WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13

§11-13-1. Definitions.

(a) General. -- When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition.

(b) Terms defined. --

(1) "Person", or the term "company", used in this article interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(2) "Sale", "sales" or "selling" includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

(3) "Taxpayer" means any person liable for any tax hereunder.

(4) "Gross income" means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal) or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his or her business, and extension of credit in connection with the sale of any tangible personal property or service and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

(5) "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

(6) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall include the rendering of gas storage service by any person for the gain or economic benefit of any person, including, but not limited to, the storage operator, whether or not incident to any other business activity.

(7) "Gas" means either natural gas unmixed or any mixture of natural and artificial gas or any other gas.

(8) "Storage reservoir" means that portion of any subterranean sand or rock stratum or

strata into which gas has been injected for the purpose of storage prior to March 1, 1989.

(9) "Gas storage service" means the injection of gas into a storage reservoir, the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir. The gas may be owned by the storage operator or any other person.

(10) "Net number of dekatherms of gas injected" means the sum of the daily injection of dekatherms of gas in excess of the sum of the daily withdrawals of dekatherms of gas during a tax month.

(11) "Net number of dekatherms of gas withdrawn" means the sum of the daily withdrawal of dekatherms of gas in excess of the sum of the daily injection of dekatherms of gas during a tax month.

(12) "Gas storage operator" means any person who operates a storage reservoir or provides a storage service as defined in this subsection either as owner or lessee.

(13) "Month" or "tax month" means the calendar month.

(14) "Dekatherm" means the thermal energy unit equal to one million British thermal units (BTU's) or the equivalent of one thousand cubic feet of gas having a heating content of one thousand BTU's per cubic foot.

(15) "Taxable year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the Tax Commissioner, the period for which the return is made.

(16) "Homeowners' association" means a homeowners' association as defined in Section 528 of the Internal Revenue Code of 1986, as amended. The term "homeowners' association" also includes any unit owners' association organized under section one hundred one, article three, chapter thirty-six-b of this code.

(17) "Member", for purposes of the exemption provided in subdivision (7), subsection (b), section three of this article, means a person having membership rights in a homeowners' association, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization ordinarily conferred on members of the homeowners association, such as the right to vote, the right to elect officers and directors and the right to hold office within the organization. The term "member" also includes a "unit owner" as that term is defined in section one hundred three, article one, chapter thirty-six-b of this code.

§11-13-2. Imposition of privilege tax.

(a) Imposition of tax. - There is hereby levied and shall be collected annual privilege taxes against the persons, on account of their business and other activities, and in the amount to be determined by the application of rates against the measures of tax as set forth in sections two-d, two-e, two-f, two-m, two-n and two-o of this article.

(b) If any person liable for any tax under section two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in the applicable section, except in those instances in which another measure of the tax is expressly provided. The Tax Commissioner shall prescribe equitable and uniform rules for ascertaining the value.

(c) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Tax Commissioner shall prescribe uniform and equitable rules for determining the value upon which the applicable privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

§11-13-2a.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§11-13-2b.

Repealed.

Acts, 1989 1st Ex. Sess., Ch. 2.

§11-13-2c.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§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 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.

(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.

§11-13-2e. Business of gas storage; effective date.

(a) Rate of tax. -- Upon every person engaging or continuing within this state in any gas storage business utilizing one or more gas storage reservoirs located within this state, the tax imposed by section two of this article shall be equal to 5¢ multiplied by the sum of either (1) the net number of dekatherms of gas injected into such a gas storage reservoir during a tax month or (2) the net number of dekatherms of gas withdrawn from such a gas storage reservoir during a tax month, whichever is applicable for that month, whether or not such gas is owned by, or is injected or withdrawn for, the storage operator or any other person. Fractional parts of dekatherms shall be included in the measure of tax as provided in regulations promulgated by the Tax Commissioner: Provided, That effective July 1, 1995, the net number of dekatherms of gas injected or the net number of dekatherms withdrawn shall not exceed the storage utilization index as defined in this subsection. For purposes of this section, the term "storage utilization index" means the utilization of storage reservoir, through the operation of existing and functional facilities available for storage use during the five year base period ending December 31, 1994, and the storage utilization index shall be the five year average of taxable dekatherms as determined for each taxable period of the stated base period.

(b) Effective date. -- The measure of tax under this section shall include gas injected into, or withdrawn from, a gas storage reservoir after February 28, 1989.

(c) Administration; installment payments. -- The tax due under this section shall be administered, collected and enforced as provided in this article and articles nine and ten of this chapter. The tax due under this section shall be remitted in periodic installments as provided in section four of this article, except that such periodic installment payments shall be remitted on or before the twentieth day of the month following the month or quarter in which the tax accrues.

(d) Notice of retirement from service. -- A taxpayer subject to the tax due under this section shall provide written notice to the Joint Committee on Government and Finance and the Department of Tax and Revenue eighteen months prior to the retirement from service of a storage reservoir.

§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia Development Office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.

(a) Rate and measure of tax. –- There is hereby imposed an annual tax, in accordance with section two of this article, upon every person engaging or continuing within this state in the business of manufacturing or producing synthetic fuel from coal for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, and the amount of the tax shall be equal to 50¢ per ton of synthetic fuel manufactured or produced for sale, profit or commercial use during the taxable year. When a fraction of a ton is included in the measure of tax, the rate of tax as to that fraction of a ton shall be proportional. The measure of tax is the total number of tons of synthetic fuel product manufactured or produced in this state during the taxable year for sale, profit or commercial use regardless of the place of sale or the fact that deliveries may be made to points outside this state. Liability for payment of this tax shall accrue when the synthetic fuel product is sold by the manufacturer or producer, determined by when the producer or manufacturer recognizes gross receipts for federal income tax purposes. When there is no sale of the synthetic fuel product, liability for tax shall accrue when the synthetic fuel product is shipped from the manufacturing facility for commercial use, whether by the taxpayer or by a related party, except as otherwise provided in legislative rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a of this code.

