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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Committee Substitute for
SENATE BILL NO. 357

(By Senators Boley & Burdette, Mr. President)



PASSED March 10, 1994

In Effect from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 357

(SENATORS BOLEY AND BURDETTE, MR. PRESIDENT,
original sponsors)

[Passed March 10, 1994; in effect from passage.]

AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two-d, two-m and two-n, article thirteen of said chapter, all relating to taxation of municipally-owned property; and making it clear that the property tax exemption for property owned by political subdivisions of other states applies only if such property is used for West Virginia public purposes and that business and occupation taxes for municipally-owned power generating facilities is applied to municipalities established under the laws of this state.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two-d, two-m and two-n, article thirteen of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 All property, real and personal, described in this
2 section, and to the extent herein limited, shall be
3 exempt from taxation, that is to say: Property belong-
4 ing to the United States, other than property permit-
5 ted by the United States to be taxed under state law;
6 property belonging exclusively to the state; property
7 belonging exclusively to any county, district, city,
8 village or town in this state, and used wholly for
9 public purposes: *Provided*, That property belonging to
10 such subdivision prior to the effective date of amend-
11 ment of this section enacted by the Legislature during
12 its regular session in the year one thousand nine
13 hundred ninety-four shall be exempt from taxation if
14 such property is used in whole or in part for public
15 purposes as otherwise provided in this code; property
16 located in this state, belonging to any city, town,
17 village, county or any other political subdivision of
18 another state, and used wholly for public purposes of
19 this state or any subdivision thereof; property used
20 exclusively for divine worship; parsonages and the
21 household goods and furniture pertaining thereto;
22 mortgages, bonds and other evidence of indebtedness
23 in the hands of bona fide owners and holders hereafter
24 issued and sold by churches and religious societies for
25 the purposes of securing money to be used in the
26 erection of church buildings used exclusively for
27 divine worship or for the purpose of paying indebted-
28 ness thereon; cemeteries; property belonging to, or
29 held in trust for, colleges, seminaries, academies and
30 free schools, if used for educational, literary or
31 scientific purposes, including books, apparatus, annui-
32 ties and furniture; property belonging to, or held in
33 trust for, colleges or universities located in West
34 Virginia, or any public or private nonprofit foundation
35 or corporation which receives contributions exclusive-
36 ly for such college or university, if the property or
37 dividends, interest, rents or royalties derived there-
38 from are used or devoted to educational purposes of
39 such college or university; public and family libraries;

40 property used for charitable purposes and not held or
41 leased out for profit; property used for the public
42 purposes of distributing water or natural gas or
43 providing sewer service by a duly chartered nonprofit
44 corporation when such property is not held, leased out
45 or used for profit; property used for area economic
46 development purposes by nonprofit corporations when
47 such property is not leased out for profit; all real estate
48 not exceeding one-half acre in extent, and the build-
49 ings thereon, and used exclusively by any college or
50 university society as a literary hall, or as a dormitory
51 or clubroom, if not leased or otherwise used with a
52 view to profit; all property belonging to benevolent
53 associations, not conducted for private profit; property
54 belonging to any public institution for the education of
55 the deaf, dumb or blind or any hospital not held or
56 leased out for profit; house of refuge, lunatic or orphan
57 asylum; homes for children or for the aged, friendless
58 or infirm, not conducted for private profit; fire engines
59 and implements for extinguishing fires, and property
60 used exclusively for the safekeeping thereof, and for
61 the meeting of fire companies; all property on hand to
62 be used in the subsistence of livestock on hand at the
63 commencement of the assessment year; household
64 goods to the value of two hundred dollars, whether or
65 not held or used for profit; bank deposits and money;
66 household goods (which term is deemed for purposes
67 of this section to mean only personal property and
68 household goods commonly found within the house
69 and items used to care for the house and its surround-
70 ing property) when not held or used for profit and
71 personal effects (which term is deemed for purposes of
72 this section to mean only articles and items of personal
73 property commonly worn on or about the human body
74 or carried by a person and normally thought to be
75 associated with the person) when not held or used for
76 profit; dead victuals laid away for family use and any
77 other property or security exempted by any other
78 provision of law; but no property shall be exempt from
79 taxation which shall have been purchased or procured
80 for the purpose of evading taxation, whether tempo-
81 rarily holding the same over the first day of the

82 assessment year or otherwise: *Provided*, That real
83 property which is exempt from taxation by this section
84 shall be entered upon the assessor's books, together
85 with the true and actual value thereof, but no taxes
86 shall be levied upon the same or extended upon the
87 assessor's books.

