

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2823

FISCAL  
NOTE

2015 Carryover

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[Introduced January 13, 2016; referred to the  
Committee on Finance.]

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

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

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

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

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

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

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

7 ~~(2)~~ (1) Water companies, four and four-tenths percent, except as to income received by  
8 municipally owned water plants;

9 ~~(3)~~ (2) Electric light and power companies, four percent on sales and demand charges  
10 for domestic purposes and commercial lighting and four percent on sales and demand charges  
11 for all other purposes, and except as to income received by municipally owned plants producing  
12 or purchasing electricity and distributing same: *Provided*, That electric light and power  
13 companies which engage in the supplying of public service but which do not generate or produce  
14 in this state the electric power they supply shall be taxed on the gross income derived from sales  
15 of power which they do not generate in this state at the rate of three percent on sales and demand  
16 charges for domestic purposes and commercial lighting and three percent on sales and demand  
17 charges for all other purposes, except as to income received by municipally owned plants:

18 *Provided, however,* That the sale of electric power under this section shall be taxed at the rate of  
19 two percent on that portion of the gross proceeds derived from the sale of electric power to a plant  
20 location of a customer engaged in a manufacturing activity, if the contract demand at such plant  
21 location exceeds two hundred thousand kilowatts per hour per year, or if the usage of such plant  
22 location exceeds two hundred thousand kilowatts per hour in a year: *Provided further,* That the  
23 sale of electric power under this section shall be exempt from the tax imposed by this section and  
24 section two of this article if it is separately metered and consumed in an electrolytic process for  
25 the manufacture of chlorine in this state, or is separately metered and consumed in the  
26 manufacture of ferroalloy in this state, and the rate reduction herein provided to the taxpayer shall  
27 be passed on to the manufacturer of the chlorine or ferroalloy. As used in this section, the term  
28 "ferroalloy" means any of various alloys of iron and one or more other elements used as a raw  
29 material in the production of steel: *And provided further,* That the term does not include the final  
30 production of steel;

31 ~~(4)~~ (3) Natural gas companies, four and twenty-nine hundredths percent on the gross  
32 income: *Provided,* That the sale of natural gas under this section shall be exempt from the tax  
33 imposed by this section and section two of this article to the extent that the natural gas is  
34 separately metered and is gas from which the purchaser derives hydrogen and carbon monoxide  
35 for use in the manufacture of chemicals in this state, and the full economic benefit of the exception  
36 herein provided to the taxpayer shall be passed on to such purchaser of the natural gas:  
37 *Provided, however,* That there shall be no exemption for the sale of any natural gas from which  
38 the purchaser derives carbon monoxide or hydrogen for the purpose of resale;

39 ~~(5)~~ (4) Toll bridge companies, four and twenty-nine hundredths percent; and

40 ~~(6)~~ (5) Upon all other public service or utility business, two and eighty-six hundredths  
41 percent.

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

48 (c) Beginning March 1, 1989, electric light and power companies shall determine their  
49 liability for payment of tax under this section and sections two-m and two-n of this article. If for  
50 taxable months beginning on or after March 1, 1989, liability for tax under section two-n of this  
51 article is equal to or greater than the sum of the power company's liability for payment of tax under  
52 subdivision (3), subsection (a) of this section and section two-m of this article, then the company  
53 shall pay the tax due under section two-n of this article and not the tax due under subdivision (3),  
54 subsection (a) of this section and section two-m of this article. If tax liability under section two-n  
55 is less, then tax shall be paid under subdivision (3), subsection (a) of this section and section  
56 two-m of this article and the tax due under section two-n shall not be paid. The provisions of  
57 subdivision (3), subsection (a) of this section shall expire and become null and void for taxable  
58 years beginning on or after January 1, 1998.

59 (d) Notwithstanding the provisions of subsection (c) of this section, beginning June 1,  
60 1995, electric light and power companies that actually paid tax based on the provisions of  
61 subdivision (3), subsection (a) of this section or section two-m of this article for every taxable  
62 month in 1994 shall determine their liability for payment of tax under this article in accordance  
63 with subdivision (1) of this subsection. All other electric light and power companies shall  
64 determine their liability for payment of tax under this article exclusively under section two-o of this  
65 article.

66           (1) If for taxable months beginning on or after June 1, 1995, liability for tax under section  
67 two-o of this article is equal to or greater than the sum of the power company's liability for payment  
68 of tax under subdivision (3), subsection (a) of this section and section two-m of this article, then  
69 the company shall pay the tax due under section two-o of this article and not the tax due under  
70 subdivision (3) subsection (a) of this section and section two-m of this article. If tax liability under  
71 section two-o is less, then the tax shall be paid under subdivision (3), subsection (a) of this section  
72 and section two-m of this article and the tax due under section two-o shall not be paid.

73           (2) The provisions of subdivision (3), subsection (a) of this section shall expire and become  
74 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.