

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 793**

SENATORS SMITH, SYPOLT, AND CLINE, *original*

*sponsors*

[Originating in the Committee on Finance; reported on

February 20, 2020]



1 A BILL to amend and reenact §11-13-2q of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new section, designated §11-13-2r, all relating to  
3 business and occupation taxes imposed on operators of certain coal-fired electric  
4 generating units located in this state; clarifying application of certain sections of code;  
5 providing for recomputation of taxable generating capacity of certain coal-fired electric  
6 generating units for business and occupation tax purposes under certain circumstances;  
7 defining certain terms, imposing recapture tax under certain circumstances; and specifying  
8 effective dates.

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

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

**§11-13-2q. Exemption from tax for certain merchant power plants.**

1 (a) *Exemption.* — Notwithstanding the provisions of §11-13-2o of this code, for taxable  
2 years, or portions thereof, beginning on or after January 1, 2020, a coal-fired merchant power  
3 plant is exempt from the business and occupation tax imposed by §11-13-2o of this code on the  
4 generating capacity of its generating units located in this state that are owned or leased by the  
5 taxpayer and used to generate electricity. When the January 1, 2020, date falls during a taxpayer's  
6 taxable year, the tax liability for that year shall be prorated based upon the number of months  
7 before and the number of months beginning on and after January 1, 2020, in that taxable year.

8 (b) *Definition.* — As used in this section, the term "coal-fired merchant power plant" means  
9 an a coal-fired electricity generating unit or plant in this state with relation to which the owners,  
10 operators, interest holders, or any combination thereof do not receive regulated cost recovery  
11 pursuant to any tariff, regulated rate, or cost recovery fee mandated or authorized by the West  
12 Virginia Public Service Commission, or by any rate-making authority of any other state of the  
13 United States, and that: (1) Is not subject to regulation of its rates by the West Virginia Public  
14 Service Commission or any rate-making authority of any other state of the United States; (2) sells  
15 electricity it generates only on the wholesale market; (3) does not sell electricity pursuant to one  
16 or more long-term sales contracts; and (4) does not sell electricity to retail consumers.

17           (c) Effective date. — The amendments to this section enacted in the year 2020 shall be  
18   retroactive to January 1, 2020.

**§11-13-2r. Recomputation of taxable generating capacity of certain coal-fired electric  
generating facilities; imposition of recapture tax.**

1           (a) General. — Notwithstanding any provision of this article to the contrary, for the taxable  
2   year beginning January 1, 2021, the tax on the privilege of generating electricity from coal-fired  
3   generating units in operation before January 1, 1995, shall be computed as provided in §11-13-  
4   2o of this code and the tax attributable to the months of January through June of 2021 shall be  
5   remitted before July 31, 2021, as provided in §11-13-4 of this code. Beginning July 1, 2021, the  
6   owner or operator of a coal-fired generating unit in operation before January 1, 1995, may elect  
7   to recompute the taxable generating capacity of those coal-fired generating units determined  
8   under §11-13-2o of this code so that the tax attributable to the second half of 2021 is computed  
9   and paid on 45 percent of the official capability of those generating units, as defined in §11-13-2o  
10   of this code: *Provided*, That this election is an irrevocable election and the owner or operator of  
11   the coal-fired generating units for which this election is made shall agree to keep them in operation  
12   until at least July 1, 2025. The tax attributable to the months of July through December of 2021,  
13   as recomputed under this section, shall be remitted before January 31, 2022, as provided in §11-  
14   13-4 of this code. When this election is made, then for taxable years beginning on and after  
15   January 1, 2022, the taxable generating capacity of coal-fired generating units in operation before  
16   January 1, 1995, shall be 45 percent of the official capability of the generating unit as defined in  
17   §11-13-2o of this code.

18           (b) Recapture tax. — Beginning on and after July 1, 2021, but before July 1, 2025, should  
19   the coal-fired generating units impacted by this tax cease to operate, the owner or operator of  
20   said plants shall remit back to the West Virginia State Tax Department all of the business and  
21   occupation tax savings incurred during the time period between July 1, 2021, and the date the  
22   coal-fired generating units ceased operation. A recapture tax is imposed by this subsection, which  
23   tax is an amount equal to the business and occupation tax savings the owner or operator of the

24 plant realized, or would have realized, due to enactment of this section, on or after July 1, 2021,  
25 but before July 1, 2025. The recapture tax shall be due and payable on the date the annual  
26 business and occupation tax return is due under this article for the taxable period for which the  
27 recapture tax applies. In the event federal law or regulation requires the closing of coal-fired  
28 generating units before July 1, 2025, the recapture tax shall not apply to taxable periods beginning  
29 subsequent to the closure date.

30 (c) *Transfer of generating unit.* — If at any time after the effective date of this section but  
31 before July 1, 2025, a coal-fired generating unit whose taxable generating capacity was  
32 recomputed under this section is transferred to another entity, the amount of the business and  
33 occupation tax benefit the transferor received, or would have received, under this section had the  
34 owner continued to own and operated the generating unit shall be recaptured under subsection  
35 (b) of this section.

36 (d) *Definitions.* — Terms “taxable generating capacity” and “official capability” used in this  
37 section are defined as provided in §11-13-2o of this code except to the extent those definitions  
38 are modified by language in this section for taxable periods beginning on and after July 1, 2021.

NOTE: The purpose of this bill is to: (1) Amend §11-13-2q of the business and occupation tax to clarify the definition for coal-fired merchant power plants; and (2) provide an election for recomputation of the taxable generating capacity of a coal-fired electric power generating units placed in service prior to January 1, 1995. Under current law the taxable generating capacity of those units is currently based on the unit’s net generation during calendar years 1991 through 1994. This bill would allow the owners or operators of those generating units to make an irrevocable election to reduce the taxable generating capacity of those units to 45 percent of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021, provided the owner agrees to keep the generating units in operation until at least January 1, 2025. A recapture tax would be imposed in the event the generating unit ceases to be operational during the required time period. The recapture tax would also be imposed when ownership of the generating unit is transferred on or after July 1, 2021, but before January 1, 2025. In the event federal law or regulation requires closure of the generating unit, the recapture tax would not applicable to periods after the closure date.

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