88 Notwithstanding any other provisions of this section,
89 however, no language herein shall be construed to
90 exempt from taxation any property owned by, or held
91 in trust for, educational, literary, scientific, religious or
92 other charitable corporations or organizations, includ-
93 ing any public or private nonprofit foundation or
94 corporation existing for the support of any college or
95 university located in West Virginia, unless such
96 property, or the dividends, interest, rents or royalties
97 derived therefrom, is used primarily and immediately
98 for the purposes of such corporations or organizations.

99 The tax commissioner shall, by issuance of regula-
100 tions, provide each assessor with guidelines to ensure
101 uniform assessment practices statewide to effect the
102 intent of this section.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

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

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

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

12 (2) Water companies, four and four-tenths percent,
13 except as to income received by municipally-owned
14 water plants;

15 (3) Electric light and power companies, four percent

16 on sales and demand charges for domestic purposes
17 and commercial lighting and four percent on sales and
18 demand charges for all other purposes, and except as
19 to income received by municipally-owned plants
20 producing or purchasing electricity and distributing
21 same: *Provided*, That electric light and power compa-
22 nies which engage in the supplying of public service
23 but which do not generate or produce in this state the
24 electric power they supply shall be taxed on the gross
25 income derived from sales of power which they do not
26 generate in this state at the rate of three percent on
27 sales and demand charges for domestic purposes and
28 commercial lighting and three percent on sales and
29 demand charges for all other purposes, except as to
30 income received by plants owned by a municipality, as
31 defined in section two, article one, chapter eight of this
32 code: *Provided, however*, That the sale of electric
33 power under this section shall be taxed at the rate of
34 two percent on that portion of the gross proceeds
35 derived from the sale of electric power to a plant
36 location of a customer engaged in a manufacturing
37 activity, if the contract demand at such plant location
38 exceeds two hundred thousand kilowatts per hour per
39 year, or if the usage of such plant location exceeds two
40 hundred thousand kilowatts per hour in a year:
41 *Provided further*, That the sale of electric power
42 under this section shall be exempt from the tax
43 imposed by this section and section two of this article
44 if it is separately metered and consumed in an electro-
45 lytic process for the manufacture of chlorine in this
46 state, or is separately metered and consumed in the
47 manufacture of ferroalloy in this state, and the rate
48 reduction herein provided to the taxpayer shall be
49 passed on to the manufacturer of the chlorine or
50 ferroalloy. As used in this section, the term "ferroal-
51 loy" means any of various alloys of iron and one or
52 more other elements used as a raw material in the
53 production of steel: *And provided further*, That the
54 term does not include the final production of steel;

55 (4) Natural gas companies, four and twenty-nine
56 hundredths percent on the gross income: *Provided*,
57 That the sale of natural gas under this section shall be

58 exempt from the tax imposed by this section and
59 section two of this article to the extent that the natural
60 gas is separately metered and is gas from which the
61 purchaser derives hydrogen and carbon monoxide for
62 use in the manufacture of chemicals in this state, and
63 the full economic benefit of the exception herein
64 provided to the taxpayer shall be passed on to such
65 purchaser of the natural gas: *Provided, however,* That
66 there shall be no exemption for the sale of any natural
67 gas from which the purchaser derives carbon monox-
68 ide or hydrogen for the purpose of resale;

69 (5) Toll bridge companies, four and twenty-nine
70 hundredths percent; and

71 (6) Upon all other public service or utility business,
72 two and eighty-six hundredths percent.

73 (b) The measure of this tax shall not include gross
74 income derived from commerce between this state and
75 other states of the United States or between this state
76 and foreign countries. The measure of the tax under
77 this section shall include only gross income received
78 from the supplying of public service. The gross income
79 of the taxpayer from any other activity shall be
80 included in the measure of the tax imposed upon such
81 other activity by the appropriate section or sections of
82 this article.

83 (c) Beginning the first day of March, one thousand
84 nine hundred eighty-nine, electric light and power
85 companies shall determine their liability for payment
86 of tax under this section and sections two-m and two-
87 n of this article. If for taxable months beginning on or
88 after the first day of March, one thousand nine
89 hundred eighty-nine, liability for tax under section
90 two-n of this article is equal to or greater than the
91 sum of the power company's liability for payment of
92 tax under subdivision (3), subsection (a) of this section
93 and section two-m of this article, then the company
94 shall pay the tax due under section two-n of this
95 article and not the tax due under subdivision (3),
96 subsection (a) of this section and section two-m of this
97 article. If tax liability under section two-n is less, then

98 tax shall be paid under subdivision (3), subsection (a)
99 of this section and section two-m of this article and the
100 tax due under section two-n shall not be paid. The
101 provisions of subdivision (3), subsection (a) of this
102 section shall expire and become null and void for
103 taxable years beginning on or after the first day of
104 January, one thousand nine hundred ninety-eight.