(b) Definitions. -- For purposes of this section:

(1) "Fiscal year" means the fiscal year of this state.

(2) "Fuel" means material that produces usable heat or power upon combustion.

(3) "Fuel manufactured or produced from coal" means liquid, gaseous or solid fuels produced from coal, including, but not limited to, such fuels when used as feedstocks.

(4) "Office of chief inspector" means the State Auditor as ex officio chief inspector and supervisor of local government offices in accordance with section eleven, article nine, chapter six of this code.

(5) "Provisional share" means the portion of the Synthetic Fuel-Producing Counties Grant Fund that is available for possible distribution to each synthetic fuel-producing county. The amount of each county's provisional share is derived by dividing the share computation base by the number of synthetic fuel-producing counties in this state during the fiscal year. The share computation base is the sum of: (A) Net revenues deposited in the synthetic fuel-producing counties grant fund for the fiscal year; and (B) any amounts repooled for the fiscal year into the synthetic fuel-producing counties grant fund under this section; less (C) the

amount dedicated and allotted to the director of the Development Office under this section for administration of the synthetic fuel-producing counties grant program. A county shall be counted as a synthetic fuel-producing county only if a synthetic fuel-manufacturing plant actively produced synthetic fuel in the county during the fiscal year.

(6) "Synthetic fuel manufactured or produced from coal" or "synthetic fuel" means and includes, but is not limited to, any fuel that is made or formed into a briquette, fragment, sheet, flake or other solid form by combining a binder or binding substance with coal dust, coal fines, crushed coal, pulverized coal, stoker fines, waste coal, coal or material derived from slurry ponds, coal or material derived from gob piles or any combination of the aforementioned materials without regard to whether any federal tax credit is, or would have been, available for or with relation to the production of such fuel. The term "synthetic fuel manufactured or produced from coal" or "synthetic fuel" also means, but is not limited to, fuel manufactured or produced from coal for which credit is allowable for federal income tax purposes under section twenty-nine of the United States Internal Revenue Code, as in effect on January 1, 2001, or for which credit would have been allowable if the synthetic fuel was produced from a facility, or expansion of a facility, that meets the requirement of section twenty-nine of the Internal Revenue Code or would have met the requirements on January 1, 2001, notwithstanding that such facility or expansion of a facility may have been placed in service either prior to or subsequent to January 1, 2001. "Synthetic fuel" does not include coke or coke gas.

(7) "Synthetic fuel-producing county" means a county of this state in which a synthetic fuel-manufacturing plant is physically located that actively produces synthetic fuel during the fiscal year. For purposes of determining whether a county is a synthetic fuel-producing county, the location of the synthetic fuel-manufacturing company headquarters, the state of incorporation or organization of the company or the location of any managerial office or facility or other office or facility of the company, other than the synthetic fuel-manufacturing plant, and the physical location where the coal or other material used in synthetic fuel manufacturing is extracted from the earth shall not be determinative of the designation of a county as a synthetic fuel-producing county.

(8) "Synthetic fuel-nonproducing county" means any county of this state other than a synthetic fuel-producing county.

(9) "Ton" means two thousand pounds.

(10) "Director of the Development Office" or "director" means the director of the West Virginia Development Office created and continued under article two, chapter five-b of this code.

(c) Credits not allowed against tax. -- When determining the amount of tax due under this section, no credit shall be allowed under section three-c or three-d of this article or under any other article of this chapter or any other chapter of this code unless it is expressly provided that the credit applies to the business and occupation tax on the privilege of

manufacturing or producing synthetic fuel.

(d) Emergency rule authorized. -- The Tax Commissioner may, in the commissioner's discretion, promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the provisions of this section.

(e) Dedication and distribution of proceeds, creation of funds. --

(1) The first $4 million of the net amount of tax collected during each fiscal year for exercise of the privilege taxed under this section shall be deposited into the Mining and Reclamation Operations Fund created in the state Treasury by section thirty-two, article three, chapter twenty-two of this code.

(2) There is hereby created a fund in the state Treasury entitled the Synthetic Fuel-Producing Counties Grant Fund which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first $4 million during each fiscal year, not to exceed $2,060,000, shall be deposited in the Synthetic Fuel-Producing Counties Grant Fund. Moneys in the Synthetic Fuel-Producing Counties Grant Fund in excess of moneys allocated to the director of the Development Office shall be dedicated to and distributed among the synthetic fuel-producing counties under the Synthetic Fuel-Producing Counties Grant Program as provided in this section. The county commission of a synthetic fuel-producing county shall use ninety percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund for infrastructure improvement and ten percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund for economic development.

(3) There is hereby created in the state Treasury a fund entitled the synthetic fuel-nonproducing counties fund which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first $6,060,000 during each fiscal year, not to exceed $2,000,000, shall be deposited in the synthetic fuel-nonproducing counties fund and equally divided and distributed among the synthetic fuel-nonproducing counties. The county commission of a synthetic fuel-nonproducing county shall first use such moneys for Regional Jail and Correctional Facility Authority and county jail expenses, and shall use any remainder for such lawful public purposes as the county commission may prescribe.

(4) The net amount of the tax collected in excess of $8,060,000 during each fiscal year shall be dedicated to the General Revenue Fund.

(5) The office of chief inspector shall annually determine that a county's expenditures of moneys distributed under this section is in compliance with the requirements of this section.

(6) For purposes of this subsection, "net amount of tax collected" means the gross amount of tax collected under this section less allowed refunds and credits.

(f) Administration of the Synthetic Fuel-Producing Counties Grant Program. --

(1) The Director of the Development Office is hereby authorized and empowered to administer the distribution of moneys in the Synthetic Fuel-Producing Counties Grant Fund.

