

Herbert Bröner
Berlin Promotion Law

Berlin Promotion Law

in its version of February 18, 1976

including a brief commentary by
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P R E F A C E

The American Chamber of Commerce in Germany welcomes the publication of the full text of the Berlin Promotion Law as a useful service to all those interested in investing in Berlin. This law, carefully annotated by Dr. Brönner, is of great importance to Berlin, because it makes both German and foreign investment in the city highly attractive.

The normalization of conditions in Berlin is expected to improve the business climate of the city considerably. It will intensify and normalize the integration of the West Berlin economy into that of the Federal Republic of Germany. Thus Dr. Brönner's annotated translation of the Berlin Promotion Law appears at a most timely moment when in particular American business interests considering investment in Germany will want to take a close look at the particular tax and other advantages Berlin has to offer.

Milan F. Ondrus
President
of the
American Chamber of Commerce in Germany

(September 1972)

INTRODUCTION

This publication is not an official translation of the Berlin Promotion Law. It is the outcome of the author's personal initiative. The purpose of this review is to make the law understandable to those not acquainted with the German language. Now as before, the German text is the sole authentic one. Consequently, it is advisable to make important decisions and to take significant steps based on the application of this law, only after having reconciled these procedures with the original German text and with the extensive administration of justice pertaining thereto. For understandable reasons, the author can assume no responsibility, regardless of its nature, for this translation.

Nevertheless, this limitation can not impair the value of this elaboration as a source of information. On the contrary, it expresses clearly that Berlin, even though organically connected with the largest industrial center on the continent, represents a sort of tax oasis. As such it is not even held suspect by the Revenue Authorities, but it is even benevolently supported on a legal basis. These advantages, coupled with further preferences, especially financial ones, should be brought to the notice of all those who have the intension of investing in Germany. This intention is accordant with the author's desire.

Experience has shown that every entrepreneur making speculations in this respect will have the following considerations in the foreground of the inquiry:

- a) Turnover tax preferences (§§ 1, 1a, 2)
- b) Special depreciation privileges (§ 14)
- c) Investment grants (§ 19)
- d) Tariff privileges

VIII

In the interpretation of this special law, an abundance of questions will of course arise which can mostly be clarified by open talks with the competent Revenue Authorities, if they have not already been cleared up elsewhere. Experience has shown that the Revenue Authorities are very open-minded in regard to serious investment projects in Berlin. At this point, a timely warning against improper interpretation of the legal regulations should be expressed. The Tax Adjustment Law provides the Revenue Authorities with the legal instruments necessary to ignore (as an exception) in such cases the design according to civil law and to tax on the basis of the true economic state of affairs.

Apart from this, the Berlin Promotion Law opens up exceedingly favourable tax conditions for serious entrepreneurial intentions in Berlin - and thereby in the Federal Republic of Germany, and at the same time in the area of the Common Market. This should be taken into consideration and should be made use of as far as possible.

Berlin, September 1972

Herbert Brönner

The Berlin Promotion Law has met with various adjustments; many open questions have been answered by jurisdiction.

This new translation and enlarged annotation will provide business interests considering starting or expanding investment in the city with the up-to-date information on the present state of advantages in both trading and investing in Berlin.

Berlin, March 1976

Herbert Brönner

Table of Contents

	page
Preface	V
Introduction	VII
S E C T I O N I	
Privileges with Regard to Turnover Tax, and Taxes on Income and Profit; Awarding of Investment Grants	1
Article I Turnover Tax Privileges	1
§ 1 Berlin Entrepreneur's Claim for Reduction	1
§ 1 a Reduction Claims with Regard to Intrafirm Turn- over	7
§ 2 Reduction Claims of West German Entrepreneurs	9
§ 3 Restrictions on the Enterprise Sphere	11
§ 4 Exceptions, Restrictions	11
§ 5 Berlin Entrepreneurs, West German Entrepreneurs	16
§ 6 Production in Berlin (West)	19
§ 6 a Creation of Additional Value in Berlin (West)	21
§ 7 Basis of Assessment	24
§ 8 Certificate of Origin	25
§ 9 Evidence of Shipping and Conveyance	26
§ 10 Book Evidence	27
§ 11 Reduction Procedures	30
§ 12 Lapse of Reduction Claims	30
§ 13 Special Reduction Claim for Entrepreneurs in Berlin (West)	31
Article II Income Tax Privileges	32
§ 13 a Special Regulations for the Application of § 6a and § 7 Subsection 2 of the Income Tax Law	32
§ 14 Increased Depreciation Provisions for Depreci- able Fixed Assets	33
§ 14 a Increased Depreciation Allowances on Residen- tial Premises and Condominium Apartments	38
§ 15 Special Regulations for the Application of § 7b of the Income Tax Law	41
§ 16 Tax Reductions for Loans Designed to Finance Investments	43
§ 17 Tax Reductions for Loans Designed to Finance Building Projects	45
§ 18 Application of §§ 16 and 17 by Workers and Employees	47