**§11-13-2m. Business of generating or producing electric
power; exception; rates.**

1 (a) Upon every person engaging or continuing
2 within this state in the business of generating or
3 producing electric power for sale, profit or commercial
4 use, either directly or through the activity of others, in
5 whole or in part, when the sale thereof is not subject
6 to tax under section two-d of this article, the amount
7 of the tax to be equal to the value of the electric
8 power, as shown by the gross proceeds derived from
9 the sale thereof by the generator or producer of the
10 same multiplied by a rate of four percent, except that
11 the rate shall be two percent on that portion of the
12 gross proceeds derived from the sale of electric power
13 to a plant location of a customer engaged in a manu-
14 facturing activity, if the contract demand at such plant
15 location exceeds two hundred thousand kilowatts per
16 hour per year, or if the usage at such plant location
17 exceeds two hundred thousand kilowatts per hour in a
18 year.

19 (b) The measure of this tax shall be the value of all
20 electric power generated or produced in this state for
21 sale, profit or commercial use, regardless of the place
22 of sale or the fact that transmission may be to points
23 outside this state: *Provided*, That the gross income
24 received by a municipality, as defined in section two,
25 article one, chapter eight of this code, from plants
26 owned by the municipality and generating or produc-
27 ing electricity shall not be subject to tax under this
28 article.

29 (c) Beginning the first day of March, one thousand
30 nine hundred eighty-nine, every person taxable under
31 this section shall determine their liability for payment

32 of tax under this section and under subdivision (3),
33 subsection (a), section two-d of this article and section
34 two-n of this article. If for taxable months beginning
35 on or after the first day of March, one thousand nine
36 hundred eighty-nine, such person's liability for pay-
37 ment of tax under this section and subdivision (3),
38 subsection (a), section two-d of this article is less than
39 the amount of such person's liability for payment of
40 tax under section two-n of this article, then such
41 person shall pay the tax due under section two-n and
42 not the sum of the amount of tax due under this
43 section and under subdivision (3), subsection (a),
44 section two-d of this article. If the tax due under
45 section two-n of this article is less, then the amount of
46 tax due under this section and subdivision (3), subsec-
47 tion (a), section two-d of this article shall be paid. The
48 provisions of this section shall expire and become null
49 and void for taxable years beginning on or after the
50 first day of January, one thousand nine hundred
51 ninety-eight.

**§11-13-2n. Business of generating or producing or selling
electric power; exemptions; rates.**

1 (a) *Rate of tax.* — Upon every person engaging or
2 continuing within this state in the business of gener-
3 ating or producing electricity for sale, profit or
4 commercial use, either directly or indirectly through
5 the activity of others, in whole or in part, or in the
6 business of selling electricity to consumers, or in both
7 businesses, the tax imposed by section two of this
8 article shall be equal to:

9 (1) Twenty-six hundredths of one cent times the
10 kilowatt hours of net generation available for sale that
11 was generated or produced in this state by the taxpay-
12 er during the taxable year, except that this rate shall
13 be five hundredths of one cent times the kilowatt
14 hours of net generation available for sale that was
15 generated or produced in this state by the taxpayer
16 and sold to a plant location of a customer engaged in
17 manufacturing activity if the contract demand at such
18 plant location exceeds two hundred thousand kilowatts
19 per hour per year or if the usage at such plant location

20 exceeds two hundred thousand kilowatts per hour in a
21 year: *Provided*, That in order to encourage the devel-
22 opment of industry to improve the environment of
23 this state, the tax imposed by this section on any
24 person generating or producing electric power and an
25 alternative form of energy at a facility located within
26 this state substantially from gob or other mine refuse
27 shall be equal to five hundredths of one cent times the
28 kilowatt hours of net generation or production avail-
29 able for sale. The measure of tax under this subdivi-
30 sion shall be equal to the total kilowatt hours of net
31 generation available for sale that was generated or
32 produced in this state by the taxpayer during the
33 taxable year, regardless of the place of sale or use, or
34 the fact that transmission may be made to points
35 outside this state.