(A) On or before the plan submission due date prescribed by the Director of the Development Office, the county commission of each synthetic fuel-producing county may annually, or with such frequency as may be prescribed by the Director of the Development Office, submit a plan to the Director of the Development Office for use of the county's provisional share of the synthetic fuel-producing counties grant fund.

(B) A grant of moneys out of the Synthetic Fuel-Producing Counties Grant Fund shall only be distributed to a synthetic fuel-producing county or encumbered for the use of a synthetic fuel-producing county after approval by the Director of the Development Office of the plan for use of the county's provisional share of the fund, submitted to the Director of the Development Office by the county commission. The Director of the Development Office shall approve the synthetic fuel-producing county's plan for use if the plan for use reasonably conforms to the requirements of this section and the rules promulgated with relation thereto.

(C) If the county's plan is approved, the Director of the Development Office may authorize a grant of money out of the Synthetic Fuel-Producing Counties Grant Fund to the county to be used by the county as specified in the approved plan for use.

(D) The Director of the Development Office may authorize distribution of any amount encumbered for the use of the county and carried over from a prior period in accordance with applicable plans for use previously approved.

(E) The Director of the Development Office may authorize encumbrances for any synthetic fuel-producing county of moneys in the Synthetic Fuel-Producing Counties Grant Fund, up to the amount of the county's provisional share for the fiscal year, for one or more qualified uses specified in the county's plan for use if the county's approved plan for use of the moneys sets forth a qualified use for the county's provisional share over a period of several fiscal years or a qualified use of the moneys calling for accumulation and distribution to the county in one or more subsequent fiscal years. Encumbered funds may carry over to succeeding fiscal years and may be used to accumulate reserves over a period of time for use by the county.

(F) In no case may an amount distributed to a synthetic fuel-producing county exceed the amount of a county's provisional share for the fiscal year plus the amount of moneys encumbered in the fund for the use of the particular county and carried over from a prior period.

(2) The Director of the Development Office may approve distributions of a county's provisional share of the Synthetic Fuel-Producing Counties Grant Fund for use as the

county's share for state or federal matching funds programs so long as, in the aggregate, ninety percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund are used for infrastructure improvement and ten percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund are used for economic development: Provided, That no county may use any amount distributed out of the Synthetic Fuel-Producing Counties Grant Fund as money to be matched under the funds matching program authorized by subsection (b), section three, article two, chapter five-b of this code.

(3) Repooling. --

(A) Any synthetic fuel-producing county that has failed to have its plan, or amended and resubmitted plan or plans, approved by the Director of the Development Office for a period of eighteen months immediately subsequent to the initial plan submission date shall lose its entitlement to the provisional share of revenues deposited in the fund and attributable to the fiscal year to which that plan relates and the provisional share that would have been attributable to that county for that fiscal year shall be pooled with all other receipts in the Synthetic Fuel-Producing Counties Grant Fund attributable to revenues for the fiscal year during which the eighteen-month period ends and shall then be reallocated equally to all synthetic fuel-producing counties as part of the provisional share of each, as if the repooled moneys were tax revenues deposited into the fund during the fiscal year in which the eighteen-month period ended. For purposes of this subsection, the "initial plan submission date" means the earlier of: (i) The required submission date, as prescribed by the Director of the Development Office, for the initial plan for use of the county's provisional share of the Synthetic Fuel-Producing Counties Grant Fund for the fiscal year, with such extensions of time to file as may be authorized under rules promulgated by the Director of the Development Office; or (ii) the actual date of submission of the initial plan for the fiscal year. For purposes of this subsection, the term "initial plan" means the first plan for use that was submitted, or that should have been submitted, by a county for the fiscal year, before the submission of any amended, revised or resubmitted plan by the county for that fiscal year.

(B) Any synthetic fuel-producing county which fails to timely submit a plan for use of its provisional share of the Synthetic Fuel-Producing Counties Grant Fund, with such extensions of time to file as may be authorized under rules promulgated by the Director of the Development Office, shall lose its entitlement to its provisional share of revenues deposited in the fund and attributable to that fiscal year and the provisional share that would have been attributable to that county for that year shall be pooled with all other receipts in the Synthetic Fuel-Producing Counties Grant Fund attributable to revenues for the fiscal year and shall be reallocated equally among the remaining synthetic fuel-producing counties other than the county or counties that have failed to timely file the plan for use and shall be made available for distribution to those remaining counties, as part of their provisional share for the fiscal year.

(C) Funds encumbered pursuant to approval of the Director of the Development Office under this subsection shall not be subject to repooling: Provided, That if the Director of the

Development Office determines that moneys previously distributed to a county out of the Synthetic Fuel-Producing Counties Grant Fund have not been used as required under the approved plan for the county or determines that previously distributed moneys derived from encumbered funds have not been used for the qualified purpose for which the encumbrance was originally approved or if there appears to be a reasonable probability that encumbered funds will not be used for that qualified purpose, the Director of the Development Office may revoke the encumbrance of any funds of that synthetic fuel-producing county remaining in the fund and repool the funds so encumbered for reallocation to all synthetic fuel-producing counties. The Director of the Development Office may, in the director's discretion, give the county an opportunity to cure the nonqualified use of moneys derived from the Synthetic Fuel-Producing Counties Grant Fund or to submit an alternative plan for use of the encumbered funds which may be approved by the director if that plan complies with the requirements of this section.

(g) Promulgation of rules by the director of the Development Office authorized. -– The Director of the Development Office, in his or her discretion, may promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the Synthetic Fuel-Producing Counties Grant Program, distribution of moneys out of or encumbrance of moneys in the Synthetic Fuel-Producing Counties Grant Fund. The Director of the Development Office is hereby granted continuing authority to promulgate in accordance with article three, chapter twenty-nine-a of this code such interpretive, legislative or procedural rules, or any combination thereof, for administration of the Synthetic Fuel-Producing Counties Grant Program as the Director of the Development Office may find necessary and appropriate. The director of the Development Office may prescribe criteria for qualification under the infrastructure improvement use requirement and the economic development requirement of this section.

