WEST VIRGINIA CODE: §11-13-2D

§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) Water companies, four and four-tenths percent, except as to income received by municipally owned water plants;

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

(4) Natural gas companies, four and twenty-nine hundredths percent on the gross income: Provided, That the sale of natural gas under this section shall be exempt from the tax imposed by this section and section two of this article to the extent that the natural gas is separately metered and is gas from which the purchaser derives hydrogen and carbon monoxide for use in the manufacture of chemicals in this state, and the full economic benefit

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of the exception herein provided to the taxpayer shall be passed on to such purchaser of the natural gas: Provided, however, That there shall be no exemption for the sale of any natural gas from which the purchaser derives carbon monoxide or hydrogen for the purpose of resale;

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

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

(b) The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. The measure of the tax under this section shall include only gross income received

from the supplying of public service. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon such other activity by the appropriate section or sections of this article.

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

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

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

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

(e) Notwithstanding the provisions of subdivision (1), subsection (a) of this section or any other provision of this article to the contrary, on and after January 1, 2017, no person engaging or continuing within this state in the service or business of street and interurban and electric railways is subject to the tax imposed by section two of this article.

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