local residents for use by them in this State regardless of the fact that delivery may be taken by the buyer at the factory or other point outside this State, or that shipment be made direct from a point outside this State to the buyer in this State. It is presumed that a motor vehicle or house trailer (mobile home) is purchased for use in this State when the buyer secures a West Virginia title pursuant to the provisions of Chapter 17A, Code of West Virginia, 1931, as amended.

A deduction from gross income will be allowed as to sales made to bona fide non-residents of West Virginia, when, as a necessary incident of the contract of sale, the seller agrees to, and does, deliver the motor vehicle or house trailer (mobile home) to the buyer

at a point outside this State, or delivers the same to a common carrier consigned to the non-resident purchaser outside this State. In either case, the expense of delivery must be borne by the seller and without additional charge to the buyer for such delivery.

THE FOREGOING DEDUCTION, HOWEVER, WILL BE ALLOWED ONLY WHEN THE SELLER HAS SECURED AND RETAINS IN HIS FILES SATISFACTORY PROOF:

- (a) That the purchaser was a bona fide resident of another state;
- (b) That the motor vehicle or house trailer (mobile home) is purchased for use outside of West Virginia;
- (c) That under the terms of the sales agreement, the seller was required to deliver the motor vehicle or house trailer (mobile home) to the buyer at a point outside this State;
- (d) That such out-of-state delivery was actually made by the seller, or by a common carrier acting as his agent, at the expense of the seller and without additional charge to the buyer for such delivery; and
- (e) That, to the seller's knowledge, the motor vehicle or house trailer (mobile home) was not titled in West Virginia by the buyer pursuant to Chapter 17A, Code of West Virginia, 1931, as amended.

The form of proof acceptable to the Tax Commissioner for the purpose of showing a sale to be an out-of-state sale, hence excluded

from gross income taxable under the Business and Occupation Tax Law, Chapter 11, Article 13, Code of West Virginia, 1931, as amended, shall be as follows:

CERTIFICATE OF OUT-OF-STATE DELIVERY

NOTICE: This certificate is for the purpose of establishing the within transaction as being exempt from the West Virginia Business and Occupation Tax, a tax levied upon the named dealer, not the purchaser. False statements subject the maker to punishment as provided by law.

Please print or type the information requested by this certificate. Post Office box numbers, as an address, are not acceptable and render this certificate void. Rural route with box numbers is acceptable.

TO THE STATE TAX COMMISSIONER OF WEST VIRGINIA:

The undersigned hereby certifies that he is a bona fide resident of the State of _____ and that his address is

(Street and number or rural route) (City, town or post office)

(State)

That on the _____ day of _____, 19____, he purchased from _____
(Dealer's Name) (Street address) (City

_____, the following described motor vehicle or house trailer and state)

(mobile home) to-wit:

Make _____, Model _____, Year _____, (Motor No.) _____,
(Serial No.) _____,

and that said motor vehicle or house trailer (mobile home) was purchased for use outside the State of West Virginia;

That under the terms of the sales agreement, at no charge to me, the above named dealer was required to, and did, deliver said motor vehicle or house trailer (mobile home) to me at _____
(Street and _____
number or rural route and box number) (City, town or post office)

(State)

Dated at _____, _____, this _____ day of _____,
(City) (State)
19____.

(Purchaser's Signature)

(Print Purchaser's Name)

CERTIFICATION OF DEALER

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit:

I hereby certify that I delivered the above described motor vehicle or house trailer (mobile home) to _____
(Name of Purchaser)

at the place described in the above certificate on the ____ day of
_____, 19____.

Date: _____

(Signature of dealer or
representative)

(Print name)

(Title--officer or agent)

The above certification of dealer was taken, subscribed and
sworn to before me this ____ day of _____, 19____.

My commission expires: _____

(Notary Public)

BOT 6.23 Trading Stamps. Persons engaged in the business of trading stamps and who have redemption stores within West Virginia shall report fifty percent (50%) of the gross income derived therefrom under the retail classification, Item C-1, on the tax return, and the remaining fifty percent (50%) under the service classification, Item H, on the tax return.

Persons engaged in the business of trading stamps and who do not have redemption stores within West Virginia shall report the

entire gross income derived therefrom under the service classification, Item H, on the tax return.

Where persons are engaged in the business of trading stamps and the facts and circumstances are such that there may be a question as to the application of the above, such question shall be submitted to the State Tax Commissioner for determination.

(Effective January 1, 1963)

BOT 6.24 Amusement. Persons engaged in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, bowling alley, billiard parlor, etc., or any other place at which amusements are offered to the public shall report the gross income derived therefrom under the amusement classification, Item G on the Business and Occupation Tax form.

In the case of operators of places of amusement doing business on a percentage basis, the operator is liable for the tax on the total admissions regardless of whether, under the terms of his agreement, he is required to pay out a percentage of the admissions as part of the cost of operating. Motion picture show operators renting films 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 films.

Persons engaged in the business of selling tangible property shall report the gross income of such sales under the retail classification, Item C-1, or under the wholesale classification, Item C-2, on the Business and Occupation Tax form, depending on whether the sales are retail or wholesale.

Persons engaged in the amusement business may also be subject to tax under the rental classification, Item I, on the Business and Occupation Tax form, for gross income derived from the rental of personal property, e.g. lockers, equipment, etc., or from the rental of real property.

BOT 6.25 Carrying Charges and Service Charges. Carrying charges added to the sales price of merchandise by the seller under conditional sales contracts or other contracts providing for deferred payments of the purchase price, regardless of whether or not such carrying charges are segregated on the taxpayer's books and records or billed separately to the customer, are considered as part of the sales price of the merchandise and are taxable under the retail classification, Item C-1, on the Business and Occupation Tax form. Also, carrying charges on service charges are taxable under the service classification, Item H, on the Business and Occupation Tax form.

BOT 6.26 Commissions on Ticket Sales. Persons receiving commissions from the sale of tickets shall report the gross commissions

under the service classification, Item H, on the Business and Occupation Tax form, without any deductions for expenses or cost of doing business.

BOT 6.27 Real Estate Brokers and Salesmen. Persons engaged in the business of selling real estate shall report the gross income from such activities on the Business and Occupation Tax form as follows:

Real estate brokers and independent salesmen, who are not employed on an employer-employee relationship, selling real estate for others on a commission basis, shall report their gross commissions under the service classification, Item H, on the Business and Occupation Tax form. Gross commissions shall include commissions paid to or deducted by other brokers or salesmen.

Persons engaged in the business of buying and selling real estate shall report the entire gross income derived therefrom without deduction of any expense whatsoever, including the original cost or purchase price, under the retail classification, Item C-1, on the Business and Occupation Tax form.

Persons building houses or structures on lots owned by them and selling such houses and lots shall report the gross income from such sales under the retail classification, Item C-1, on the Business and Occupation Tax form.

BOT 6.28 Merchandise Brokers. Persons engaged in business as merchandise brokers maintaining a place of business in West Virginia for the purpose of representing out-of-state suppliers of merchandise on a commission basis and obtaining orders for the shipment from such out-of-state suppliers to customers in West Virginia shall report their gross commissions on the Business and Occupation Tax form under the service classification, Item H, on the Business and Occupation tax form.

Merchandise brokers maintaining a place of business in West Virginia, representing West Virginia suppliers on a commission basis, obtaining orders from customers located outside of West Virginia for the shipment of merchandise from the West Virginia supplier to out-of-state points, where such solicitation takes place outside of West Virginia, are not liable for the tax on the commissions earned on such interstate sales.

BOT 6.29 Insurance Agents and General Agents. Persons engaged in business as insurance agents and general agents shall report the gross income derived from said business under the service classification, Item H, on the Business and Occupation Tax form. The gross income shall consist of commissions received for the service rendered and not the gross amount of premiums passing through the agency or collected by the agent.

Insurance companies which pay the State of West Virginia a tax upon premiums are exempt if said companies meet the requirements set forth in BOT 4.01 (a).

Agents and general agents whose contracts of employment make such agents employees of the insurance company are not subject to the Business and Occupation Tax. The decision as to whether or not an agent is an employee of the company shall be made by the Commissioner in each particular case. The circumstances and facts must be presented to the Commissioner for review. In every case, a copy of the contract of employment of the particular agent in question shall be submitted to the Commissioner for review.

BOT 6.30 Barbers and Beauticians. Persons engaged in business as barbers and beauticians shall report the gross income derived from said business under the service classification, Item H, on the Business and Occupation Tax form, without any deductions or any other expenses whatsoever. The entire gross income of the shop shall be reported without deducting commissions or shares of barbers or beauticians working in the shop.

BOT 6.31 Mail Carriers. Persons engaged in the business of transporting mail under contract or otherwise for the Post Office Department of the United States Government shall report the gross income derived therefrom under the service classification, Item H,

on the tax return.

Where a person who was awarded the original contract to perform this transporting service subcontracts the performance of this service to another, the person who was awarded the original contract shall report the gross income derived therefrom under the service classification, Item H, on the tax return. Also, the person who was awarded the subcontract shall report the gross income derived therefrom under the service classification, Item H, on the tax return.

Persons engaged in this type of business are independent contractors, and not employees of the United States Government or any of its instrumentalities and are not engaged in the performance of a governmental function.

(Effective February 1, 1964)

BOT 6.32 Newspaper Carriers. Persons engaged in the business of transporting newspapers under contract or otherwise for others shall report the gross income derived therefrom under the service classification, Item H, on the tax return.

Where a person who was awarded the original contract to perform this transporting service subcontracts the performance of this service to another, the person who was awarded the original contract shall report the gross income derived therefrom under the service

classification, Item H, on the tax return. Also, the person who was awarded the subcontract shall report the gross income derived therefrom under the service classification, Item H, on the tax return.
(Effective February 1, 1964)

BOT 6.33 Laundry and/or Dry Cleaning. The term "laundry and/or dry cleaning business" applies to: (1) the business of operating a plant or establishment for laundering, cleaning, dyeing, pressing, and the incidental repair of such articles as clothing, linens, towels, curtains, draperies, rugs, etc., (2) a person who, under his own name operates a place of business or pick-up and delivery system for the collection and distribution of such articles, holding himself out to the public as performing such services even though such person owns no plant and contracts with another for a part or all of the services rendered. This does not apply, however, to a person who establishes himself or who acts as an agent for laundry and/or dry cleaning plants.

The term "serve yourself laundry business" means the business of providing laundry facilities for hire.

The term "laundry and/or dry cleaning agent" applies to any person who operates a place of business or pick-up and delivery system for the collection and distribution of articles to be laundered, cleaned, dyed, or pressed, acting as an agent for another or others, and acting as an independent contractor rather than as an employee.