(h) There is hereby dedicated and allocated to the West Virginia Development Office $60,000 annually for administration of the Synthetic Fuel-Producing Counties Grant Program under this section. $60,000 shall be paid out of the Synthetic Fuel-Producing Counties Grant Fund to the director of the Development Office each fiscal year for administration of the Synthetic Fuel-Producing Counties Grant Program.

(i) Effective date. -–

(1) This section as enacted in the year 2000 took effect upon enactment. The measure of tax shall include all synthetic fuel sold or shipped after January 1, 2001, regardless of when the synthetic fuel was manufactured or produced in this state.

(2) Amendments to this section enacted during the fifth extraordinary session of the Legislature in the year 2001 shall have retroactive effect to January 1, 2001, and the measure of tax shall include all synthetic fuel sold or shipped after January 1, 2001, regardless of when the synthetic fuel was manufactured or produced in this state.

§11-13-2g.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§11-13-2h.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§11-13-2i.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§11-13-2j.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§11-13-2k.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§11-13-2l.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 2.

§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.

§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, 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.

§11-13-2o. Business of generating or producing or selling electricity on and after June 1, 1995; definitions; rate of tax; exemptions; effective date.

(a) *Definitions.* — As used in this section:

(1) "Average four-year generation" is computed by dividing by four the sum of a generating unit's net generation, expressed in kilowatt hours, for calendar years 1991, 1992, 1993, and 1994. For any generating unit which was newly installed and placed into commercial operation after January 1, 1991, and prior to the effective date of this section, "average four-year generation" is computed by dividing the unit's net generation for the period beginning with the month in which the unit was placed into commercial operation and ending with the month preceding the effective date of this section by the number of months in the period and multiplying the resulting amount by twelve with the result being a representative 12-month average of the unit's net generation while in an operational status.

(2) "Capacity factor" means a fraction, the numerator of which is average four-year generation and the denominator of which is the maximum possible annual generation.

(3) "Generating unit" means a mechanical apparatus or structure which through the operation of its component parts is capable of generating or producing electricity and is regularly used for this purpose.

(4) "Inactive reserve" means the removal of a generating unit from commercial service for a period of not less than 12 consecutive months as a result of lack of need for generation from the generating unit or as a result of the requirements of state or federal law or the removal of a generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

(5) "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times 8,760 hours.

(6) "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

(7) "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.

(8) "Retired from service" means the removal of a generating unit from commercial service for a period of at least 12 consecutive months with the intent that the unit may not thereafter be returned to active service.

(9) "Taxable generating capacity" means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, subject to the modifications set forth in subdivisions (2) and (3), subsection (c) of this section.

(10) "Net generation" for a period means the kilowatt hours of net generation available for

sale generated or produced by the generating unit in this state during the period less the following:

(A) Twenty-one twenty-sixths of the kilowatt hours of electricity generated at the generating unit and sold during the period to a plant location of a customer engaged in manufacturing activity if the contract demand at the plant location exceeds 200,000 kilowatts per hour in a year or where the usage at the plant location exceeds 200,000 kilowatts per hour in a year;

(B) Twenty-one twenty-sixths of the kilowatt hours of electricity produced or generated at the generating unit during the period by any person producing electric power and an alternative form of energy at a facility located in this state substantially from gob or other mine refuse;

(C) The total kilowatt hours of electricity generated at the generating unit exempted from tax during the period by §11-13-2(n)(b) of this code.

(b) *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 §11-13-2 of this code shall be equal to:

(1) For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of $22.78 multiplied by the taxable generating capacity of each generating unit in this state owned or leased by the taxpayer, subject to the modifications set forth in subsection (c) of this section: *Provided,* That with respect to each generating unit in this state which has installed a flue gas desulfurization system, the tax imposed by section two of this article shall, on and after January 31, 1996, be equal to the product of $20.70 multiplied by the taxable generating capacity of the units, subject to the modifications set forth in subsection (c) of this section: *Provided, however,* That with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at the plant location exceeds 200,000 kilowatts per hour per year or if the usage at the plant location exceeds 200,000 kilowatts per hour in a year, in no event may the tax imposed by this article with respect to the sale or use of the electricity exceed five hundredths of one cent times the kilowatt hours sold to or used by a plant engaged in a manufacturing activity; and

(2) For taxpayers who sell electricity to consumers in this state that is not generated or produced in this state by the taxpayer, 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 200,000 kilowatts per hour per year or if the usage at such plant location exceeds 200,000 kilowatts per hour in a year. The measure of

tax under this subdivision shall be equal to the total kilowatt hours of electricity sold to consumers in the 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. For the purposes of this subdivision, net kilowatt hours of electricity generated or produced in this state by the taxpayer includes the taxpayer's pro rata share of electricity generated or produced in this state by a partnership or limited liability company of which the taxpayer is a partner or member. The provisions of this subdivision may not apply to those kilowatt hours exempt under §11-13-2(n)(b) of this code. Any person taxable under this subdivision shall be allowed a credit against the amount of tax due under this subdivision for any electric power generation taxes or a tax similar to the tax imposed by subdivision (1) of this subsection paid by the taxpayer with respect to the electric power to the state in which the power was generated or produced. The amount of credit allowed may not exceed the tax liability arising under this subdivision with respect to the sale of the power.

(c) The following provisions are applicable to taxpayers subject to tax under subdivision (1), subsection (b) of this section:

(1) *Retired units; inactive reserve.* — If a generating unit is retired from service or placed in inactive reserve, a taxpayer may not be liable for tax computed with respect to the taxable generating capacity of the unit for the period that the unit is inactive or retired. The taxpayer shall provide written notice to the Joint Committee on Government and Finance, as well as to any other entity as may be otherwise provided by law, 18 months prior to retiring any generating unit from service in this state.

