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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984



ENROLLED

SENATE BILL NO. 110

(By Mr. Boether & Mr. Holliday)



PASSED March 10, 1984

In Effect from Passage



ENROLLED

Senate Bill No. 110

(BY MR. BOETTNER AND MR. HOLLIDAY)

[Passed March 10, 1984; in effect from passage.]

AN ACT to amend and reenact article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-f; to further amend said chapter by adding thereto a new article, designated article thirteen-f; to amend and reenact section eleven, article twenty-four of said chapter; to amend and reenact sections one and two, article two-a, chapter twenty-four of said code; and to further amend said article by adding thereto two new sections, designated sections three and four, all relating to reducing electric and natural gas utility rates for low-income residential customers; business and occupation tax and a credit thereto; corporate net income tax and a credit thereto; providing for special reduced rates for low-income residential customers of gas and electric utilities, except municipal utilities, during certain months of the year; establishing rules for persons qualifying for such special reduced rates and for proving one's eligibility therefor; limiting municipalities as to the amounts relating to the special reduced rates on which local business and occupation or privilege taxes and local public utilities excise taxes can be levied; and prohibiting municipalities from levying such taxes on utilities' recoveries of revenue deficiencies resulting from the special reduced rates.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-f; that said chapter be further amended by adding thereto a new article, designated article thirteen-f; that section eleven, article twenty-four of said chapter be amended and reenacted; that sections one and two, article two-a, chapter twenty-four of said code be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three and four, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

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

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

6 (b) The tax commissioner may prescribe such
7 regulations as may be necessary to carry out the purposes of
8 this section, article thirteen-f of this chapter, and section
9 eleven, article twenty-four of this chapter.

ARTICLE 13F. BUSINESS AND OCCUPATION TAX CREDIT FOR REDUCING ELECTRIC AND NATURAL GAS UTILITY RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS.

§11-13F-1. Legislative purpose.

1 In order to reimburse public utilities for the revenue
2 deficiencies which they incur in providing special reduced
3 electric and natural gas utility rates to low-income
4 residential customers in accordance with the provisions of
5 article two-a of chapter twenty-four, there is hereby
6 provided a business and occupation tax credit for reducing
7 electric and natural gas utility rates for low-income
8 residential customers.

§11-13F-2. Definitions.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in article
3 thirteen of this chapter, unless a different meaning is
4 clearly required by the context of its use or by definition in
5 this article.

6 (b) For purposes of this article, the term:

7 (1) "Eligible taxpayer" means a utility which has
8 provided electric or natural gas service, or both, to qualified
9 low-income residential customers at special reduced rates.

10 (2) "Cost of providing electric or natural gas utility
11 service, or both, at special reduced rates" means the amount
12 certified by the public service commission under the
13 provisions of section three, article two-a, chapter twenty-
14 four of this code as the revenue deficiency incurred by a
15 public utility in providing special reduced rates for electric
16 or natural gas utility service as required by section one,
17 article two-a, chapter twenty-four of this code.

18 (3) "Special reduced rates" means the rates ordered by
19 the public service commission under the authority of
20 section one, article two-a, chapter twenty-four of this code.

21 (4) "Qualified low-income residential customers"
22 means those utility customers eligible to receive electric or
23 natural gas utility service, or both, under special reduced
24 rates.

§11-13F-3. Amount of credit.

1 There shall be allowed to any eligible taxpayer a credit
2 against the business and occupation taxes imposed by
3 article thirteen of this chapter, for reducing electric and
4 natural gas utility rates. The amount of the credit available
5 to any eligible taxpayer shall be equal to its cost of
6 providing electric or natural gas service, or both, at special
7 reduced rates to qualified residential customers, less any
8 reimbursement of said cost which the taxpayer has received
9 through any other means.

§11-13F-4. When credit may be taken.

1 An eligible taxpayer may claim a credit allowed under
2 this article against its business and occupation tax liability
3 for the year in which it receives certification of the amount

4 of its revenue deficiency from the public service
5 commission.

6 Notwithstanding the provisions of section four, article
7 thirteen of this chapter to the contrary, in determining the
8 amount of estimated business and occupation taxes
9 reported on any monthly or quarterly estimate of business
10 and occupation taxes that is due for any portion of the
11 calendar year prior to the first day of July of such year, no
12 estimated credit may be claimed or considered.