Article III Investment Grant	48
§ 19 Investment Grant	48
§ 20 (Deleted)	
S E C T I O N II	
Tax Reductions and Privileges for Workers and Employees	56
Article IV Income Tax (Wage Tax) and Corporation In- come Tax	56
§ 21 Reduction of the Assessed Income and Corpora- tion Income Tax	56
§ 22 Reduction of the Assessed Income Tax in the Case of Workers Moving in	60
§ 23 Earnings from Berlin (West)	60
§ 24 Treatment of Profit-Sharing Business Entities and Affiliated Companies	63
§ 25 Calculation of the Reduction of the Income and Corporation Income Tax Assessed	64
§ 26 Reduction of Wage Tax	66
§ 27 (Deleted)	
Article V Privileges for Workers and Employees in Berlin (West)	67
§ 28 Privileges by the Granting of Wage Supplements	67
§ 29 Supplementary Regulations	72
Article VI Authorization Regulations	73
§ 30 Authorization Regulations	73
S E C T I O N III	
Scope of the Law	74
§ 31 Scope of the Law	74
§ 32 Authorization	76
S E C T I O N IV	
Validity in Berlin	76
§ 33 The Berlin Clause	76
Appendix	
Original Text in German of the Berlin Promotion Law (Gesetz zur Förderung der Berliner Wirtschaft).	79
Index	99

S e c t i o n I

PRIVILEGES WITH REGARD TO TURNOVER TAX, AND TAXES ON INCOME AND PROFIT; AWARDING OF INVESTMENT GRANTS

Article I

T u r n o v e r T a x P r i v i l e g e s

§ 1 Berlin Entrepreneur's Claim for Reduction

(1) If a Berlin entrepreneur has delivered goods to a West German entrepreneur, he is entitled to reduce the turnover tax he owes by 4.5% of the consideration agreed upon for the said objects, provided they have been made in Berlin (West) and have entered the remaining part of the purview of this law from Berlin.

(2) If a Berlin entrepreneur has supplied labour plus material in the remaining part of the purview of this law to a West German entrepreneur and has used objects made in Berlin (West) as component parts in this work, he is entitled to reduce the turnover tax he owes by 4.5% of the consideration for these objects, provided they have been separately invoiced.

(3) If a Berlin entrepreneur has performed services for a West German entrepreneur in Berlin (West), he is entitled to reduce the turnover tax he owes by 4.5% of the consideration agreed upon for these services, provided that the objects processed or finished have entered the remaining part of the purview of this law from Berlin (West).

(4) If a Berlin entrepreneur has leased objects to a West German entrepreneur, he is entitled to reduce the turnover tax he owes by 4.5% of the consideration agreed upon for turning over the said objects, provided they have been made by the Berlin entrepreneur after December 31, 1961 in Berlin (West) and have been utilized in the remaining part of the purview of this law.

(5) If a Berlin entrepreneur has turned over films, sound negatives or mixed tracks of synchronized versions to a West German entrepreneur for utilization in the remaining part of the purview of this law, he is entitled to reduce the turnover tax he owes by 4.5% of the consideration agreed upon for turn-

ing over the items for utilization, provided he has made them in Berlin (West) after December 31, 1961. Utilization in accordance with sentence 1 is turning over the objects for use by cinemas and for broadcasting by radio stations.

(6) If a Berlin entrepreneur has carried out any of the following services for a West German entrepreneur, he is entitled to reduce the turnover tax he owes by 10% of the consideration agreed upon for these services:

1. technical and economic advice and planning for plants out of Berlin (West), including the preparing of construction-, calculation- and plant records, as well as the supervision of carrying out any of these, provided the entrepreneur has been engaged in this exclusively, or substantially, in Berlin (West);
2. the turning over of industrial procedures, experience, and data processing programmes, which have - exclusively, or for the essential part - been developed or obtained in Berlin (West);
3. data processing with machines installed in Berlin (West);
4. the turning over of self-made designs for fashion purposes, model sketches and fashion photographs in Berlin (West);
5. other services rendered by publicity agents or advertising agencies as well as similar public relations enterprises involved usually or solely in advertising or the publicity business, provided the entrepreneur has been engaged in this exclusively or substantially in Berlin (West);
6. the services connected directly with the activities of film and television studios in Berlin (West) for the manufacture of image and sound carriers, as far as they are intended for utilization in the remaining part of the purview of this law; this does not apply to film and television studios operated by legal entities (under Public Law), or in the form of corporations according to private law, whose shares belong exclusively to corporations under public law and whose proceeds flow to juridical persons only;
7. the turning over of pre-printing and reprinting rights, as well as performance-, broadcasting- and screen rights, even for reproduction in extracts of works published in Berlin (West) and produced in Berlin (West);