(2) *New generating units.* — If a new generating unit, other than a peaking unit, is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal 40 percent of the official capability of the unit: *Provided,* That the taxable generating capacity of a county-owned or municipally owned generating unit shall equal zero percent of the official capability of the unit and for taxable periods ending on or before December 31, 2007, the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind shall equal five percent of the official capability of the unit: *Provided, however,* That for taxable periods beginning on or after January 1, 2008, the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind shall equal 12 percent of the official capability of the unit: *Provided further,* That for taxable periods beginning on or after January 1, 2020, the taxable generating capacity of a generating unit utilizing solar photovoltaic methods shall equal eight percent of the official capacity of the unit. For purposes of this subsection, "solar photovoltaic methods" means a module or array of solar cells electronically connected in a series or in parallel to provide suitable voltages and currents for electricity generation. Methods include, but are not limited to, a grid-connected photovoltaic system designed to operate in parallel with an electric utility grid.

(3) *Peaking units.* — If a peaking unit is placed in initial service on or after the effective date

of this section, the generating unit's taxable generating capacity shall equal five percent of the official capability of the unit: *Provided,* That the taxable generating capacity of a county-owned or municipally owned generating plant shall equal zero percent of the official capability of the unit.

(4) *Transfers of interests in generating units.* — If a taxpayer acquires an interest in a generating unit, the taxpayer shall include the computation of taxable generating capacity of the unit in the determination of the taxpayer's tax liability as of the date of the acquisition. Conversely, if a taxpayer transfers an interest in a generating unit, the taxpayer may not for periods thereafter be liable for tax computed with respect to the taxable generating capacity of the transferred unit.

(5) *Proration, allocation.* — The Tax Commissioner shall promulgate rules in conformity with §29A-3-1 *et seq.* of this code to provide for the administration of this section and to equitably prorate taxes for a taxable year in which a generating unit is first placed in service, retired, or placed in inactive reserve, or in which a taxpayer acquires or transfers an interest in a generating unit, to equitably allocate and reallocate adjustments to net generation, and to equitably allocate taxes among multiple taxpayers with interests in a single generating unit, it being the intent of the Legislature to prohibit multiple taxation of the same taxable generating capacity.

So as to provide for an orderly transition with respect to the rate-making effect of this section, those electric light and power companies which, as of the effective date of this section, are permitted by the West Virginia Public Service Commission to utilize deferred accounting for purposes of recovery from ratepayers of any portion of business and occupation tax expense under this article shall be permitted, until the time that action pursuant to a rate application or order of the commission provides for appropriate alternative rate-making treatment for that expense, to recover the tax expense imposed by this section by means of deferred accounting to the extent that the tax expense imposed by this section exceeds the level of business and occupation tax under this article currently allowed in rates.

(6) *Electricity generated by manufacturer or affiliate for use in manufacturing activity.* — When electricity used in a manufacturing activity is generated in this state by the person who owns the manufacturing facility in which the electricity is used and the electricity-generating unit or units producing the electricity so used are owned by the manufacturer, or by a member of the manufacturer's controlled group, as defined in Section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity may not be taxable under this article: *Provided,* That any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity. The Department of Revenue shall promulgate rules in accordance with §29A-3-1 *et seq.* of this code: *Provided, however,* That the rules shall be promulgated as emergency rules.

(d) Beginning June 1, 1995, electric light and power companies that actually paid tax based on §11-13-2d(a)(3) of this code or §11-13-2m of this code for every taxable month in 1994 shall determine their liability for payment of tax under this article in accordance with subdivisions (1) and (2) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under this section beginning June 1, 1995, and thereafter.

(1) If for taxable months beginning on or after June 1, 1995, liability for tax under this section is equal to or greater than the sum of the power company's liability for payment of tax under §11-13-2d(a)(3) of this code and this section, then the company shall pay the tax due under this section and not the tax due under §11-13-2d(a)(3) of this code and §11-13-2m of this code. If tax liability under this section is less, then the tax shall be paid under §11-13-2d(a)(3) of this code and §11-13-2m of this code and the tax due under this section may not be paid.

(2) Notwithstanding subdivision (1) of this subsection, for taxable years beginning on or after January 1, 1998, all electric and light power companies shall determine their liability for payment of tax under this article exclusively under this section.

§11-13-2p. Credit against tax based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind.

(a) For taxable periods beginning on or after January 1, 2008, a credit shall be allowed against tax imposed by this article and calculated based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind. The total credit shall be equal to the amount of qualified contractually agreed contributions as defined in this section. The amount of total credit shall be reduced each year by the amount of credit annually applied to reduce tax under this section.

(b) Definitions. -- For purposes of this section:

(1) "Qualified contractually agreed contribution" means money paid, or the lower of the cost or fair market value, at the time of transfer, of property transferred, by the taxpayer, the owner of the taxpayer or the operator or owner of the wind turbine unit to a county in which the wind turbine unit is located, a county school board of the county in which the wind turbine unit is located or to a municipality located in the county in which the wind turbine unit is located pursuant to a written transfer agreement.

(A) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to any county, county school board or municipality or to any other governmental subdivision, agency or instrumentality of this state or of any county or municipality.

(B) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to any county, county school board or municipality or to any other governmental subdivision, agency or instrumentality of any state other than this state or of any county or municipality of any state other than this state.

(C) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to the United States or to any governmental subdivision of the United States or to any agency or instrumentality of the United States or to any foreign government or subdivision, agency or instrumentality thereof.

(2) "Taxpayer" means any person that is legally liable for tax imposed by this article that is calculated based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind.

(3) "Wind turbine unit" means, and is limited to, an electricity-generating unit utilizing a turbine powered primarily by wind that has a taxable generating capacity determined in accordance with subdivision (2), subsection (c), section two-o of this article.

