

# WEST VIRGINIA CODE: §11-13-2M

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

(a) Upon every person engaging or continuing within this state in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be 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 per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year.

(b) The measure of this tax shall be the value of all electric power generated or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this state: Provided, That the gross income received by municipally owned plants generating or producing electricity shall not be subject to tax under this article.

(c) Beginning March 1, 1989, every person taxable under this section shall determine their liability for payment of tax under this section and under subdivision (3), subsection (a), section two-d of this article and section two-n of this article. If for taxable months beginning on or after March 1, 1989 such person's liability for payment of tax under this section and subdivision (3), subsection (a), section two-d of this article is less than the amount of such person's liability for payment of tax under section two-n of this article, then such person shall pay the tax due under section two-n and not the sum of the amount of tax due under this section and under subdivision (3), subsection (a), section two-d of this article. If the tax due under section two-n of this article is less, then the amount of tax due under this section and subdivision (3), subsection (a), section two-d of this article shall be paid. The provisions of this section shall expire and become null and void for taxable years beginning on or after January 1, 1998.

(d) Beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a), section two-d of this article or this section 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), section two-d of this article and this

section, 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), section two-d of this article and this section. If tax liability under section two-o is less, then the tax shall be paid under subdivision (3), subsection (a), section two-d of this article and this section and the tax due under section two-o shall not be paid.

(2) The provisions of this section shall expire and become null and void for taxable years beginning on or after January 1, 1998. Notwithstanding this subsection or any other provision of this chapter to the contrary, an electric light and power company that generates and produces power in this state shall continue to be deemed to be an "industrial taxpayer" for purposes of subdivision (8), subsection (b), section two, article thirteen-d of this chapter, and gross income of an electric light and power company from the generation and production of power in this state and sales and demand charges for electric power sold in this state shall continue to be deemed "gross income of the business subject to tax under article thirteen of this chapter" for purposes of subsection (b), section seventeen, article twenty-three of this chapter all to the extent of and in accordance with the law in effect immediately preceding the effective date of this section as amended in 1995.