WEST VIRGINIA CODE: §11-13-2R

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

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

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

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

WV Legislature

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

WV Legislature