(4) "Written transfer agreement" means a written contract or written promise to transfer money or property to a county in which the wind turbine unit is located, a county school board of the county in which the wind turbine unit is located or a municipality located in the

county in which the wind turbine unit is located, executed not later than March 1, 2007, by the taxpayer, the owner of the taxpayer or the operator or owner of the wind turbine unit and executed by the county commission of the county in which the wind turbine unit is located or by any officer or representative of the county commission having authority to execute binding legal documents for the county commission, the county school board of the county in which the wind turbine unit is located or any officer or representative of the county school board having authority to execute binding legal documents for the county school board, or the city council, mayor or city manager of a municipality located in the county in which the wind turbine unit is located or any officer or representative of the municipality having authority to execute binding legal documents for the municipality.

(c) Credit limitations. –-

(1) The total amount of credit allowable under this section is limited to the amount of qualified contractually agreed contributions made pursuant to a written transfer agreement.

(2) The credit allowed under this section may only be applied to offset annual tax imposed by this article that is measured by the taxable generating capacity of the wind turbine unit. No other tax imposed by or under this article may be offset by the credit allowed under this section and no other tax imposed by this code may be offset by the credit.

(3) The credit allowed under this section shall be applied after application of the credit allowed under article thirteen-d of this chapter, as applicable, and after any other applicable credits allowed by this chapter against tax imposed by this article.

(4) The amount of credit allowed under this section and the amount of the credit allowed under article thirteen-d of this chapter may not, in combination, reduce the amount of annual tax imposed by this article on the taxable generating capacity of the wind turbine unit to an amount that is less than fifty percent of the amount of annual tax that would have been imposed by this article on the wind turbine unit if the taxable generating capacity of the wind turbine unit was set at five percent of the official capacity of the wind turbine unit.

(d) Time over which credit may be applied. –-

(1) The total amount of credit determined under subsection (a) of this section shall be reduced annually by the amount of credit applied in each tax year to offset tax under this section.

(2) The credit allowed under this section may be applied annually, beginning on the later of:

(A) The year a qualified contractually agreed contribution in money was paid or a qualified contractually agreed contribution in property was delivered to the county, the county school board or the municipality; or

(B) The year in which title thereto irrevocably passed to the transferee;

(3) The credit may thereafter be taken in each succeeding tax year until the amount of total credit has been exhausted or until the ninth succeeding tax year after the contractually agreed contribution of money was so paid or the contractually agreed contribution of property was so delivered. Credit remaining after the ninth succeeding tax year is forfeited.

(4) Credit to which a taxpayer is entitled under this section shall be applied in an order and sequence such that the credit earned earliest in time shall be applied first in any tax year to offset tax under this section.

(e) Credit for successor businesses and transferees of a wind turbine unit; apportionment. --

(1) Mere change in form of business. -– The credit allowed under this section shall not be forfeited by reason of a mere change in the form of the entity or organization that is conducting the business so long as the successor business continues to remain a taxpayer, as defined in this section, in this state, operating the wind turbine unit that was originally owned or operated by the predecessor taxpayer. Such successor shall acquire the amount of credit that remains available under this section for each subsequent taxable year until the credit expires or is exhausted, based on the years remaining and amount of credit remaining to which the transferor was entitled at the time of the transfer.

(2) Transfer or sale to successor. –- The credit allowed under this section shall not be forfeited by reason of a transfer or sale to a successor business of a wind turbine unit so long as the successor business continues to remain a taxpayer, as defined in this section, in this state, operating the wind turbine unit that was originally owned or operated by the predecessor taxpayer. Upon transfer or sale of a wind turbine unit, the successor shall acquire the amount of credit that remains available under this section for each subsequent taxable year until the credit expires or is exhausted, based on the years remaining and amount of credit remaining to which the transferor was entitled at the time of the transfer.

(3) Apportionment in the year of transfer. –- Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this section for each taxable year subsequent to the taxable year of the transferor during which the transfer occurred and, for the year of transfer, an amount of annual credit for the year in the same proportion as the number of days remaining in the transferor's taxable year bears to the total number of days in the transferor's taxable year.

§11-13-2q. Exemption from tax for certain merchant power plants.

(a) *Exemption*. — Notwithstanding the provisions of §11-13-2o of this code, for taxable years, or portions thereof, beginning on or after January 1, 2020, a coal-fired merchant power plant is exempt from the business and occupation tax imposed by §11-13-2o of this code on the generating capacity of its generating units located in this state that are owned or leased by the taxpayer and used to generate electricity. When the January 1, 2020, date falls during a taxpayer's taxable year, the tax liability for that year shall be prorated based upon the number of months before and the number of months beginning on and after January 1, 2020, in that taxable year.

(b) *Definition*. — As used in this section, the term "coal-fired merchant power plant" means a coal-fired electricity generating unit or plant in this state with relation to which the owners, operators, interest holders, or any combination thereof do not receive regulated cost recovery pursuant to any tariff, regulated rate, or cost recovery fee mandated or authorized by the West Virginia Public Service Commission, or by any rate-making authority of any other state of the United States, and that: (1) Is not subject to regulation of its rates by the West Virginia Public Service Commission or any rate-making authority of any other state of the United States; (2) sells electricity it generates only on the wholesale market; (3) does not sell electricity pursuant to one or more long-term sales contracts; and (4) does not sell electricity to retail consumers.

(c) *Effective date*. — The amendments to this section enacted in the year 2020 shall be retroactive to January 1, 2020.

§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.

(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.

§11-13-3. Exemptions; annual exemption and periods thereof.

(a) Monthly exemption. –- For any tax imposed under the provisions of this article with respect to any period beginning on or after July 1, 1985, there is an exemption in every case of $41.67 per month in amount of tax computed under the provisions of this article. Only one exemption is allowed to any one person, whether the person exercises one or more privileges taxable hereunder.

