WEST VIRGINIA CODE: §11-13-2N

§11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.

(a) Rate of tax. -- Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by section two of this article shall be equal to:

(1) Twenty-six hundredths of one cent times the kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer during the taxable year, except that this rate shall be five hundredths of one cent times the kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer and sold to a plant location of a customer engaged in 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: Provided, That in order to encourage the development of industry to improve the environment of this state, the tax imposed by this section on any person generating or producing electric power and an alternative form of energy at a facility located within this state substantially from gob or other mine refuse shall be equal to five hundredths of one cent times the kilowatt hours of net generation or production available for sale. The measure of tax under this paragraph shall be equal to the total kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer during the taxable year, regardless of the place of sale or use, or the fact that transmission may be made to points outside this state.

(2) Nineteen hundredths of one cent times the kilowatt hours of electricity sold to consumers in this state that were not generated or produced in this state by the taxpayer, except that the rate shall be five hundredths of one cent times the kilowatt hours of electricity not generated or produced in this state by the taxpayer which is sold to a plant location in this state of a customer engaged in 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. The measure of tax under this paragraph shall be equal to the total kilowatt hours of electricity sold to consumers in this state during the taxable year, that were not generated or produced in this state by the taxpayer, to be determined by subtracting from the total kilowatt hours of electricity sold to consumers in the state the net kilowatt hours of electricity generated or produced in the state by the taxpayer during the taxable year.

The West Virginia Public Service Commission shall, upon application of a public utility, allow an immediate pass-through to the utility's customers in this state in the form of a rate surcharge the increase enacted by the Legislature during its third extraordinary session,

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1990, in the tax imposed by this article upon electricity generated or produced in this state and sold to consumers in this state and upon electricity not generated or produced in this state that is sold to consumers in this state.

(b) Exemptions. -- The provisions of this section shall not apply to:

(1) Kilowatt hours of electricity generated and sold, or purchased and resold, by a municipally owned plant.

(2) Kilowatt hours of electric power that are separately metered and consumed in an electrolytic process for the manufacture of chlorine.

(3) Kilowatt hours of electric power that are separately metered and consumed in the manufacture of ferroalloy. As used in this paragraph, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel but shall not include electric power used in the production of steel.

(4) The full economic benefits provided to the taxpayer by subdivisions (2) and (3) of this subsection shall be passed on to the manufacturer of the chlorine or ferroalloy.

(c) Credit. -- Any person taxable under subdivision (2), subsection (a) of this section shall be allowed a credit against the amount of tax due under that paragraph for any electric power generation taxes paid by the taxpayer with respect to such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under subdivision (2), subsection (a) of this section with respect to the sale of such power.

(d) Transition rule. -- Beginning March 1, 1989, electric light and power companies shall determine their liability for payment of tax under this section and sections two-d and two-m 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), section two-d 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 section two-d and section two-m of this article. If tax liability under section two-n is less, then tax shall be paid under paragraph (3), subsection (a), section two-d and section two-m of this article and the tax due under section two-n shall not be paid. The provisions of this subsection (d) shall expire and become null and void for taxable years beginning on or after January 1, 1998.

(e) Effective date. -- The amendments to this section made in the year 1990 shall take effect on October 1, 1990: Provided, That as to calendar months ending before such date, the tax rates specified in this section, as then in effect shall be fully and completely preserved.

(f) Beginning June 1, 1995 and thereafter, electric light and power companies shall not determine their tax liability under this section.

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