36 (2) Nineteen hundredths of one cent times the
37 kilowatt hours of electricity sold to consumers in this
38 state that were not generated or produced in this state
39 by the taxpayer, except that the rate shall be five
40 hundredths of one cent times the kilowatt hours of
41 electricity not generated or produced in this state by
42 the taxpayer which is sold to a plant location in this
43 state of a customer engaged in manufacturing activity
44 if the contract demand at such plant location exceeds
45 two hundred thousand kilowatts per hour per year or
46 if the usage at such plant location exceeds two hun-
47 dred thousand kilowatts per hour in a year. The
48 measure of tax under this subdivision shall be equal to
49 the total kilowatt hours of electricity sold to consumers
50 in this state during the taxable year, that were not
51 generated or produced in this state by the taxpayer, to
52 be determined by subtracting from the total kilowatt
53 hours of electricity sold to consumers in the state the
54 net kilowatt hours of electricity generated or produced
55 in the state by the taxpayer during the taxable year.

56 The West Virginia public service commission shall,
57 upon application of a public utility, allow an immedi-
58 ate pass-through to the utility's customers in this state
59 in the form of a rate surcharge the increase enacted
60 by the Legislature during its third extraordinary

61 session, one thousand nine hundred ninety, in the tax
62 imposed by this article upon electricity generated or
63 produced in this state and sold to consumers in this
64 state and upon electricity not generated or produced in
65 this state that is sold to consumers in this state.

66 (b) *Exemptions.* — The provisions of this section
67 shall not apply to:

68 (1) Kilowatt hours of electricity generated and sold,
69 or purchased and resold, by a plant owned by a
70 municipality, as defined in section two, article one,
71 chapter eight of this code.

72 (2) Kilowatt hours of electric power that are separ-
73 ately metered and consumed in an electrolytic process
74 for the manufacture of chlorine.

75 (3) Kilowatt hours of electric power that are separ-
76 ately metered and consumed in the manufacture of
77 ferroalloy. As used in this subdivision, the term
78 “ferroalloy” means any of the various alloys of iron
79 and one or more other elements used as a raw
80 material in the production of steel but shall not
81 include electric power used in the production of steel.

82 (4) The full economic benefits provided to the
83 taxpayer by subdivisions (2) and (3) of this subsection
84 shall be passed on to the manufacturer of the chlorine
85 or ferroalloy.

86 (c) *Credit.* — Any person taxable under subdivision
87 (2), subsection (a) of this section shall be allowed a
88 credit against the amount of tax due under that
89 subdivision for any electric power generation taxes
90 paid by the taxpayer with respect to such electric
91 power to the state in which such power was generated
92 or produced. The amount of credit allowed shall not
93 exceed the tax liability arising under subdivision (2),
94 subsection (a) of this section with respect to the sale of
95 such power.

96 (d) *Transition rule.* — Beginning the first day of
97 March, one thousand nine hundred eighty-nine, elec-
98 tric light and power companies shall determine their
99 liability for payment of tax under this section and

100 sections two-d and two-m of this article. If for taxable
101 months beginning on or after the first day of March,
102 one thousand nine hundred eighty-nine, liability for
103 tax under section two-n of this article is equal to or
104 greater than the sum of the power company's liability
105 for payment of tax under subdivision (3), subsection
106 (a), section two-d and section two-m of this article,
107 then the company shall pay the tax due under section
108 two-n of this article and not the tax due under
109 subdivision (3), subsection (a) of section two-d and
110 section two-m of this article. If tax liability under
111 section two-n is less, then tax shall be paid under
112 subdivision (3), subsection (a), section two-d and
113 section two-m of this article and the tax due under
114 section two-n shall not be paid. The provisions of this
115 subsection shall expire and become null and void for
116 taxable years beginning on or after the first day of
117 January, one thousand nine hundred ninety-eight.

118 (e) *Effective date.* — The amendments to this section
119 made in the year one thousand nine hundred ninety
120 shall take effect on the first day of October, one
121 thousand nine hundred ninety: *Provided*, That as to
122 calendar months ending before such date, the tax rates
123 specified in this section, as then in effect, shall be fully
124 and completely preserved.

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

[Handwritten signature]
.....
Chairman Senate Committee

[Handwritten signature]
.....
Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect from passage.

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.....
Clerk of the Senate

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.....
Clerk of the House of Delegates

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.....
President of the Senate

[Handwritten signature]
.....
Speaker House of Delegates

The within is disapproved this the 30th day of March, 1994.

[Handwritten signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/94

Time 1:07 PM