(b) Exemptions from tax. –- The provisions of this article do not apply to:

(1) Insurance companies which pay the State of West Virginia a tax upon premiums: Provided, That the exemption does not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any company maintains its office or offices, in this state, whether the income is in the form of rentals or royalties;

(2) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(3) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: Provided, That the exemption does not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services of fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code;

(4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes and production credit associations, organized under the provisions of the federal Farm Credit Act of 1933;

(5) Any credit union organized under the provisions of chapter thirty-one of this code or any other chapter of this code: Provided, That the exemptions of this section do not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;

(6) Gross income derived from advertising service rendered in the business of radio and television broadcasting;

(7) Gross income of a nonprofit homeowners' association received from assessments on its members for community services such as road maintenance, common area maintenance, water service, sewage service and security service; and

(8) Nonprofit water and sewer companies governed by the Public Service Commission of West Virginia and organized and operated for the exclusive benefit of their members.

§11-13-3a. Deduction for contributions to an employee stock ownership plan by a manufacturer.

(a) General rule. -- There shall be allowed as a deduction from gross income reportable under section two-b of this article, for the taxable year, the amount of qualified contribution to an employee stock ownership plan made during the taxable year, for any period beginning after June 30, 1983.

(b) Definitions. -- For purposes of this section the term:

(1) "Employee stock ownership plan" means a plan as defined in paragraph (7), subsection (e), section 4975 of the Internal Revenue Code.

(2) "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended, which is codified as Title 26 of the United States Code.

(3) "Qualified contribution" means the amount of employer contributions during the taxable year to an employee stock ownership plan, which are deductible by the corporation for federal income tax purposes under paragraph (10), subsection (a), section 404 of the Internal Revenue Code, and which do not exceed the amount allowable under paragraph (6), subsection (c), section 415 of the Internal Revenue Code.

§11-13-3b. Definitions; reduction allowed in tax due; how computed.

When used in this section, the phrase "normal tax" means the tax computed by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, in this article, less the amount of the annual exemption for the period actually engaged in business.

The normal tax shall be computed by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article, less the amount of the annual exemption allowed and determined under section three of this article.

The surtax shall be computed by the application of the surtax rate against gross income as set forth in section two-k of this article.

§11-13-3c. Tax credit for business investment and jobs expansion.

(a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-c of this chapter, relating to tax credit for business investment and jobs expansion.

(b) The Tax Commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and article thirteen-c of this chapter.

§11-13-3d. Tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

(a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-d of this chapter, relating to tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

(b) The Tax Commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and article thirteen-d of this chapter.

(c) Any tax credit to which an industrial taxpayer became entitled under section three-c of this article, before its repeal, shall be fully and completely preserved under the provision of this section, as amended, as if this section were in effect, at the time the qualifying investment was made.

§11-13-3e. Tax credit for coal loading facilities; regulations.

(a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-e of this chapter, relating to tax credit for new or expanded or revitalized coal loading facilities.

(b) The Tax Commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section and article thirteen-e of this chapter.

§11-13-3f. Tax credit for reducing electric, natural gas or water utility rates for low-income residential customers; regulations.

(a) There shall be allowed as a credit against the tax imposed by this article, the cost of providing electric or natural gas or water utility service, or any combination of electric, natural gas or water utility services, at reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

(b) For tax years beginning on or after January 1, 2019, there shall be allowed as a credit against the tax imposed by this article, the cost of providing sewer service or sewer and water service at reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

(c) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section, of §11-13F-1 et seq. of this code and of §11-24-11 of this code.

§11-13-3g. Tax credit for increased generation of electricity from coal.

(a) There shall be allowed as a credit against the tax imposed by section two of this article, on the privilege taxable under section two-m of this article, the amount determined under article thirteen-h of this chapter, providing a credit for increased generation of electricity at electric power plants in this state which burn coal produced by miners who are residents of this state.

(b) The Tax Commissioner may prescribe such regulations as he deems necessary to carry out the purposes of this section and article thirteen-g of this chapter.

§11-13-4. Computation of tax; payment.

The taxes levied hereunder shall be due and payable as follows:

(a) For taxpayers whose estimated tax under this article exceeds $1,000 per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which he is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the office of the commissioner: Provided, That the installment payment otherwise due under this subdivision on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15 each year, beginning June 15, 1988. In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year and one twelfth of the total exemption allowed for such year.

(b) For taxpayers whose estimated tax under this article does not exceed $1,000 per month, the tax shall be due and payable in quarterly installments within one month from the expiration of each quarter in which the tax accrued. Each such taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the office of the commissioner. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of the total exemption allowed for such year.

(c) When the total tax for which any person is liable under this article does not exceed $2,000 in any year, the taxpayer may pay the same quarterly as aforesaid, or, with the consent in writing of the Tax Commissioner, at the end of the month next following the close of the tax year.

(d) The above provisions of this section notwithstanding, the Tax Commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed above.

§11-13-5. Return and remittance by taxpayer.

On or before the expiration of one month after the end of the tax year, each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this article and deduct the amount of monthly or quarterly payments (as hereinbefore provided), if any, and transmit with his report a remittance in the form prescribed by the Tax Commissioner covering the residue of the tax chargeable against him to the office of the Tax Commissioner; such return shall be signed by the taxpayer if made by an individual, or by the president, vice president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The Tax Commissioner, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him be deemed advisable.

§11-13-6.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-7.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-8.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-8a.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-9. Tax year.

(a) Taxable year. -- For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) Method of accounting. -- A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the tax under this article shall be computed under such method that in the opinion of the Tax Commissioner clearly reflects such income.

(c) Adjustments. -- In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Tax Commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

§11-13-10. Tax cumulative.

The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are condition precedent to exercising the privilege taxed, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article.

§11-13-11.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-12.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-13. Receivership or insolvency proceedings.