13 In estimating the amount of monthly or quarterly tax due
14 for the months of July and succeeding months in any
15 calendar year, the eligible taxpayer may divide the amount
16 certified as its revenue deficiency by the public service
17 commission, by the number of returns (estimated and
18 annual) that will become due for the period July through
19 December of each year. The resultant quotient shall be the
20 maximum amount allowed to be taken as credit on each said
21 return: *Provided*, That in no event may application of this
22 credit reduce the tax liability below zero.

§11-13F-5. Application of credit.

1 (a) Any unused portion of a credit allowed under this
2 article may be taken as a credit against corporation net
3 income taxes due for the taxable year, as provided in section
4 eleven, article twenty-four of this chapter.

5 (b) If any portion of the amount certified as its revenue
6 deficiency by the public service commission is not
7 recovered under subsection (a), it may be carried over to the
8 subsequent year for business and occupation tax purposes
9 and shall be applied as a credit before any other credits for
10 that year are applied.

11 (c) In no event shall an eligible taxpayer be allowed to
12 recover more than one hundred percent of its certified
13 revenue deficiency.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11. Credit for reducing electric and natural gas utility rates for low-income residential customers.

1 (a) *General.*—A credit shall be allowed against the
2 primary tax liability of an eligible taxpayer under this
3 article for the cost of providing electric or natural gas utility
4 service, or both, at special reduced rates to qualified low-

5 income residential customers which has not been
6 reimbursed by any other means.

7 (b) *Definitions.*—For purposes of this section, the term:

8 (1) “Eligible taxpayer” means a utility which has
9 provided electric or natural gas service, or both, to qualified
10 low-income residential customers at special reduced rates.

11 (2) “Cost of providing electric or natural gas utility
12 service, or both, at special reduced rates” means the amount
13 certified by the public service commission under the
14 provisions of section three, article two-a, chapter twenty-
15 four of this code, as the revenue deficiency incurred by a
16 public utility in providing special reduced rates for electric
17 or natural gas utility service, or both, as required by section
18 one, article two-a, chapter twenty-four of this code.

19 (3) “Special reduced rates” means the rates ordered by
20 the public service commission under the authority of
21 section one, article two-a, chapter twenty-four of this code.

22 (4) “Qualified low-income residential customers”
23 means those utility customers eligible to receive electric or
24 natural gas utility service, or both, under special reduced
25 rates.

26 (c) *Amount of credit.*—The amount of the credit
27 available to any eligible taxpayer shall be equal to its cost of
28 providing electric or natural gas service, or both, at special
29 reduced rates to qualified residential customers, less any
30 reimbursement of said cost which the taxpayer has received
31 through any other means.

32 (d) *When credit may be taken.*—An eligible taxpayer
33 may claim a credit allowed under this section on its annual
34 return for the taxable year in which it receives certification
35 of the amount of its revenue deficiency from the public
36 service commission.

37 Notwithstanding the provisions of section sixteen of this
38 article to the contrary, no credit may be claimed on any
39 declaration of estimated tax filed for such taxable year
40 prior to the first day of July of such taxable year. Such
41 credit may be claimed on a declaration or amended
42 declaration filed on or after that date but only if the amount
43 certified will not be recovered by application of the
44 business and occupation tax credit allowed by section
45 three-f, article thirteen of this chapter. In such event, only
46 that amount not recovered by that credit may be considered

47 or taken as a credit when estimating the tax due under this
48 article. In no event may the eligible taxpayer recover more
49 than one hundred percent of its revenue deficiency as
50 certified by the public service commission.

51 (e) *Application of credit.*—The credit allowable by this
52 section for a taxable year is not subject to the fifty percent
53 limitation specified in section nine of this article.
54 Notwithstanding the provisions of section four, article
55 thirteen-f of this chapter, any unused credit may be carried
56 over and applied against business and occupation taxes in
57 the manner specified in section five, article thirteen-f of this
58 chapter.

59 (f) *Copy of certification order.*—A copy of a certification
60 order from the public service commission shall be attached
61 to any annual return under this article on which a credit
62 allowed by this section is taken.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF ELECTRICITY AND GAS.

§24-2A-1. Special rates for gas and electric utility customers receiving social security supplemental security income (SSI), aid to families with dependent children (AFDC), aid to families with dependent children - unemployed (AFDC-U), or food stamps.