For the purposes of the Business and Occupation Tax, persons engaged in the "laundry and/or dry cleaning business" and "serve yourself laundry business" as defined above, are taxable on the Business and Occupation Tax form under Item H, service classification, on the gross income of the business without any deductions on account of commissions allowed or paid "laundry and/or dry cleaning agents". If such commissions are deducted by a "laundry and/or dry cleaning agent" from gross collections, with only the balance appearing as an entry in books of account of the "laundry and/or dry cleaning business", said commissions must be added to the net figure remitted by the agent in the determination of the proper tax base of the business.

A person engaged in the "laundry and/or dry cleaning business" or "serve yourself laundry business", as defined above, performing work for another person engaged in the same business, is required, however, to report only the compensation received from the second person. The second person shall report the full amount received from his customers without any deduction of the amount paid the first person.

Whether or not a taxpayer is acting as a "laundry and/or dry cleaning agent" will be determined as follows:

- (a) From the manner of billing customers and advertising.

If the advertising on his truck, or otherwise, and/or

the billing to the customer, indicates that he is actually engaged in the "laundry and/or dry cleaning business", that is conclusive evidence that he is so engaged. If the advertising and/or billing indicates that a second person is performing the actual work, this is conclusive evidence that the taxpayer is engaged in the business of a "laundry and/or dry cleaning agent".

- (b) From any contract entered into between the agent and the business if the terms of such contract are carried out in business practice.

For purposes of the Business and Occupation Tax "laundry and/or dry cleaning agents", as defined above, are taxable under Item H, the service classification, on the amount of gross commissions received from or withheld from the person actually engaged in the "laundry and/or dry cleaning business" or "serve yourself laundry business" as defined in the regulation. The tax will be imposed on the "agent" unless he can establish an employer-employee relationship with the "business".

The burden of reporting any change in the method of doing business from employer-employee to contractual relationship which may have the effect of shifting any part of tax liability will be primarily on the "business" and secondarily on the "agent" although

both are liable for reporting to this office such change.

Persons 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 of such business under the rental classification, Item I, on the Business and Occupation Tax form.

The term "tangible personal property", as used herein shall not include money or public securities.

BOT 6.34 Coin Operated Machines. Persons who own coin operated machines and who place same in a business establishment belonging to another person are considered to be rendering a service to the person in whose place of business such machines are located. The gross income derived by the owner from these machines shall be reported under the service classification, Item H, on the Business and Occupation Tax form; that is, the owner's proportionate share of the entire gross income of the machine shall be reported under that classification. The person in whose place of business the machine is located is considered to be receiving commissions and shall report his share of the gross income from the machine under the service classification, Item H.

A person who owns and operates a machine in his own place of business is considered to be engaged in the amusement business and the gross income derived from said machine shall be reported under the amusement classification, Item G.

BOT 6.35 Drilling Contractors. Persons engaged in the business of drilling contractors, e.g. wells shall report the gross income derived from said business under the service classification, Item H, on the Business and Occupation Tax form. Gross income shall include any oil or gas payments or production payments in lieu of cash.

The receipt by the contractor of an interest in consideration for the drilling of a well is considered as a contribution of capital by the contractor to the enterprise and is not considered as income to the contractor. Any other compensation received by the contractor from other interested lease holders represents income to the contractor and such compensation is subject to the tax.

BOT 6.36 Shooting Oil and Gas Wells. Persons engaged in the business of shooting oil and gas wells shall report their gross income from such activities on the Business and Occupation Tax form as follows:

When the nitro-glycerin and other explosives are not manufactured in West Virginia by the taxpayer, 75% of the income

received shall be reported on the Business and Occupation Tax form under Item C-2, wholesale classification, and the remaining 25% of such income shall be reported under Item H, service classification.

When the nitro-glycerin and other explosives are manufactured in West Virginia by the taxpayer, 75% of the income received shall be reported under Item B, manufacturing classification, and the remaining 25% of such income shall be reported under Item H, service classification.

Gross income received from the shooting of wells by the taxpayer, without the furnishing of the explosives, shall be reported under Item H, service classification.

Gross income received from sale of explosives and other materials, which are not manufactured by the taxpayer in West Virginia, and the shooting is performed by another, shall be reported under Item C-2, wholesale classification.

Gross income received from sale of explosives manufactured by the taxpayer in West Virginia, the shooting to be performed by another, shall be reported under Item B, manufacturing classification.

BOT 6.37 Garage and/or Automotive Business. Persons engaged in the business of operating a garage and/or the business of selling, servicing or repairing motor vehicles or house trailers (mobile homes) and parts used in the servicing or repairing thereof shall report the gross income derived from the sales of such tangible

personal property under the retail classification, Item C-1, on the tax return or under the wholesale classification, Item C-2, on the tax return, depending whether the sale is a retail or wholesale sale.

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 tax imposed by the Business and Occupation Tax or Transportation Privilege Tax; (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.

Persons engaged in the business of operating a garage and/or business of selling, servicing or repairing motor vehicles or house trailers (mobile homes) shall report the gross income derived from the performance of labor or service under the service classification, Item H, on the tax return. Examples of service or repair work: tire repairing, washing or greasing cars, labor for car repairs, etc.

Persons engaged in the business of operating a garage and/or business of selling, servicing or repairing motor vehicles or house trailers (mobile homes) are entitled to certain deductions and

exemptions in computing gross income subject to tax. These deductions and exemptions are set forth in BOT 4.02 and in BOT 6.22.

In all cases where the taxpayer claims a deduction or exemption, adequate records must be maintained to establish and support the deduction or exemption claimed. The Annual Business and Occupation Tax Return, page one, column three, must be completed showing the gross amount of deductions and/or exemptions claimed. The deductions and/or exemptions claimed on page one, column three, must be itemized in the space as provided on page two and/or page three of the Annual Return.

In those cases where the nature of the business requires the reporting of gross income under the retail, wholesale and service classifications, the taxpayer must maintain adequate records to establish the gross income properly subject to tax under the retail, wholesale and service classifications. Example: A repairs B's car for \$100. A's invoice to B shows \$40 for parts and shows \$60 for labor. A must report the \$40 as subject to tax under the retail or wholesale classification while the \$60 for labor must be reported as subject to tax under the service classification.

In the above example, assuming that A failed to show a proper breakdown on his invoice to B for parts and labor in the repair job, the State Tax Commissioner will presume the entire gross income of \$100 as subject to tax under the service classification. The

burden of proof will be upon the taxpayer to rebut this presumption.

(Amended: Effective January 1, 1963)

BOT 6.38 Gasoline Service Stations. Persons engaged in the business of operating a gasoline service station shall report the gross income derived from the sale of all tangible personal property, including, but not limited to, the sale of gasoline, oil, tires, tubes, batteries, etc., under the retail classification, Item C-1, on the tax return.

Persons engaged in this type of business activity shall report the gross income derived from service charges, including, but not limited to, washing, greasing, repairing or any other type of service rendered to its customers, under the service classification, Item H, on the tax return.

Persons engaged in this type of business activity who have a vending machine or machines on the premises which are not owned by the service station operator and said vending machine dispenses soft drinks, cigarettes, candy, insurance or any other tangible personal property, the service station operator shall report the gross income derived from commissions from the vending machine under the service classification, Item H, on the tax return. Where the vending machine is owned by the service station operator, the service station operator shall report the gross income derived from

the sale of tangible personal property from the vending machine under the retail classification, Item C-1, on the tax return.

Persons engaged in this type of business activity who have tangible personal property for rent, e. g. trailers, etc., which are not owned by the service station operator, the service station operator shall report the gross income derived from commissions from the rental of the tangible personal property under the service classification, Item H, on the tax return.

Where the service station operator owns tangible personal property, e. g. trailers etc., and rents the same, the gross income derived therefrom shall be reported under the rental classification, Item I, on the tax return. Also, where the service station operator owns and rents real property, the gross income derived therefrom is subject to tax under the rental classification, Item I, on the tax return.

The taxpayer may deduct from gross income the federal and state excise tax on gasoline, diesel fuel and oil. The taxpayer may not deduct from gross income the federal excise tax on tires, accessories, etc. The deductions and exemptions for this type of business activity are set forth in detail in BOT 4.02.

In all cases where the taxpayer claims a deduction or exemption, adequate records must be maintained to establish and support the deduction or exemption claimed. The Annual Business and

Occupation Tax Return, page one, column three, must be completed showing the gross amount of deductions and/or exemptions claimed. The deductions and/or exemptions claimed on page one, column three, must be itemized in the space as provided on page two and/or page three of the Annual Return.

In those cases where the nature of the business requires the reporting of gross income under the retail, wholesale and service classifications, the taxpayer must maintain adequate records to establish the gross income properly subject to tax under the retail, wholesale and service classifications. Example: A repairs B's car for \$100. A's invoice to B shows \$40 for parts and shows \$60 for labor. A must report the \$40 as subject to tax under the retail or wholesale classification while the \$60 for labor must be reported as subject to tax under the service classification.

In the above example, assuming that A failed to show a proper breakdown on his invoice to B for parts and labor in the repair job, the State Tax Commissioner will presume the entire gross income of \$100 as subject to tax under the service classification. The burden of proof will be upon the taxpayer to rebut this presumption.

BOT 6.39 Rental and Royalty. Persons 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 classification, Item I on the tax form.

The term "tangible personal property" as used herein, shall not include money or public securities.

Special directions applicable to any other activities in which the taxpayer is engaged will be furnished upon request.

BOT 6.40 Rental of Equipment. Persons engaged in the business of renting equipment without an operator for same shall report the gross income derived therefrom under the rental classification, Item I on the Business and Occupation Tax form.

Persons engaged in the business of renting equipment and furnishing the operator for the same on a charge per hour, per day, etc., shall report the gross income derived therefrom under the service classification, Item E on the Business and Occupation Tax form. However, in the event the gross income from such activity is subject to the Transportation Privilege Tax, the Business and Occupation Tax shall not apply.

Persons 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 classification, Item I on the Business and Occupation Tax form.

The term "tangible personal property", as used herein, shall not include money or public securities.

Gross income received from rental of equipment, as set forth hereinabove, which is received by a contractor as part of the consideration for the performance of a contract as defined in BOT 2.11, is taxable under the contracting classification, Item E on the Business and Occupation Tax form.

BOT 6.41. Leased Departments. The owner or operator, lessor, of the store or establishment in which leased departments are conducted may include in his return the gross income of the leased departments under the appropriate classification. If the tax is so reported and paid by the lessor, it shall not be necessary for the lessee, operator of the leased department, to file a return or pay tax on the gross income so included in the return of the lessor, owner or operator of the store. The lessor, owner or operator, shall indicate on the return or by rider attached thereto, the name of the lessee of any leased department so included in his return. The fact that the lessor reports and pays the tax does not relieve the lessee from liability for any deficiency.

If the lessor, owner or operator, of the store does not elect

to include the gross income of leased departments on his return, the lessee, operator of the leased department, shall file separate returns of the gross income of the business of such department under the appropriate classification.