In the event a business subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of such taxes as the same become due.

§11-13-14.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-15.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-16.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-16a.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-17. Priority in distribution in receivership, etc.; personal liability of administrator.

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, all taxes due and unpaid under this article shall be paid from the first money available for distribution in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any person charged with the administration of an estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

§11-13-18. Agents for collection of delinquent taxes.

The Tax Commissioner may, with the approval of the Governor, appoint not more than twelve agents for the entire state for the collection of delinquent taxes, delinquent license taxes and all additions to tax, penalties and interest. All delinquent taxes, delinquent license taxes and all additions to tax, penalties and interest so collected shall be, by the Tax Commissioner, paid into the State Treasury to the credit of the state general fund. The salary of every such agent appointed shall be determined by the State Tax Commissioner by and with the approval of the Governor.

§11-13-19. Certificate to clerk of county court of assessment of taxes.

The Tax Commissioner for the more effective collection of the tax may file with the clerk of the county court of any county a certified copy of an assessment of taxes under this article. A certificate so filed shall be recorded in a book provided for the purpose and thereafter shall constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the county as against all parties whose interest arose after such recordation. Upon payment of taxes delinquent under this article the lien of which shall have been recorded the Tax Commissioner shall certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificates, one to the taxpayer and one to the clerk of the county court of the county where the taxpayer shall have been listed as delinquent. The clerk of the county court shall record the certificate in the book in which releases are recorded, without payment of any additional fee. From the date that such a certificate is admitted to record the land of the taxpayer in the county shall be free from any lien for taxes under this article accrued to the date that the certificate was issued.

§11-13-20.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-21.

Repealed.

Acts, 1984 Reg. Sess., Ch. 170.

§11-13-22.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-23.

Repealed.

Acts, 1955 Reg. Sess., Ch. 165.

§11-13-24.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

§11-13-25. Cities, towns or villages restricted from imposing additional tax.

Notwithstanding the provisions of section five, article thirteen, chapter eight of this code, no city, town or village shall impose a business and occupation tax:

(a) Upon occupations or privileges taxed under sections two- a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j of this article, in excess of rates in effect under this article on January 1, 1959;

(b) Upon occupations or privileges taxed under section two- k of this article, in excess of one percent of gross income;

(c) Under section two-l of this article; or

(d) Upon occupations or privileges taxed under section two- m of this article, in excess of the tax rate applicable to such occupations or privileges under section two-b of this article on January 1, 1959.

§11-13-26. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§11-13-27. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article thirteen with like effect as if said act were applicable only to the tax imposed by this article thirteen and were set forth in extenso in this article thirteen.

§11-13-28. Effective date; transition rules.

(a) The provisions of sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article are inoperative as of July 1, 1987. Persons who are fiscal year taxpayers having a fiscal year ending on June 30, 1987, shall file their annual return for fiscal year 1987, on or before July 31, 1987, and remit the amount of any taxes shown thereon to be due.

(b) Persons who are calendar year taxpayers and who are not subject to the tax imposed by this article for months beginning on or after July 1, 1987, and persons who are fiscal year taxpayers having a fiscal year ending on any date other than June 30, 1987, and who are not subject to the tax imposed by this article for months beginning on or after July 1, 1987, shall file their annual returns on or before July 31, 1987, for the short taxable year which ended June 30, 1987, and remit the amount of any taxes shown thereon to be due. Persons required to file an annual return for a short taxable year may claim a portion of the annual exemption allowed under section three of this article, determined in accordance with the amount of the exemption allowable for each month in the short taxable year. The $5,000 annual exemption allowed to producers of natural gas shall similarly be calculated and allowed on a monthly basis at the rate of $416.66 for each month of the short taxable year ending on June 30, 1987.

(c) Persons engaged in activities taxable under sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article prior to July 1, 1987, are taxable under either article thirteen-a or twenty-three of this chapter, or both, on and after such date.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending June 30, 1987, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any additional taxes due within thirty days after determining that gross income, gross proceeds of sale or gross value were under reported on such annual return, or that any allowable deductions were over reported.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending June 30, 1987, computing their tax liability under such method: Provided, That such a taxpayer shall file a supplemental return for such year within one month after the close of each quarter during which he or she received gross income or gross proceeds of sale for any activity or portion thereof completed prior to July 1, 1987, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the business and occupation tax no longer applies to the taxpayer's ongoing business activity.

(f) Tax liabilities, if any arising for taxable years ending prior to July 1, 1987, shall be determined, administered, assessed and collected as if sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article had not been effectively repealed;

and the rights and duties of the taxpayer and the State of West Virginia shall be fully and completely preserved.

(g) Persons who keep their records using a method of accounting other than the accrual method or cash method shall file their returns in accordance with regulations and instructions promulgated by the Tax Commissioner.

§11-13-29. Tax commissioner to furnish comparative study reports to Governor and Legislature, dates therefor.

The State Tax Commissioner, who will be recipient of informational reports and tax returns from taxpayers in respect of the revised state tax structure on business, beginning on July 1, 1987, shall furnish a comparative study report in respect of the data concerning businesses and their changed tax liabilities, entitlement to tax credits, and general categories wherein tax liability is substantially increased or lessened. Such report shall be furnished to the Governor and to the Legislature at its regular sessions of the year 1986 and 1987, with particular emphasis on the elements of equity and adequacy that the acquired data may reflect in respect of the state's major industries and taxpayers, on the basis of their being subjected to taxation under the revised state tax structure.

§11-13-30. Tax credit for coal coking facilities; regulations.

(a) Effective July 1, 1987, notwithstanding any provisions of this code to the contrary, any company granted a reduced rate loan pursuant to section seven, article two, chapter five-b of this code shall be allowed a credit against the tax imposed by this article for a period of five years from the date the reduced rate loan is issued.

(b) The Tax Commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section.

§11-13-31. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.