1 The commission shall order each gas and electric utility
2 subject to its jurisdiction, except municipal or cooperative
3 gas or electric utilities, to offer special reduced rates
4 applicable to gas and electric service for the billing months
5 of December, January, February, March and April of each
6 year (beginning with the billing month of December, one
7 thousand nine hundred eighty-three), to residential utility
8 customers receiving (a) social security supplemental
9 security income (SSI), (b) aid to families with dependent
10 children (AFDC), (c) aid to families with dependent
11 children — unemployed (AFDC-U), or (d) food stamps, if
12 such food stamp recipients are sixty years of age or older.
13 The special reduced rate offered by each gas and electric
14 utility to its eligible customers shall be twenty percent less
15 than the rate which would be applicable to such customers

16 if they were not receiving any of the four forms of assistance
17 which confer eligibility for the special reduced rates. A
18 customer of a utility offering special reduced rates shall be
19 eligible to receive such rates for each of the billing months
20 of December, January, February, March and April that
21 correlates to a calendar month during which that customer
22 is eligible to participate in one or more of the qualifying
23 programs specified in this section, except as otherwise
24 provided in this section. The correlation of billing months to
25 calendar months of eligibility to participate in a qualifying
26 program is as follows: A December billing month correlates
27 to the calendar month of November; a January billing
28 month correlates to the calendar month of December; a
29 February billing month correlates to the calendar month of
30 January; a March billing month correlates to the calendar
31 month of February; and an April billing month correlates to
32 the calendar month of March. After the billing month of
33 April, one thousand nine hundred eighty-four, no customer
34 shall be eligible to receive the special reduced rates until the
35 billing month in which that customer applies for such rates.
36 For the billing months of December, one thousand nine
37 hundred eighty-three, and January, February, March and
38 April, one thousand nine hundred eighty-four, a customer
39 shall be eligible to receive a utility's special reduced rates
40 for any of said billing months which correlates to a calendar
41 month during which that customer is eligible to participate
42 in one or more of the qualifying programs specified in this
43 section, regardless of the date on which that customer
44 applies for such rates: *Provided*, That the date of
45 application falls on or prior to the fifteenth day of May, one
46 thousand nine hundred eighty-four. No customer who
47 applies for the special reduced rates after the fifteenth day
48 of May, one thousand nine hundred eighty-four, shall be
49 eligible to receive such rates for any of the billing months of
50 December, one thousand nine hundred eighty-three, or
51 January, February, March or April, one thousand nine
52 hundred eighty-four. Before any individual may qualify to
53 receive the special reduced rates, the following
54 requirements must be met:

55 (a) The special reduced rates shall apply only to current
56 customers or to those persons who subsequently become
57 customers in their own right. If an SSI, AFDC, AFDC-U or

58 food stamp recipient is living in a household which is served
59 under the name of a person who is not an SSI, AFDC,
60 AFDC-U or food stamp recipient, that service may not be
61 changed or have been changed subsequent to the twelfth
62 day of March, one thousand nine hundred eighty-three, to
63 the name of the SSI, AFDC, AFDC-U or food stamp
64 recipient in order to qualify for service under the special
65 reduced rates.

66 (b) The burden of proving eligibility for the special
67 reduced rates shall be on the customer requesting such
68 rates. The department of human services shall establish by
69 rules and regulations procedures (1) to inform persons
70 receiving any of the four forms of assistance which confer
71 eligibility for the special reduced rates about the
72 availability of the special reduced rates, (2) to assist
73 applicants for the special reduced rates in proving their
74 eligibility therefor, and (3) to assist gas and electric utilities
75 offering the special reduced rates in determining on a
76 continuing basis the eligibility therefor of persons receiving
77 or applying for such rates. The commission shall establish
78 by rules and regulations procedures for the application for
79 and provision of service under the special reduced rates and
80 for the determination and certification of revenue
81 deficiencies resulting from the special reduced rates.
82 Within ten days of the effective date of this article, the
83 commission and the department of human services shall
84 adopt temporary rules and regulations, as required by this
85 section, which rules and regulations shall not be subject to
86 the requirements of chapter twenty-nine-a and section
87 seven, article one of chapter twenty-four except that they
88 shall be filed with the secretary of state and published in the
89 state register. These temporary rules and regulations shall
90 remain in effect until supplanted by permanent rules and
91 regulations, which shall be adopted by the commission and
92 the department of human services within one hundred
93 eighty days of the effective date of this article. No customer
94 who is a recipient of more than one of the four forms of
95 assistance which confer eligibility for the special reduced
96 rates shall be eligible for more than one twenty percent
97 discount for gas service and one twenty percent discount for
98 electric service during each billing month that said
99 customer is eligible to receive the special reduced rates.