The lessor in all cases shall report the rental income derived from the leased departments under the rental classification, Item I on the Business and Occupation Tax form.

The lessor, owner and operator, shall advise the Commissioner in writing as to the manner in which such return will be filed. After such notification, the lessor, owner or operator, shall not change his method of reporting without first having obtained in writing the approval of the Tax Commissioner for such change.

BOT 6.42 Small Loan and Industrial Loan. 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 the gross income derived therefrom under the small loan and industrial loan classification, Item J on the Business and Occupation Tax form.

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. Bad debts as defined in BOT 4.02 are not proper deductions for persons taxable under Item J on the Business and Occupation Tax form.

The term "gross income" is defined in BOT 2.05.

BOT 6.43 Accommodation Sales. The term "Accommodation Sales" includes only those sales for resale by persons regularly engaged in the business of making sales of the type of tangible personal property so sold to other persons engaged in the business of selling that type of tangible personal property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him to fill a bona fide existing order of a customer or to reimburse in kind a previous accommodation sale by the buyer to the seller; provided, that such accommodation sales must be incidental to the seller's principal business activity.

The "amount paid by the seller to his vendor" may under some circumstances include certain actual costs incurred by the seller and billed as such to the buyer in addition to the invoice cost of the article sold as an accommodation sale. The term "incidental to the seller's principal business activity" shall mean infrequent

in relation to the total volume of sales.

In computing the tax under the wholesale classification, there may be deducted from the reported gross amount so much as represents receipts from accommodation sales. Each seller claiming this deduction must retain sales and cost records sufficient to prove each individual accommodation transaction claimed. In the event the seller fails to keep sufficient sales and cost records to establish the nature of the transaction, no deduction will be allowed under this regulation.

(Effective January 1, 1963)

BOT 6.44 Sales Between Affiliates. Where sales are made between affiliated businesses, or under circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Tax Commissioner shall determine the sales price to be reported by the taxpayer on the Business and Occupation Tax form, such sales price to correspond as nearly as possible to the sales price of similar products between non-affiliates.

BOT 6.45 Casual Sales. Sales are deemed to be casual sales 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:

1. Sale of a capital asset by a manufacturer, wholesaler or retailer;
2. Sale of any second hand property which is of a type not regularly sold by the taxpayer; e. g., sale of an automobile or radio by a plumber.
3. Sale of household furniture by a person who is not engaged in the business of selling; e.g., sale of a dining set by a lawyer.

On the other hand, the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or handled by him is not a casual sale, even though he may make but one such sale.

Furthermore, 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 not made frequently.

BOT 6.46 Direct or "Drop" Shipments of Merchandise. Persons engaged in the business of selling tangible property at wholesale and retail in West Virginia frequently have occasion to take orders from customers, which orders are forwarded to an out-of-state manufacturer or jobber. The out-of-state manufacturer or jobber may then make

shipment direct from an out-of-state point to the West Virginia customer. The invoice, however, is made to the West Virginia seller who in turn bills his customer. While such shipments themselves are in interstate commerce, the sale from the West Virginia seller to his customer is strictly intrastate and the gross income of such sale must be included in the measure of the Business and Occupation Tax.

BOT 6.47 Opticians, Optometrists, Ophthalmologists and Oculists. Optometrists, ophthalmologists and oculists are not subject to the Business and Occupation Tax on fees and charges which are attributable to the rendition of professional services, such services including the furnishing of temples and frames fitted with prescription lenses prepared by and secured from opticians or optical laboratories.

Opticians are subject to the Business and Occupation Tax and are required to report their gross income on the Business and Occupation Tax form as follows:

- (a) The wholesale value of eye glasses, lenses, or other articles manufactured, assembled, or prepared for sale in West Virginia by the taxpayer shall be reported under the manufacturing classification, Item B on the Business and Occupation Tax form.

- (b) The gross income derived from the retail sales of eye glasses, lenses, or other articles manufactured, assembled, or prepared for sale by the optician shall be reported under the retail classification, C-1 on the form, and in addition thereto, the gross income shall be reported under the manufacturing classification, Item B on the form, as set forth in paragraph (a) above.
- (c) The sales value of eye glasses, lenses, or other articles manufactured, or prepared for sale in West Virginia by the taxpayer and sold at wholesale to optometrists, ophthalmologists, oculists or to other opticians shall be reported only under the manufacturing classification, Item B on the form.
- (d) The gross income of wholesale sales of merchandise not manufactured, assembled, or prepared for sale in West Virginia by the taxpayer shall be reported under the wholesale classification, Item C-2 on the form.
- (e) The gross income from repair charges shall be reported under the service classification, Item H on the form. In the event tangible property is furnished in connection with the repair charges, the material used may be reported under the retail or wholesale classification, as the case may be, and the service charges may be reported

under the service classification. In order to report the service charges in above manner, however, the taxpayer must keep his records in such a way as to show separately the income received from the material sold and the income received from the service charges. If such records are not maintained, the entire amount billed to the customer shall be reported under the service classification.

BOT 6.48 Natural Gas Utilities Producing all or any Part of Their Gas Which is Sold as a Utility. Persons engaged in the business of selling gas as a utility are liable for the tax levied under Section 2d of the law, designated utility classification, and shall report under Item D-5 on the Business and Occupation Tax form the gross income from all sales made as a utility. In addition to other allowable deductions, persons producing natural gas and selling such produced gas as a utility are allowed to claim as an exemption under Item D-5, utility classification, the proportion of the production tax paid under Item A-4 that the amount of such production sold as a utility bears to the total production.

Utilities producing gas must report under Item A-4, the well-mouth value of the gas produced as set forth in the instructions to persons engaged in the business of producing gas.

Utilities engaged in the business of making non-utility

sales of tangible property shall report the gross income of such sales under Item C-1, retail classification, or Item C-2, wholesale classification, depending on whether the sales are retail or wholesale. However, utilities making non-utility sales of their own production to producers of natural resources, manufacturers, etc., for use or consumption in the purchaser's business are not required to report the income received from the sale of the produced gas under Item C-2, wholesale classification.

Other activities are to be reported under the classification on the Business and Occupation Tax form in which they fall as set forth below:

Persons engaged in any service business or calling not otherwise specifically classified under the Business and Occupation Tax Law, shall report the gross income of such business under Item H, service classification. Such income will include that from service, alterations, repairs, delivery charges for local deliveries made by the taxpayer, and other miscellaneous charges or receipts.

Persons engaged in the business of furnishing any real or tangible personal property (the term tangible personal property shall not include money or public securities) 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 (excluding interest and dividends) shall report the

gross income of such business under Item I, rents, royalties, etc.

Special directions applicable to any other activities in which the taxpayer is engaged will be furnished upon request.

BOT 6.49 Limestone or Sandstone. Persons engaged in the business of producing limestone or sandstone for sale or consumption, either directly or through the activity of others, shall in addition to being subject to tax under Section 2a of the law, production classification, be deemed manufacturers and are subject to tax under Section 2b of the law, manufacturing classification. The gross proceeds from the sale of the production shall be reported under the manufacturing classification, Item B on the Business and Occupation Tax form and the value of the limestone or sandstone produced at 35¢ a net ton shall also be reported under the production classification, Item A-5 on the Business and Occupation Tax form.

Persons engaged in the business of selling tangible property shall report the gross income derived from such sales under the retail classification, Item C-1 or under the wholesale classification, Item C-2, depending on whether the sales are retail or wholesale. A producer who sells limestone or sandstone at retail in West Virginia shall report the gross proceeds derived from the sale of such limestone or sandstone under the retail classification, Item C-1, in addition to the amount reported under the production classification,

Item A-5, and the value of the limestone or sandstone reported under the manufacturing classification, Item B.

A producer who sells limestone or sandstone at wholesale to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to report the value of the limestone or sandstone under the wholesale classification, Item C-2, but shall report the same under the production and manufacturing classification as set forth hereinabove.

BOT 6.50 Timber, Lumber and Pulpwood. Persons engaged in the timber, lumber and pulpwood businesses shall report the gross income derived therefrom in the following manner:

(a) Timber - Production. A person who owns timber on the stump and who produces by cutting the timber and who sells the same at wholesale shall report the entire gross proceeds derived from such wholesale sales only under the production of timber classification, Item A-6 on the Business and Occupation Tax form, regardless of whether such timber is sold on the ground or delivered to the mill.

(b) Timber and Lumber - Production and Manufacturing or Preparing for Sale. 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 sawing, etc., it himself into lumber shall report the entire gross proceeds derived from the sale of such lumber under the manufacturing or preparing for sale classification, Item B on the Business and Occupation Tax form, and in addition shall report under the production of timber classification, Item A-6 on the Business and Occupation Tax form, twenty percent (20%) of the amount reported under the manufacturing or preparing for sale classification, Item B. It is to be noted that the amount reported under the production of timber classification, Item A-6, is twenty percent (20%) of the gross proceeds derived from the sale of the lumber manufactured or prepared for sale from timber owned and produced by the taxpayer.

(c) Pulpwood - Production and Manufacturing or Preparing for Sale. A person who owns timber on the stump and who produces by cutting the timber and who manufactures or prepares for sale the timber, which is to be used in the making of pulp, shall report the entire gross proceeds derived from the sale of the pulpwood under the manufacturing or preparing for sale classification, Item B, and in addition, shall report under the production of timber classification, Item A-6, fifty percent (50%) of the amount reported under the manufacturing or preparing for sale classification, Item B.

In cases involving timber to be used in the making of pulp, the amount reported under the production of timber classification,

Item A-6, is fifty percent (50%) of the gross proceeds derived from the sale of the pulpwood.

(d) Service. A person who does not own timber on the stump, and who never takes title to the same, and who produces by cutting the timber for the owner and/or who manufactures or prepares for sale the same into lumber or pulpwood and other products for consideration, shall report the gross income derived from the performance of services for the owner under the service classification, Item H.

(e) Owner who Hires Another to Produce and/or Manufacture or Prepare for Sale. A person who owns timber on the stump, but who hires another to produce by cutting the timber and/or who hires another to manufacture or prepare for sale the timber by sawing, etc., shall report gross income in the same manner as a person who owns, produces and/or manufactures or prepares for sale the timber into lumber as set forth in paragraph (b) above.

(f) Purchased Severed Timber - Manufacturing or Preparing for Sale. Where a person purchases severed timber and manufactures or prepares for sale such severed timber into lumber, he shall report the gross proceeds derived from the sale of the lumber manufactured or prepared for sale from purchased severed timber under the manufacturing or preparing for sale classification, Item B, and shall not be required to report under the production of timber classification, Item A-6, the twenty percent (20%) of the gross

proceeds derived from the sale of lumber manufactured or prepared for sale from purchased severed timber.

