

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Engrossed

Senate Bill 935

BY SENATORS TAYLOR, SMITH (MR. PRESIDENT), ROSE,

PHILLIPS, ROBERTS, RUCKER, CHAPMAN, AND WILLIS

[Introduced February 12, 2026; referred
to the Committee on Finance]

1 A BILL to repeal §11-13-2q of the Code of West Virginia, 1931, as amended, relating to eliminating
2 the business and occupation tax exemption for certain coal-fired merchant power plants
3 on the generating capacity of the generating units located in this state that are owned or
4 leased by the taxpayer and used to generate electricity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

**§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) Notwithstanding the provisions of subsection (a) of this section, for any coal-fired
19 generating unit that is regulated entirely by another state, beginning July 1, 2026, the tax on the
20 privilege of generating electricity from coal-fired generating units in operation before January 1,
21 1995, shall be computed as provided in §11-13-2o of this code and the tax attributable to the
22 second half of 2026 and thereafter shall be 100 percent of the official capability of the generating
23 unit as defined in §11-13-2o of this code. The tax attributable to the months of January through
24 June of 2026 shall be remitted before July 31, 2026, as provided in §11-13-4 of this code.

25 (c) *Recapture tax.* — Beginning on and after July 1, 2021, but before July 1, 2025, should
26 the coal-fired generating units impacted by this tax cease to operate, the owner or operator of
27 said plants shall remit back to the West Virginia State Tax Department all of the business and
28 occupation tax savings incurred during the time period between July 1, 2021, and the date the
29 coal-fired generating units ceased operation. A recapture tax is imposed by this subsection, which
30 tax is an amount equal to the business and occupation tax savings the owner or operator of the
31 plant realized, or would have realized, due to enactment of this section, on or after July 1, 2021,
32 but before July 1, 2025. The recapture tax shall be due and payable on the date the annual
33 business and occupation tax return is due under this article for the taxable period for which the
34 recapture tax applies. In the event federal law or regulation requires the closing of coal-fired
35 generating units before July 1, 2025, the recapture tax ~~shall~~ does not apply to taxable periods
36 beginning subsequent to the closure date.

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

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