

**H. B. 2823**

(By Delegates Walters, Blair, Upson, Ireland, R. Phillips, H. White,  
J. Nelson, Hanshaw, E. Nelson, Boggs and Caputo)

[Introduced February 19, 2015; referred to the  
Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-13-2d of the Code of West Virginia, 1931, as amended, relating  
to eliminating the street and interurban and electric railways tax.

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

That §11-13-2d of the Code of West Virginia, 1931, as amended, be amended and reenacted  
to read as follows:

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

**§11-13-2d. Public service or utility business.**

(a) Upon any person engaging or continuing within this state in any public service or utility  
business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water  
carriers by steamboat or steamship and motor carriers, the tax imposed by section two of this article  
shall be equal to the gross income of the business derived from such activity or activities multiplied  
by the respective rates as follows:

~~(1) Street and interurban and electric railways, one and four-tenths percent;~~

~~(2)~~ (1) Water companies, four and four-tenths percent, except as to income received by

1 municipally owned water plants;

2       ~~(3)~~ (2) Electric light and power companies, four percent on sales and demand charges for  
3 domestic purposes and commercial lighting and four percent on sales and demand charges for all  
4 other purposes, and except as to income received by municipally owned plants producing or  
5 purchasing electricity and distributing same: *Provided*, That electric light and power companies  
6 which engage in the supplying of public service but which do not generate or produce in this state  
7 the electric power they supply shall be taxed on the gross income derived from sales of power which  
8 they do not generate in this state at the rate of three percent on sales and demand charges for  
9 domestic purposes and commercial lighting and three percent on sales and demand charges for all  
10 other purposes, except as to income received by municipally owned plants: *Provided, however*, That  
11 the sale of electric power under this section shall be taxed at the rate of two percent on that portion  
12 of the gross proceeds derived from the sale of electric power to a plant location of a customer  
13 engaged in a manufacturing activity, if the contract demand at such plant location exceeds two  
14 hundred thousand kilowatts per hour per year, or if the usage of such plant location exceeds two  
15 hundred thousand kilowatts per hour in a year: *Provided further*, That the sale of electric power  
16 under this section shall be exempt from the tax imposed by this section and section two of this article  
17 if it is separately metered and consumed in an electrolytic process for the manufacture of chlorine  
18 in this state, or is separately metered and consumed in the manufacture of ferroalloy in this state, and  
19 the rate reduction herein provided to the taxpayer shall be passed on to the manufacturer of the  
20 chlorine or ferroalloy. As used in this section, the term "ferroalloy" means any of various alloys of  
21 iron and one or more other elements used as a raw material in the production of steel: *And provided*  
22 *further*, That the term does not include the final production of steel;

1           ~~(4)~~(3) Natural gas companies, four and twenty-nine hundredths percent on the gross income:  
2   *Provided*, That the sale of natural gas under this section shall be exempt from the tax imposed by  
3 this section and section two of this article to the extent that the natural gas is separately metered and  
4 is gas from which the purchaser derives hydrogen and carbon monoxide for use in the manufacture  
5 of chemicals in this state, and the full economic benefit of the exception herein provided to the  
6 taxpayer shall be passed on to such purchaser of the natural gas: *Provided, however*, That there shall  
7 be no exemption for the sale of any natural gas from which the purchaser derives carbon monoxide  
8 or hydrogen for the purpose of resale;

9           ~~(5)~~(4) Toll bridge companies, four and twenty-nine hundredths percent; and

10          ~~(6)~~(5) Upon all other public service or utility business, two and eighty-six hundredths  
11 percent.

12          (b) The measure of this tax shall not include gross income derived from commerce between  
13 this state and other states of the United States or between this state and foreign countries. The  
14 measure of the tax under this section shall include only gross income received from the supplying  
15 of public service. The gross income of the taxpayer from any other activity shall be included in the  
16 measure of the tax imposed upon such other activity by the appropriate section or sections of this  
17 article.

18          (c) Beginning March 1, 1989, electric light and power companies shall determine their  
19 liability for payment of tax under this section and sections two-m and two-n of this article. If for  
20 taxable months beginning on or after March 1, 1989, liability for tax under section two-n of this  
21 article is equal to or greater than the sum of the power company's liability for payment of tax under  
22 subdivision (3), subsection (a) of this section and section two-m of this article, then the company

1 shall pay the tax due under section two-n of this article and not the tax due under subdivision (3),  
2 subsection (a) of this section and section two-m of this article. If tax liability under section two-n  
3 is less, then tax shall be paid under subdivision (3), subsection (a) of this section and section two-m  
4 of this article and the tax due under section two-n shall not be paid. The provisions of subdivision  
5 (3), subsection (a) of this section shall expire and become null and void for taxable years beginning  
6 on or after January 1, 1998.

7 (d) Notwithstanding the provisions of subsection (c) of this section, beginning June 1, 1995,  
8 electric light and power companies that actually paid tax based on the provisions of subdivision (3),  
9 subsection (a) of this section or section two-m of this article for every taxable month in 1994 shall  
10 determine their liability for payment of tax under this article in accordance with subdivision (1) of  
11 this subsection. All other electric light and power companies shall determine their liability for  
12 payment of tax under this article exclusively under section two-o of this article.

13 (1) If for taxable months beginning on or after June 1, 1995, liability for tax under section  
14 two-o of this article is equal to or greater than the sum of the power company's liability for payment  
15 of tax under subdivision (3), subsection (a) of this section and section two-m of this article, then the  
16 company shall pay the tax due under section two-o of this article and not the tax due under  
17 subdivision (3) subsection (a) of this section and section two-m of this article. If tax liability under  
18 section two-o is less, then the tax shall be paid under subdivision (3), subsection (a) of this section  
19 and section two-m of this article and the tax due under section two-o shall not be paid.

20 (2) The provisions of subdivision (3), subsection (a) of this section shall expire and become  
21 null and void for taxable years beginning on or after January 1, 1998.

NOTE: The purpose of this bill is to eliminate the street and interurban and electric railways one and four-tenths percent tax.

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