(g) Retail and/or Wholesale. A person who sells at retail or at wholesale timber, e.g. mine timber, etc., which he does not produce by cutting and which he does not manufacture or prepare for sale, shall report the gross income derived from such sale under the retail classification, Item C-1, or under the wholesale classification, Item C-2, as the case may be.

(h) Retail and/or Wholesale. A person who owns, produces and/or prepares for sale timber or lumber and the same is sold at retail, the gross income derived from such retail sale shall be reported under the retail classification, Item C-1, in addition to the amounts reported under the production of timber classification, Item A-6, and/or manufacturing or preparing for sale classification, Item B.

Where a person taxable under paragraph (b) above sells at wholesale timber or lumber, the gross income derived from such wholesale sale shall not be reported under the wholesale classification, Item C-2, but only under the production of timber classification, Item A-6, and the manufacturing or preparing for sale classification, Item B.

BOT 6.51 Manufacturing, Compounding or Preparing for Sale.

Persons engaged in the business of manufacturing, compounding, or

preparing for sale, profit or commercial use, either directly or through the activity of others, in whole or part, any article, substance, commodity or electric power not produced by public utilities are subject to tax under the manufacturing, compounding, or preparing for sale classification, Item B on the Business and Occupation Tax form. The amount of the tax is to be equal to the value of the article, substance, commodity or electric power manufactured, compounded or prepared for sale as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided.

The measure of this tax is the value of the entire product manufactured, compounded or prepared in this State for sale, profit or commercial use, regardless of the place of sale or the fact that delivery may be made to a point outside the State. There shall be no deductions for selling commissions, bad debts or any other expenses whatsoever in determining the value of the entire product.

In those instances in which the same person partially manufactures products within this State and partially manufactures such products outside the State the measure of his tax under the manufacturing classification shall be either of the following at the option of the taxpayer.

- (a) 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 the same product.
- (b) The proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the article.

In determining the value of the entire product, the taxpayer must adhere to BOT 6.52, Rules for Determining the Value of Natural Resource Products or Articles Manufactured, which is applicable.

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, etc. is returned, not sold, by the manufacturer to the owner, the manufacturer shall report the gross income derived therefrom under the service classification, Item H, on the Business and Occupation Tax form. In those cases where the manufacturer is not vested with title to the article, etc., the manufacturer is rendering a service rather than manufacturing the same.

Persons engaged in the business of manufacturing, compounding or preparing for sale, profit or commercial use, any article, substance, commodity or electric power and the same is sold at retail

shall report the gross income derived from such retail sale under the retail classification, Item C-1, and the value of the same shall be also reported under the manufacturing, compounding or preparing for sale classification, Item B.

In those cases where a person manufactures, compounds or prepares for sale, profit or commercial use, any article, substance or commodity or electric power and the same is sold at wholesale, as defined in BOT 2.10, the gross income derived therefrom shall be reported only under the manufacturing classification, Item B, and not under both the manufacturing and wholesale classifications.

BOT 6.52 RULES FOR DETERMINING THE VALUE OF NATURAL RESOURCE PRODUCTS OR ARTICLES MANUFACTURED.

I. RULES APPLICABLE TO ALL PRODUCERS AND MANUFACTURERS.

A. Values Based upon Actual Gross Proceeds from Sales.

B. Equivalent Values in the Absence of Sales.

(1) Shipments made without sale.

(2) Use or consumption by producer or manufacturer.

C. Equivalent Values Where Sales are not Indicative of True Value.

(1) Sales made exclusively to affiliates.

(2) Sales made partially to affiliates.

II. RULES APPLICABLE TO PRODUCERS AND MANUFACTURERS OPERATING BOTH WITHIN THE STATE AND WITHOUT THE STATE.

- A. Values Based Upon Actual Gross Proceeds From Sales.
- B. Equivalent Values If Gross Proceeds Cannot Be Segregated.
- C. Allocated Values In Case Of Partial Production.

III. MINIMUM VALUES.

- A. Purchase of Like Products.
- B. Values Used For Other Purposes.

I. RULES APPLICABLE TO ALL PRODUCERS AND MANUFACTURERS.

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 exclusively within the state and to those engaged in such activities both within and without the state. The values determined under these rules will be uniformly applied in computing the taxes imposed by the statute.

A. Values Based Upon Actual Gross Proceeds From Sales.

Whenever possible, and unless otherwise provided in these rules, the value of articles produced or manufactured within the state shall be determined by the actual gross proceeds derived from the sale thereof by the producer or manufacturer. Adjustment to such sales values for inventories at the beginning or end of the taxable year may be made or may not be made, as long as the method employed is

followed consistently throughout the years.

The gross proceeds from sales shall be those shown by the books of the producer or manufacturer, and the inventories, whenever used, shall be those employed in closing such books, except that the following adjustments shall be made in those instances where sales are made at retail rather than at the wholesale prices of the producer or manufacturer:

- (1) There shall be deducted from the retail sales shown by the books the difference between the retail and wholesale prices of the producer or manufacturer for the items sold at retail. This deduction may also be made by using the customary discount granted by the producer or manufacturer to his wholesale customers.
- (2) If all sales are at retail and no wholesale prices of the producer or manufacturer are available, any reasonable adjustments will be accepted, if such adjustment is based either upon the customary margin of gross profit enjoyed by retailers of like or similar items or if such adjustment is

based upon the actual retail selling expenses
of the producer or manufacturer.

The gross proceeds from sales shall be those after discounts, allowances, returns and trade-ins, provided that the gross proceeds from subsequent sales of returns and trade-ins are included.

In order to determine the value within the state, there may be deducted from the gross proceeds of sales any outgoing freight charges actually paid by the producer or manufacturer, but no deduction will be allowed for expenses incurred by him through the use of his own equipment in transporting items produced or manufactured.

B. Equivalent Values In The Absence Of Sales.

Whenever the value of articles produced or manufactured cannot be determined by the actual gross proceeds from the sales by the producer or manufacturer, because he ships or transfers such products or articles without making sales thereof or because he uses or consumes such products or articles in his business, then the values shall be determined according to the following rules.

(1) Shipments made without sale.

Whenever products or articles manufactured within the state are shipped without sale to warehouses, branches or

other establishments maintained by the producer or manufacturer or any of his agents, the value of such products or articles manufactured within the state shall be determined, whenever possible, by the actual gross proceeds derived from the subsequent sales thereof by the producer, manufacturer or any of his agents, except that if such sales are made at retail the same adjustments as those outlined above shall be made.

Whenever shipments without sale are made to consignees or other bona fide purchasers of the producer or manufacturer, their value shall be determined by the actual gross proceeds of the subsequent sales as if such sales had been made at the time of shipment.

(2) Use or consumption by producer or manufacturer.

Whenever natural products or articles manufactured within the state are used or consumed by the producer or manufacturer in his business, whether within the state or without the state, whether in the same business or in an affiliated business, the values of such products or articles shall be determined by one of the following methods, but not necessarily in the order stated:

- (a) By applying to the products or articles the wholesale list prices of the producer or

manufacturer.

- (b) If no such list prices are available, by applying to the products or articles the average prices at which sales are made during the taxable year to regular customers of the producer or manufacturer.
- (c) If no such sales are made or if the proceeds from such sales are relatively small and their average prices inconclusive, by applying to the products or articles the average market prices for products or articles of like quality or character obtained by other producers and manufacturers.
- (d) If such market prices are not readily available, then values shall be determined by adding to the total production or manufacturing cost within the state the average markup realized by the producer or manufacturer on his products or, if necessary, by resorting to the average markup of other producers or manufacturers of such products or articles.

In all instances where products or articles are used or consumed at a point distant from the place of production or manufacturing, outgoing freight charges paid by the

producer or manufacturer 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; for example, if wholesale list prices, average selling prices or market prices used are f.o.b. and the producer or manufacturer pays the freight on shipments destined for use or consumption in his business, then such prepaid freight will not be an allowable deduction in arriving at a local sales value.

Which one of the above methods will be preferable depends entirely on the particular circumstances in each instance. In general, preference should be given to any method which can be applied with the least effort, without the necessity for burdensome calculations and for which the needed data are most readily available from the books and records of the producer or manufacturer, as long as such method will reflect as nearly as possible approximately true values of production or articles manufactured.

C. Equivalent Values Where Sales Are Not Indicative of True Value.

Whenever the actual gross proceeds from the sale of products or articles are not indicative of their true value, because such sales are made to affiliates of the producer or manufacturer or under other circumstances where a common interest exists between him and the purchaser, the following

rules shall be applied in determining values produced or manufactured. The same shall apply also to inter-departmental, inter-divisional or inter-company shipments which are not sales within the legal meaning of the word.

(1) Sales made exclusively to affiliates.

Whenever sales are made exclusively to affiliates the value of products or articles manufactured within the state shall be determined on the basis of the actual gross proceeds from the subsequent sale of such products or articles by the affiliate of the producer or manufacturer, except that in cases where such sales are made at retail the same adjustments as those outlined above shall be made.

If the gross proceeds from the sale of such products or articles cannot be segregated from those of other products or articles sold by the affiliate, but not produced or manufactured within the state, then the determination of values shall be made on the basis of the wholesale list prices or average selling prices of the affiliate or on the basis of average market prices or by resort to cost plus values in the same manner as outlined above in the rules for producers or manufacturers using or consuming products or articles manufactured within the State.

(2) Sales made partially to affiliates.

If sales are only partially made to affiliates and partially to regular customers of the producer or manufacturer, then values produced or manufactured shall be determined in the following manner.

If sales to affiliates are made on a discount basis from wholesale list prices to regular customers and such discounts to affiliates are separately accounted for on the books of the producer or manufacturer, then such discounts shall be disregarded and the values which are the measure of the tax shall be based upon the wholesale list prices without any reduction for such discounts to affiliates.

If sales to affiliates are not made on such discount basis or if such discounts to affiliates are not segregated on the books of the producer or manufacturer, then the value of that portion of the products or articles manufactured which has been sold to affiliates shall be determined by applying the wholesale list prices or average selling prices of the producer or manufacturer to regular customers, or by adding to the proportionate production or manufacturing cost of the products or articles sold to affiliates the actual markup shown by the proportionate cost of the sales to customers

and the gross proceeds derived from such sales. The latter method shall be used in all instances where sales or shipments to affiliates are being made on a cost basis or by reference to cost through the use of a cost plus basis.

II. RULES APPLICABLE TO PRODUCERS AND MANUFACTURERS OPERATING BOTH WITHIN THE STATE AND WITHOUT THE STATE.

The following rules for determining the taxable value of natural resource products or articles manufactured within the state shall apply only to producers and manufacturers who are engaged in such activities both within the state and without the state. The values determined under these rules will be uniformly applied in computing the taxes imposed by the statute.

(A) Values Based Upon Actual Gross Proceeds From Sales.

Whenever possible, and unless otherwise provided in these rules, the value of products or articles manufactured within the state shall be determined by the actual gross proceeds derived from the sale thereof by the producer or manufacturer, if such gross proceeds can be clearly segregated from the gross proceeds of products or articles not produced or manufactured within the state.

Such segregation may be made in a number of ways which will be acceptable whenever actual gross proceeds form the

basis for such segregation.

If the books of the producer or manufacturer clearly segregate the gross proceeds from the sale of products or articles manufactured within the state, totally or partially, then such gross proceeds shall be used in determining the value.

If the books of the producer or manufacturer do not segregate such gross proceeds, but clearly segregate the gross proceeds from the sale of various products or articles and any of those are produced or manufactured exclusively within the state, then the gross proceeds from the sale of such products or articles shall be used in determining their value.

If the books of the producer or manufacturer clearly segregate the gross proceeds from the sale of various products or articles, but such products or articles are not exclusively produced or manufactured within the state, being produced or manufactured in other states as well, then the values shall be determined by that portion of the gross proceeds which bears the same ratio to total gross proceeds which the number of units produced or manufactured within the state bears to the total number of units produced or manufactured both within and without the state.

Whenever the gross proceeds from sales are segregated on the books of the producer and manufacturer, but exclusions and deductions are not so segregated, then that portion of such exclusions and deductions shall be used in determining values which bears the same ratio to the total of such exclusions and deductions as the values determined to have been produced or manufactured within the state bear to the total gross proceeds.

(B) Equivalent Values If Gross Proceeds Cannot Be Segregated.

Whenever the actual gross proceeds derived from the sale of products or articles manufactured within the state cannot be segregated from the gross proceeds derived from the sale of products or articles manufactured without the state in any manner described above, then the values shall be determined by adding to the production or manufacturing cost within the state the markup based upon the difference between the total gross proceeds and the total production or manufacturing cost both within the state and without the state. The values so determined shall be the equivalent of that portion of the gross proceeds which bears the same ratio to the total gross proceeds as the production or manufacturing cost within the state bears to the total production or manufacturing cost both within and without the state.

Production cost, whenever used in these rules, shall mean only the cost of raw materials, productive labor and production or manufacturing overhead, but shall not be construed to include any general, selling or administrative expenses or any portion thereof, since this would be tantamount to an indirect deduction of such expenses not allowed to any other taxpayer.

(C) Allocated Values In Case Of Partial Production.

Whenever articles are only partially manufactured within the state and partially manufactured without the state, regardless of whether such partial production begins, ends or only passes through some process within the state, the rules contained herein shall be applied only to the extent that they do not conflict with the statutory formula for the allocation of gross proceeds to partial production within the state on the basis of payroll cost of manufacturing within the state to total payroll cost of manufacturing or on the basis of cost of operations within the state to the comparable total cost of operations both within and without the state. The option which the statute has granted to manufacturers as to articles only partially manufactured in this state is not intended to be limited by any of the rules herein.

III. MINIMUM VALUES.

Notwithstanding all rules outlined heretofore, certain minimum values shall be presumed to be the value of products or articles manufactured within the State, unless the producer or manufacturer makes a clear and convincing showing that such minimum values would be inequitable under his particular circumstances.

Such presumed minimum values shall be applied in all instances where, under the rules above, values would be determined otherwise than by reference to the actual gross proceeds from sales.

It shall be further presumed that products or articles manufactured within the state are of the highest quality of any products or articles of the same producer or manufacturer, unless they are shown to be of a different quality or character.

Under no circumstances shall values be presumed to be less than the actual cost of operations within the state.

(A) Purchases of Like Products.

Whenever a producer or manufacturer in addition to producing or manufacturing within the state purchases products or articles of like quality and character, whether within the state or without the state, then the highest price paid by him

during the taxable year for such products or articles shall be presumed to be their minimum value, unless the market conditions under which such price was paid are shown to have been abnormal and the resulting price in excess of true value.

(B) Values Used For Other Purposes.

Whenever a producer or manufacturer represents the value of products or articles manufactured within the state to be in excess of the value determinable under these rules or uses such excess value in computing his inventories, preparing his financial statements or otherwise for purposes other than determining his Business and Occupation Taxes in this state, then the values so represented or used during the taxable year shall be presumed to be the minimum value, unless they are shown to be incongruous.

This regulation became effective January 1, 1959, and supercedes any and all prior provisions inconsistent herewith.

BOT 6.53 Service Business or Calling. 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, Item H, on the Business and Occupation Tax form.

"Service business or calling" shall include all nonprofessional 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, Section 2a of the Business and Occupation Tax Law.

(a) Services to Personal Property. Where a person renders a service to personal property belonging to others, e.g. mechanic 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.

There are many cases where a person in rendering a service, furnishes or 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 furnishing or sale of tangible personal property is taxable under the retail or wholesale classification, as the case may be.

(b) Services to Real Property. Where a person agrees with another to furnish work or labor or material and work or labor on

a "time and material" basis, the gross income derived from the work or labor is taxable under the service classification and the gross income derived from the furnishing or sale of material is taxable under the retail or wholesale classification, as the case may be.

In all cases where the service rendered involves work or labor charged on an hourly basis, daily basis, footage basis, or other similar basis, whether the labor charges are for work rendered to personal or real property, the gross income shall be reported under the service classification.

Persons who furnish work or labor or material and work or labor to real property and the work or labor is not furnished on an hourly basis, daily basis, footage basis, or other similar basis the gross income derived therefrom is subject to tax under the contracting classification, BOT 6.56.

(c) Personal Services. Where a person renders personal services to another, the gross income derived therefrom shall be reported under the service classification, e.g. barbers.

(d) Professional Services. Persons who render professional services are exempt from the Business and Occupation Tax Law, e.g. attorneys, physicians.

* * *

In every case, the person taxed hereunder shall keep adequate records for the purpose of segregating and reporting the gross

income derived from the furnishing of work or labor and the gross income derived from the furnishing or sale of tangible personal property. If such person shall fail to maintain adequate records, the entire gross income shall be taxed under the service classification and the burden will be upon the taxpayer to show the proper segregation.

In those cases where a person reports gross income for Business and Occupation Tax purposes under the service, retail and/or wholesale classifications, the Consumers' Sales and Service Tax must be charged to the customer on the total invoice price or the customer shall furnish a duly executed exemption certificate in lieu of the sales tax.

Some examples of business which are subject to tax under the service classification, include, but are not limited to, the following: Barbers, beauticians, brokers, coal sales agents, credit bureaus, dry cleaners, hospitals, hotels, insurance agents, laundries, motels, parking lots, photographers, real estate agents, shoe repairs, window cleaners, etc. Some of the gross income derived from the above businesses also may be subject to tax under the retail and/or wholesale classification, as the case may be, if the rendition of the service involves the sale or furnishing of tangible personal property.

It is to be noted that a person engaged in any service business

or calling in West Virginia not otherwise specifically taxed under the Business and Occupation Tax Law is taxed under the service classification.

BOT 6.54 Floor Covering and Wall Covering. Persons engaged in the business of selling and/or installing floor covering and wall covering shall report the gross income derived therefrom in the following manner:

(a) Service - Labor and Material. Where a person agrees with another to furnish work or labor and material on a "time and material" basis, the gross income derived from the work or labor is taxable under the service classification, Item H on the Business and Occupation Tax form, and the gross income derived from the furnishing or sale of material is taxable under the retail, Item C-1, or wholesale, Item C-2, classification, as the case may be.

In cases where the work or labor is charged on an hourly basis, daily basis, footage basis or other similar basis, the gross income derived from the labor charges shall be reported under the service classification and the material under the retail or wholesale classification, as the case may be.

(b) Contracting - Labor and Material. Persons who furnish work or labor or material and work or labor and the work or labor is not

furnished on an hourly basis, daily basis, footage basis, or other similar basis, the gross income derived therefrom is subject to tax under the contracting classification, BOT 6.56. Item E on the Business and Occupation Tax form.

(c) Labor Only. Persons who furnish only work or labor on a cost plus fixed fee basis, lump sum basis, or other similar basis shall report the gross income derived therefrom under the contracting classification, Item E.

Persons who furnish only work or labor on an hourly basis, daily basis, footage basis, or other similar basis, shall report the gross income derived therefrom under the service classification, Item H.

(d) Material Only. Persons who sell or furnish material only and not work or labor shall report the gross income derived therefrom under the retail, Item C-1, or wholesale, Item C-2, classification, as the case may be.

* * *

A person taxed hereunder shall keep adequate records for the purpose of segregating where applicable and reporting the gross income derived from the furnishing of work or labor and the gross income derived from the furnishing or sale of tangible personal property. If such person shall fail to maintain adequate records, the entire gross income shall be taxed under the contracting classification and the burden will be upon the taxpayer to prove otherwise.

In those cases where a person reports gross income under the service, retail and/or wholesale classifications, the Consumers' Sales and Service Tax must be charged to the customer on the total invoice price or the customer shall furnish a duly executed exemption certificate in lieu of the sales tax.

In those cases where a person reports gross income under the contracting classification, the Consumers' Sales and Service Tax is not to be charged to the customer.

BOT 6.55 Plumbing, Heating, Air Conditioners, Vacuum Cleaners and Kitchens. Persons engaged in the business of selling and/or installing plumbing fixtures, heating fixtures, central air conditioning systems, central vacuum cleaning systems and built-in kitchens, shall report the gross income derived therefrom in the following manner:

(a) Service - Labor and Material. Where a person agrees with another to furnish work or labor and material on a "time and material" basis, the gross income derived from the work or labor is taxable under the service classification, Item H on the Business and Occupation Tax form, and the gross income derived from the furnishing or sale of material is taxable under the retail, Item C-1, or wholesale, Item C-2, classification, as the case may be.

In cases where the work or labor is charged on an hourly basis,

daily basis, footage basis or other similar basis, the gross income derived from the labor charges shall be reported under the service classification and the material under the retail or wholesale classification, as the case may be.

(b) Contracting - Labor and Material. Persons who furnish work or labor or material and work or labor and the work or labor is not furnished on an hourly basis, daily basis, footage basis, or other similar basis, the gross income derived therefrom is subject to tax under the contracting classification, BOT 6.56, Item E on the Business and Occupation Tax form.

(c) Labor only. Persons who furnish only work or labor on a cost plus fixed fee basis, lump sum basis, or other similar basis shall report the gross income derived therefrom under the contracting classification, Item E.

Persons who furnish only work or labor on an hourly basis, daily basis, footage basis or other similar basis, shall report the gross income derived therefrom under the service classification, Item H.

(d) Material Only. Persons who sell or furnish material only and not work or labor shall report the gross income derived therefrom under the retail, Item C-1, or wholesale, Item C-2, classification, as the case may be.

* * *

A person taxed hereunder shall keep adequate records for the purpose of segregating where applicable and reporting the gross income derived from the furnishing of work or labor and the gross income derived from the furnishing or sale of tangible personal property. If such person shall fail to maintain adequate records, the entire gross income shall be taxed under the contracting classification and the burden will be upon the taxpayer to prove otherwise.

In those cases where a person reports gross income under the service, retail and/or wholesale classifications, the Consumers' Sales and Service Tax must be charged to the customer on the total invoice price or the customer shall furnish a duly executed exemption certificate in lieu of the sales tax.

In those cases where a person reports gross income under the contracting classification, the Consumers' Sales and Service Tax is not to be charged to the customer.

BOT 6.56 Contracting. Persons engaged in the business of furnishing of work, or both materials and work, in the fulfillment of a contract, either written or oral, 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 real property are subject to tax under the contracting classification, Item E, on the Business and Occupation

tax form.

(a) Prime Contractor. A "prime contractor" or "general contractor" is one who furnishes work or both materials and work and contracts directly with the owner or another under expressed or implied contract, under which the prime contractor may furnish work or both materials and work himself or sublet portions thereof.

The prime contractor shall report the entire gross income of the original contract and any amendments thereto under the contracting classification, Item E, even though the prime contractor may have executed a contract(s) with a subcontractor(s) for a portion of the original contract.

(b) Subcontractor. A "subcontractor" is one who has contracted with the prime contractor for the furnishing of all or any part of the work or both materials and work which the prime contractor has himself contracted to perform.

The subcontractor shall report under the contracting classification the entire gross income derived from his subcontract, even though the prime contractor has reported the entire gross income of the original contract.

(c) Subcontractor of Subcontractor. A person who contracts with a subcontractor for the furnishing of all or any part of the work or both materials and work in the fulfillment of a subcontract is also a subcontractor.

In those cases where the subcontractor has executed a contract with another, the subcontractor of the subcontractor shall report the gross income derived therefrom under the contracting classification.

(d) Gross Income. The term "gross income" means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.

(e) Contracts-Turnkey Job, Cost Plus Fixed Fee, Lump Sum or Other Similar Basis. Persons engaged in the contracting business shall report the entire gross income derived from a turnkey job contract, cost plus fixed fee contract, lump sum contract, or other contracts having a similar basis under the contracting classification.

The measure of the tax under the contracting classification is gross income which is defined in paragraph (d) hereinabove. It includes all items of cost where the contractor has incurred a

liability, either as principal or as agent for the owner or another, for payment thereof.

The cost of materials and/or the cost of labor can only be exempted from the measure of the tax in those cases where the vendors and/or workmen may not look to the contractor for payment of the materials and/or labor. In those cases where the contractor contends that he has not incurred a tax liability because he acted solely as agent for the owner or another, the burden of proving the alleged agency relationship shall be upon the contractor.

(f) Arm's Length Transactions. 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 Section 2c of 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.

(g) Purchase Orders. 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 paragraph (f) above.

(h) Other Contracting Activities. The term "contracting" shall also include those persons engaged in the business of the moving of earth or clearing of land or clearing or cutting rights of way or razing, demolishing or moving buildings or structures. The gross income derived from such activities is also subject to tax under the contracting classification.

Persons engaged in the business of clearing or cutting rights of way shall report the gross income derived therefrom under the contracting classification, but the gross income from the maintenance thereafter of such rights of way shall be reported under the service classification.

(i) Contract for Work or Labor Only. Persons who furnish only work or labor on a turnkey job contract, cost plus fixed fee contract, lump sum contract, or other contracts having a similar basis

shall report the gross income derived therefrom under the contracting classification.

Persons who furnish only work or labor on an hourly basis, daily basis, footage basis or other similar basis, shall report the gross income derived therefrom under the service classification, as set forth in detail in BOT 6.53.

(j) Contract for Material Only. Persons who sell or furnish material only shall report the gross income derived therefrom under the retail or wholesale classification, as the case may be.

(k) Speculative Builder. As used herein the term "speculative builder" means one who constructs improvements upon real estate 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, e.g. buildings, shall be reported under the retail classification, Item C-1. The sales price is the measure of the tax. A speculative builder is deemed to be the ultimate consumer of all supplies, materials or equipment used in the construction of buildings or the improvement of real property. Therefore, speculative builders must pay Consumers' Sales and Service Tax upon all supplies, materials, etc., purchased by them and services rendered for them. The Use Tax is applicable to their purchases made from outside of West Virginia.

(1) Professional Services. Professional services, e.g. architectural fees, are not subject to the Business and Occupation Tax. However, in those cases where professional services are rendered to the contractor, as part of the contract, the fees for such professional services are not excludable by said contractor in reporting his gross income under the contracting classification.

(m) Rental of Equipment, etc. Persons engaged in the contracting business who rent to others tangible personal property, e.g. equipment, or real property shall report their gross income derived therefrom under the rental and royalties classification, Item I.

(n) Reporting of Gross Income. All gross income received, whether on a partial or final payment, by the contractor during a particular tax period shall be reported on the tax return for that period. The reporting of gross income and the payment of tax due should not be delayed until completion of the contract.

(o) Contracts with State or Political Subdivision - Final Settlement. All state, county, district and municipal officers and agents making contracts on behalf of the State of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the Commissioner to the effect that all taxes levied or accrued under the Business and Occupation Tax Law against the

contractor have been paid.

Any official violating this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars, or imprisoned not exceeding one year in the county jail, or shall be subject to both said fine and imprisonment, in the discretion of the court. (Chapter 11, Article 13, Section 16, West Virginia Code of 1931, as amended.)

Upon request, the Commissioner will provide the necessary forms for compliance with the above provisions.

(p) Nonresident Contractor - Final Settlement. Any person, firm, or corporation contracting with a nonresident person, firm or corporation engaged in a business or service taxed under the Business and Occupation Tax Law shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the Commissioner to the effect that all taxes levied and accrued under the Business and Occupation Tax Law against the contractor have been paid.

If any person, firm or corporation shall fail to withhold as provided herein he shall be personally liable for the payment of all such taxes, and the same shall be recoverable by the Commissioner by appropriate legal proceedings. (Chapter 11, Article 13, Section 16a, West Virginia Code of 1931, as amended.)

Upon request, the Commissioner will provide the necessary forms for compliance with the above provisions.

* * *

In those cases where the contractor reports gross income under the service, retail and/or wholesale classifications, the contractor shall charge and collect the Consumers' Sales and Service Tax or a duly executed exemption certificate shall be furnished to the contractor in lieu of the sales tax.

In those cases where the contractor reports gross income under the contracting classification, the Consumers' Sales and Service Tax is not to be charged and collected by the contractor.

The contractor is not required to pay the Consumers' Sales and Service Tax on the materials, supplies, etc. purchased by him and directly used in his contracting business.

BOT 6.57 Coal. Persons engaged in the coal business shall report the gross proceeds of sale or gross income derived therefrom in the following manner:

(a) Production. Persons engaged in the business of producing coal for sale, profit or commercial use shall report the gross proceeds derived therefrom under the production of coal classification, Item A-1 on the Business and Occupation Tax form.

The measure of the tax is the value of the entire production in this state, regardless of the place of sale or the fact that the

delivery may be made to points outside the State.

In determining the value, the taxpayer must adhere to BOT 6.52, Rules for Determining the Values of Natural Resource Products or Articles Manufactured, which is applicable.

The Tax Commissioner shall determine the person who is the actual producer of coal from the substance of the agreement or agreements between the parties contracting for the mining or severance of coal, irrespective of whether such an agreement or agreements shall be oral or in writing. The burden of proof as to the true relationship between the parties shall be upon the individual taxpayer. In making the determination of the person who is the actual producer of coal the Commissioner shall consider, in addition to the substance of the agreement or agreements between the parties, other elements which shall include, but not be limited to the following:

1. That the person is obligated to pay to the owner of the coal in place a royalty after severance thereof;

2. That the person owns coal in place or has under lease agreement the exclusive right to sever or mine, or caused to be severed or mined, by sub-lease or otherwise, the coal and/or owns or controls the only tipple or tipples from which it is economically feasible to process or load the coal for delivery to purchasers;

3. That the person owns the coal in place or has the exclusive right to sever or mine or cause to be severed or mined, the coal, by sub-lease or otherwise, shall be deemed to have title to the coal;

4. That the person claims production depletion allowance for mined or severed coal;

5. That a person may be determined to be the producer of coal irrespective of whether the agreement between the contracting parties is oral or in writing;

6. That the person is the beneficiary of an exclusive purchase agreement which is contained in a sub-lease for coal, whether such sub-lease be oral or in writing.

* * *

It is immaterial whether the gross proceeds are paid to the producer or his agent or employee. The fact that the agent may guarantee the credit of the buyer does not alter his agency status. The commission or other remuneration realized by the agent is part of the producer's expense of doing business and is not deductible from the tax base.

Out-going freight charges and transportation charges of coal produced and/or prepared for sale in West Virginia may be deducted from the gross proceeds derived from the sale of such coal, provided that the seller has paid such freight and/or transportation charges.

A person who produces coal and does not sell the same, but uses or consumes it in his business within or without the State shall report the value of the same under the production of coal classification, Item A-1. In determining the value of the coal, the taxpayer must adhere to BOT 6.52, Rules for Determining the Value of Natural Resource Products or Articles Manufactured, which is applicable.

Where the relationship between the producer of the coal and the purchaser thereof is such that the gross proceeds derived from the sale of the coal are not indicative of the true value of the coal, the amount to be reported shall be the value of the coal as prescribed in BOT 6.52, Rules for Determining the Value of Natural Resource Products or Articles Manufactured, which is applicable.

(b) Service - Contract Mining. The Tax Commissioner shall determine, from the substance of the agreement or agreements between the parties contracting for the mining or severance of coal, irrespective of whether such an agreement or agreements shall be oral or in writing, the person who is performing a service in the mining or severance of coal. The gross income derived from this activity shall be reported under the service classification, Item H, on the Business and Occupation Tax form. The burden of proof as to the true relationship between the parties shall be upon the individual taxpayer. In making the determination of the person who is performing a service in the mining or severance of coal, the

Commissioner shall consider, in addition to the substance of the said agreement or agreements between the parties, other elements which shall include, but not be limited to, the following:

1. That the person is not obligated to pay to the owner of the coal in place a royalty after severance thereof;
2. That the person does not own the coal in place or does not have the exclusive right to sever or mine or cause to be severed or mined, by sub-lease or otherwise, the coal;
3. That the person does not claim production depletion allowance for the mined or severed coal;
4. That the person mining or severing the coal is doing so under oral agreement or agreements only; and
5. That the person is obligated to deliver all or any portion of the mined or severed coal to the beneficiary of an exclusive purchase agreement, which agreement is contained in a sub-lease for such coal.

A person who makes charges to the producer or another for preparing coal for sale is deemed to be engaged in a service business and shall report the gross income from such charges under the service classification, Item H.

(c) Manufacturing or Preparing for Sale. Persons engaged in the business of manufacturing, compounding, or preparing for sale, profit or commercial use, either directly or through the activity

of others, in whole or part, any article, substance or commodity are subject to tax under the manufacturing, compounding, or preparing for sale classification, Item B on the Business and Occupation Tax form. The amount of the tax is to be equal to the value of the article, substance or commodity manufactured, compounded or prepared for sale as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same.

The measure of this tax is the value of the entire product manufactured, compounded or prepared in this State for sale, profit or commercial use, regardless of the place of sale or the fact that delivery may be made to a point outside the State.

In determining the value of the entire product, the taxpayer must adhere to BOT 6.52, Rules for Determining the Value of Natural Resource Products or Articles Manufactured, which is applicable.

In those instances in which the same person partially manufactures products within this State and partially manufactures such products outside the State, the measure of the tax is as prescribed in BOT 6.52, Rules for Determining the Value of Natural Resource Products or Articles Manufactured, which is applicable.

Persons engaged in the business of buying coal from others and preparing for sale, e.g. screening, crushing, grading, washing, oiling, or otherwise, such coal in West Virginia shall report the gross

proceeds derived therefrom under the manufacturing, compounding, or preparing for sale classification, Item B.

Persons engaged in the business of mining and severing coal outside of West Virginia but who prepare for sale, e. g. screening, crushing, grading, washing, oiling, or otherwise, such coal within West Virginia shall report the gross proceeds derived therefrom under the manufacturing, compounding, or preparing for sale classification, Item B.

Where a person taxable under paragraph (a) hereinabove, manufactures, compounds or prepares for sale the coal produced into a by-product, e. g. coke, the value of the coal produced shall be reported under the production of coal classification, Item A-1, and in addition, the value of the by-product shall be reported under the manufacturing, compounding or preparing for sale classification, Item B.

(d) Retail - Wholesale. Persons engaged in the business of selling tangible property shall report the gross income of such sales under the retail classification, Item C-1, or under the wholesale classification, Item C-2 on the Business and Occupation Tax form, depending on whether the sales are retail or wholesale. A producer who sells coal at retail e.g. house coal to employees, in West Virginia shall report the gross income from the retail sale of such coal under the retail classification, Item C-1, and in addition,

shall report the value of the coal under the production of coal classification, Item A-1.

However, a producer who sells coal at wholesale to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to report the gross income from the wholesale sale of the coal under the wholesale classification, Item C-2, but shall report only under the production of coal classification, Item A-1.

Examples of retail sales: Sales to employees or others of explosives, dynamite caps, mining supplies, etc.

(e) Rental and Royalty. Persons engaged in the business of furnishing any real property or tangible personal property which has a tax situs in this state, which shall include coal in place, or any interest therein, for hire, loan, lease or otherwise, whether the return be in the form of rents, royalties, fees or otherwise, shall report the gross income of such business under the rental and royalty classification, Item I on the Business and Occupation Tax form.

The term "tangible personal property" as used herein, shall not include money or public securities.

Example: A leases coal lands to B and B agrees to pay royalty of 30¢ per ton to A. Later B subleases to C and C agrees to pay

royalty of 40¢ per ton to B.

A reports royalty of 30¢ per ton and B reports royalty of 40¢ per ton under Item I.

BOT 6.58 Receipts From Sales to or Services for Federal and State Governments and Their Subdivisions. Sales made to or services rendered for the State and Federal Governments or any of their instrumentalities or subdivisions are not exempt from Business and Occupation Tax.



**State Tax Department
of West Virginia**

Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

I, Herschel H. Rose III, Commissioner of the West Virginia State Tax Department do hereby resubmit to the Office of the Secretary of State two copies of existing rules and regulations to be refiled pursuant to W. Va. Code § 29A-2-5. This refiling pertains to the Business and Occupation Tax, Chapter 11, Article 10, Series XIII.


Herschel H. Rose III
State Tax Commissioner

Date Submitted: December 29, 1982

120.20

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XIII
(1974)

Subject: Business and Occupation Tax

Refiled: December 29, 1982

INTRODUCTION

The West Virginia business and occupation tax is a tax levied for the privilege of engaging in business in West Virginia. The statutory provisions of said tax are contained within Chapter 11, Article 13, West Virginia Code of 1931, as amended.

It is difficult and inaccurate to label the business and occupation tax as any one particular type of tax. Even though gross income is the measure of the tax, in most instances, it is not an income tax; nor is it a sales tax. It can be defined as a privilege tax, or with some degree of accuracy, as a business activities tax measured by gross receipts.

The tax is measured by the application of rates against values of products, gross proceeds of sales, or gross income according to the classification of the business activity or activities in which the taxpayer may be engaged. In most situations, gross income is the measure of the tax. However, under the production and manufacturing classifications, the measure of the tax is the value of the article produced or manufactured as shown by the gross income derived from the sale thereof, provided that the income is indicative of the true value of the product.

Before a taxpayer can compute his business and occupation tax liability, he must first determine under which classification his business activity falls. He must also determine if income has been derived from more than one type of activity and report

these segments of income under the proper classifications and compute the tax on each separate classification. This means, of course, that most taxpayers are liable for tax under more than one classification. For example, if the business makes retail sales of products and also services such products, the taxpayer must determine his gross income from each separate classification (retail sales and service) and report accordingly. The taxation of multiple classifications was upheld by the West Virginia Supreme Court of Appeals in the case of J. D. Moore, Inc. v. Hardesty, 147 W.Va. 611, 129 S.E. (2d) 722 (1963). The Court held that integrated businesses must report and pay tax on income derived under each business classification, and are not permitted to report all income under their predominant classification.

There are twenty-one (21) different business classifications under which a taxpayer can compute his tax liability. The tax rates on these classifications vary from \$0.27 per \$100 on whole-sale activities to \$8.63 per \$100 on the production of natural gas.

The business and occupation tax has often been referred to as a pyramid tax, because once the tax has been paid on a particular article, sale or service, it may have to be paid again by the consumer or purchaser of the original article, sale or service if he uses it in his business. For example, an individual who is awarded a contract must pay business and occupation tax on the full amount of the contract and his subcontractors must also pay business and occupation tax on the full amount of their subcontracts.

Two (2) returns are used in reporting business and occupation tax: a quarterly return and an annual return. The quarterly return which, in effect, is an estimated return is filed three (3) times a year and is due on the last day of the month succeeding the taxable period. For example, a taxpayer whose books and records are kept on a calendar year basis must file his quarterly estimates on or before April 30, July 31, and October 31. The taxpayer's annual return, which is a compilation of the first three (3) quarters plus the fourth quarter, will then be due on or before January 31. A facsimile of an annual return is shown at § 11.01(k)

Each taxpayer is permitted an annual exemption against the tax of \$50. A person who exercises a taxable privilege for only a fractional part of a tax year is entitled to an exemption of the sum bearing the proportion to \$50 that the period of time the privilege is exercised bears to a whole year.

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

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TABLE OF PARALLEL REFERENCES

<u>Regulation</u>	<u>Code Section</u>
Section 1	11-10-5(a) 29A-1-2(d) 29A-2-5
Section 1(a).	11-13-1
Section 2	11-13-2
Section 2(a).	11-13-2(a)
Section 2(b).	11-13-2(b)
Section 2(c).	-1-13-2(c)
Section 2(d).	11-13-2(d)
Section 2(e).	11-13-2(e)
Section 2(g).	11-13-2(g)
Section 2(h).	11-13-2(h)
Section 2(i).	11-13-2(i)
Section 2(j).	11-13-2(j)
Section 2(k).	11-13-2(k)
Section 3	11-13-3
Section 3(c).	11-13-3(c) 11-13-1 et seq
Section 4	11-13-4
Section 5	11-13-5
Section 6	11-10-7
Section 7	11-10-8
Section 8	11-10-9 11-10-10
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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XIII
(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.

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).

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

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

Section 1a.01(f)

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

Section 1a.01(g)

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

Section 1a.01(g)

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

Section 1a.01(g)

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-

Section 1a.01(h)

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.

Section 1a.01(i)

- (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

Section 1a.01(j)

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-

Section 1a.01(k)

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

Section 1a.01(k)

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 form 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

Section 1a.01(k)

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.)

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

4a- 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.

FORM OF BUSINESS (CHECK ONE)	
INDIVIDUAL	☒
CORPORATION	☐
PARTNERSHIP	☐
ASSOCIATION	☐
TRUST	☐
JOINT VENTURE	☐

This return covers one of the following periods:

- a. The calendar year ending December 31, 1972 b. Or, The fiscal year ending 19 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 Exemption (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		50.00
5. Net Amount of Tax (Line 3 less Line 4)		881.09
6. Less Payment Hereof Made on Quarterly Estimated Returns as follows: 1st Quarter \$205 2nd Quarter \$195 3rd Quarter \$220 TOTAL \$620		620.00
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

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 5 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	WHOLESALE				.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	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

John Doe

Owner

Section 1a.01(e)

(1) 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 records 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.

Section 1a.01(m)

(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

Section 1a.01(m)

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.

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- (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.

(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 manufactures 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 situation, 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.

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(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

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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

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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

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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

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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.

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(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 virtue 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 Classifications

Rate of Tax

Production of coal

Three and five-tenths percent

Limestone or sandstone quarried
or mined

Two and two-tenths percent

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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

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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 tax-
ation of gross income received
by 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

Section 2.03(a)

§ 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-

Section 2.03(b)

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

Section 2.03(c)

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.

Section 2.03(d)

- (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

Section 2.03(d)

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

Section 2.03(d)

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

Section 2.03(d)

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

Section 2.04

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

Section 2.04(b)

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

Section 2.04(c)

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

Section 2.04(d)

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.

Section 2.04(e)

- (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

Section 2.04(f)

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-

Section 2.04(f)

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.

Section 2.04(f)

- (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.

Section 2.05(b)

- (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 within 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.

Section 2.06(b)

- (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.

Section 2a.01(b)

(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.

Section 2a.03(b)

- (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.

Section 2a.04

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

Section 2a.06(e)

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.

Section 2a.06(i)

(i) The severance and production of natural gas shall be valued for purposes of the business and occupation tax at the 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.

Section 2a.06(i)

- (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 characteristics 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

Section 2a.06(j)

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. Therefore, 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

Section 2a.07(d)

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

Section 2a.07(d)

(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

Section 2a.07(d)

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 and reflects gross income of \$592,000 under production ($\$400,000 + \$156,000 + \$36,000 = \$592,000$) and \$36,000 under the retail classification.

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.

FORM OF BUSINESS (Check One)	
INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT VENTURE	

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

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)	\$	20,918 -
2. Tax Credit for Involuntary Expenditure (Schedule C or Appraisal Credit Form must be attached)		
a. Available Annual Credit	\$	
b. Applied Credit (Enter line 2a or 50% of line 1, whichever is less)		
3. Adjusted Tax (Line 1 less line 2)		- 0 -
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		20,918 -
5. Net Amount of Tax (Line 3 less line 4)		50 -
6. Less Payment Transmittals Made on Quarterly Estimated Returns as follows: 1st Quarter 4,900. 2nd Quarter 5,300. 3rd Quarter 5,100 TOTAL		20,868 -
7. Balance of Tax Due (Line 5 less line 6)		15,300 -
8. Add: Penalty of 5% for first month or fraction thereof, and 1% for each succeeding month or fraction thereof of delinquency		5,568 -
9. Total Tax and Penalty Due (Add line 7 and line 8)		- 0 -
		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

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE NO.	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	TAX RATE	COLUMN 5 TAX	LINE NO.
1	A PRODUCTION COAL, Lignite, etc.	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 GAS, etc.				4.34		3
4	A NATURAL GAS IN EXCESS OF \$1,000.00 (ANNUAL EXEMPTION)				8.60		4
5	A LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.20		5
6	A TIMBER				2.20		6
7	A OTHER NATURAL RESOURCE PRODUCTS				2.84		7
8	B MANUFACTURED, COMPOUNDED OR PREPARED FOR SALE PRODUCTS				.84		8
9	C SELLING TANGIBLE PROPERTY, RETAILERS	36,000-	- 0 -	36,000-	.55	198-	9
10	C WHOLESALE				.27		10
11	D ELECTRIC LIGHT AND POWER COMPANIES (RESIDENTIAL & 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 RATES AND DEMAND CHARGES (FOR ALL OTHER PURPOSES)				4.29		13
14	D NATURAL GAS COMPANIES (FOR BUDGETS)				4.29		14
15	D ALL OTHER PUBLIC SERVICE OR UTILITY BUSINESS				2.84		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 CARRYING 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

CLASSIFICATION	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS

SIGNATURE REQUIRED

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.

Date:

(e) Example 3.

- (1) X, a manufacturer of chemicals, owns land within West Virginia 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.

Section 2a.07(e)

- (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 ($\$12.00 \times 700,000 = \$8,400,000$) as the value thereof under the coal production classification on the business and occupation tax return.

Section 2a.07(e)

- (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 made 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

Section 2a.07(g)

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.

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

(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

Section 2a.07(h)

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.

Section 2a.07(i)

- (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

Section 2a.07(i)

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.
- (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

PLEASE PRINT NAME AND ADDRESS IF NOT CORRECT.
1972

FORM OF BUSINESS CHECK ONE
INDIVIDUAL ☒
CORPORATION ☐
PARTNERSHIP ☐
ASSOCIATION ☐
TRUST ☐
JOINT VENTURE ☐

This return covers one of the following periods:
a. The calendar year ending December 31, 1972
b. Or, The fiscal year ending 19 to 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 Exemption (Schedule C or Approved Credit Form must be attached) a. Available Annual Credit b. Annual Credit (Enter line 2a or 50% of line 1, whichever is less)	- 0 -
3. Adjusted Tax (Line 1 less Line 2)	14,222 -
4. Tax Exemption of \$50 Annually; \$12.50 Per Quarter; \$4.16 Per Month or 14 Cents Per Day A. *Tax Exemption is Allowed Only for the Period Actually Engaged in Business	50 -
5. Total Amount of Tax (Line 3 less Line 4)	14,172 -
6. Payments Hereof 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 Due Tax Due (Line 5 less Line 6)	3,072 -
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 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

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	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 CEMENT-FAST 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 OTHER	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 RETAILERS				.55		9
10	C WHOLESALES				.27		10
11	D ELECTRIC LIGHT AND POWER COMPANIES (ALL OTHER SALES AND DEMAND CHARGES FOR ALL OTHER PURPOSES)				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 BUSINESSES				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	F SERVICE OF CALLING AND ALL OTHER BUSINESSES	20,000 -	- 0 -	20,000 -	1.15	230 -	19
20	D RENTALS, ROYALTIES, FEES OR OTHERWISE				1.15		20
21	K BANKING AND OTHER FINANCIAL BUSINESSES				1.15		21
GROSS TAX ENTER THIS AMOUNT ON LINE 1 OF PAGE 1 OF THIS RETURN						14,222 -	

SCHEDULE B
EXEMPTIONS

CLASSIFICATION	EXEMPTIONS	DESCRIPTIONS OF EXEMPTIONS

SIGNATURE PROVIDED

Penalties on Return: If the taxpayer has not provided this return including accompanying schedules and statements and to the best knowledge and belief of the taxpayer, the return is true and complete.

Taxpayer

Signature of Officer

Date

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

Section 2a.07(j)

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 ($15\% \times \$32,000 = \$4,800$). Therefore, A B's deductions, which total \$9,800, are applied against his gross receipts to arrive at his taxable value ($\$32,000 \text{ less } \$9,800 = \$22,200$) 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 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.

Section 2b.01(b)

(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-

Section 2b.01(f)

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-

Section 2b.02(c)

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

Section 2b.05(d)

dressings 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 into 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

Section 2b.05(b)

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

Section 2b.06(e)

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

Section 2b.07(b)

any outgoing freight charges paid to a common carrier to deliver these goods 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

Section 2b.07(b)

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 herein.

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 Exemption (Schedule C or Appraisal Credit form must be attached)	
a. Available Annual Credit	\$ - 0 -
b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)	
3. Adjusted Tax (Line 1 less Line 2)	1,563.30
4. Less Exemption of \$30 Annually, \$12.50 Per Quarter; 3d. 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. Total Payment Thereof Made on Quarterly Estimated Returns on follows: 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 THEREIN AND MUST BE SIGNED BY THE TAXPAYER.

DO NOT USE THIS SPACE.

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 5 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	WHOLESALES	4,000 -	- 0 -	4,000 -	.27	1,080	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 OF CALLING AND ALL OTHER BUSINESS	135,000 -	- 0 -	135,000 -	1.15	1,552.50	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							1,563.30	

SCHEDULE B
EXEMPTIONS

CLASSIFICATION	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.

WEST VIRGINIA BUSINESS AND OCCUPATION TAX RETURN

1972

READ INSTRUCTIONS CAREFULLY
ALL QUESTIONS MUST BE ANSWERED



98-7654321

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

721400

4a- 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. 26017

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 FULLY 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)	\$	- 0 -
a. Available Annual Credit		
b. Applied Credit (Enter Line 2a or 50% of Line 1, whichever is less)		
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 Heretofore 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.

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 \$3,000.00 (ANNUAL EXEMPTION)				8.63		4
5 A	LIMESTONE OR SANDSTONE QUARRIED OR MINED				2.30		5
6 A	TIMBER				2.30		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	SALE OF TANGIBLE PROPERTY, RETAILERS	20,000 -	- 0 -	20,000 -	.55	110 -	9
10 C	WHOLESALES				.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 WALL 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						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.

(Date)

(Signature of Officer)

Yes

(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

Section 2b.07(c)

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

- (3) During the taxable period, XY tipped, 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 activities 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

Section 2b.07(c)

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.

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

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.

FORM OF BUSINESS CHECK ONE	
INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT VENTURE	

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 huckle and prepare
coal for use 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 COMPUTE GROSS TAX
(SCHEDULE A) AND ITEMIZE EXEMPTIONS (SCHEDULE B) ON PAGE 2.

1. GROSS TAX (FROM SCHEDULE A)	\$ 10,977 -
2. Tax Credit for Industrial Expansion (Schedule C or Approval 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 of \$50 Annually; \$12.50 Per Quarter; \$4.16 Per Month or 1/4 Cent 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 Made on Quarterly Estimated Returns as follows: 1st Quarter 2,150 - 2nd Quarter 1,700 - 3rd Quarter 3,950 - 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 th 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.

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	CODE	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (BY SCHEDULE B)	COLUMN 4 TAXABLE INCOME	RATE	COLUMN 5 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, BAST, PUMPHACE SLUD				4.34		3
4	A	NATURAL GAS IN EXCESS OF \$2,000.00 (ANNUAL EXEMPTION)				4.43		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 -	.86	6,952 -	8
9	C	SELLING TANGIBLE PROPERTY, RETAILERS				.55		9
10	C	WHOLESALES				.37		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 HALL 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)

(Signature of Officer)

Date

(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

Section 2b.07(d)

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 ($20\% \times \$1,600,000 = \$320,000$).
- (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).

(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

Section 2b.07(f)

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.

Section 2b.07(f)

- (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

Section 2b.07(f)

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

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.

TAXPAYER'S STATUS	
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 Exemption (Schedule C or Approved Credit Form must be attached)	\$	
a. Available Annual Credit		46,670 -
b. Applied 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 1d Cent 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 Payment Installments 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

SCHEDULE A
COMPUTATION OF GROSS TAX

LINE	COLUMN 1 BUSINESS CLASSIFICATION	COLUMN 2 GROSS AMOUNT	COLUMN 3 EXEMPTIONS (SEE SCHEDULE B)	COLUMN 4 TAXABLE INCOME	TAX RATE	COLUMN 5 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, SLURRY, PUMICE, SLAG				4.34		3
4	A NATURAL GAS IN EXCESS OF \$4,000.00 (NATURAL GAS 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 WHOLESALE				.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						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)

Date

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

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

Account Identification
Number: 44-3117831

Address: Martinsburg, W. Va. 27746

By: Frank Fritz, Pres.
(Title)

Date: Jan. 11, 1973

"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. Miscellaneous: (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

Section 2c.03(c)

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-

Section 2c.05(c)

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 generating 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

Section 2d.02

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%).

Section 2e.03

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.

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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

Section 2g.04

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 situation 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

Section 2h.04(b)

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

Section 2h.04(c)

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 ($7\% \times \$800,000 = \$56,000$). The broker pays XY a commission of \$11,200 ($20\% \times \$56,000 = \$11,200$).

- (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.

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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.

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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 secured by first mortgages or deeds of trust on residential property occupied by nontransients.

Section 2k.04

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.

Section 3.02

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.

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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

Section 3.01(d)

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 classifications.

(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.

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.

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- (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.

Section 3c.03(b)

(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 ($66 \frac{2}{3}\%$) 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 ($33 \frac{1}{3}\%$) 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.

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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.

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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.

Section 5.03(c)

(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, under-reported 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

Section 6.02

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-

Section 7.05

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.

Section 8.06

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

Section 10.01(d)

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

Section 10.01(f)

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.

Section 10.01(i)

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 classification.
- (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-

Section 10.01(1)

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.

(1) 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

Section 11.01(b)

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:

Section 11.01(d)

- (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.

Section 11.01(e)

(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.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XIII
(1974)

Subject: Business and Occupation Tax

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