100 (c) In order to provide each eligible residential utility
101 customer the special reduced rates for the billing months of
102 December, one thousand nine hundred eighty-three,
103 through April, one thousand nine hundred eighty-four,
104 (hereinafter referred to as the first special-reduced-rate
105 season), each utility providing the special reduced rates
106 shall credit against the amount otherwise owed by each
107 such customer an amount equal to the difference between
108 the total amount that each such customer was actually
109 billed during the first special-reduced-rate season and the
110 total amount that each customer would have been entitled
111 to be billed under the special reduced rates. Each such
112 credit shall be fully reflected on the first bill issued to each
113 such customer after approval of each such customer's
114 application for the special reduced rates, except in cases
115 where the interval between the approval and the issuance of
116 the next bill is so short that it is administratively
117 impracticable to do so, in which cases such credits shall be
118 fully reflected on the second bill issued to each such
119 customer after approval of that customer's application. If
120 the interval between the approval and the issuance of the
121 next bill is fifteen days or more, it shall not be deemed
122 administratively impracticable to reflect such credit on the
123 customer's first such bill.

§24-2A-2. Recovery of revenue deficiencies.

1 In order to provide the special reduced rates mandated by
2 section one of this article and still maintain the integrity of
3 the earnings of the utilities offering service under these
4 rates, the commission shall each year, beginning in the year
5 one thousand nine hundred eighty-four, determine, upon
6 application by any affected utility, that utility's revenue
7 deficiency resulting from the special reduced rates. Upon
8 determining any utility's revenue deficiency, the
9 commission shall issue an order certifying the amount of
10 that deficiency. Certified revenue deficiencies shall be
11 recovered by the affected utilities as follows:

12 (1) A utility's certified revenue deficiency, if any,
13 resulting from the special reduced rates shall be allowed as
14 a tax credit against the liability of the utility pursuant to the
15 provisions of article thirteen-f of chapter eleven.

16 (2) After allowance of a tax credit pursuant to the

17 provisions of article thirteen-f of chapter eleven, a utility's
18 remaining revenue deficiency, if any, resulting from the
19 special reduced rates, shall be allowed as a tax credit
20 against the liability of the utility pursuant to the provisions
21 of section eleven, article twenty-four of chapter eleven.

**§24-2A-3. Limitation on and exemption from local business
and occupation or privilege taxes and local public
utility excise taxes.**

1 (a) Any municipality which presently or hereafter
2 imposes a business and occupation or privilege tax under
3 section five, article thirteen of chapter eight or a public
4 utilities excise tax under section five-a, article thirteen of
5 chapter eight shall be restricted, in the case of utility
6 services rendered to a customer under the special reduced
7 rates, to levying such taxes on (1) in the case of a local
8 business and occupation or privilege tax, the gross revenues
9 derived under the special reduced rates for any period
10 during which that customer receives service under the
11 special reduced rates, and (2) in the case of a local public
12 utilities excise tax, to the gross amount of that customer's
13 utility bill as calculated under the special reduced rates.

14 (b) No recovery of revenue deficiencies provided in
15 section three of this article shall be subject to tax under
16 sections five or five-a, article thirteen of chapter eight.

§24-2A-4. Definitions.

1 As used in this article, the term:

2 (a) "Billing cycle" shall mean a period of time during
3 the course of which a utility either bills for or measures, by
4 meter-reading or any other means, the usage of its utility
5 services by all of its customers a single time. A utility may
6 elect whether it wishes to determine its billing cycles by
7 date of measurement or by date of billing. A utility which
8 employs twelve billing cycles per year shall be deemed to
9 employ monthly billing cycles. A utility which employs
10 more or fewer than twelve billing cycles per year shall be
11 deemed to employ non-monthly billing cycles. For a utility
12 employing monthly billing cycles, a billing cycle identified
13 by the name of a particular calendar month must include at
14 least twelve days of that calendar month.

15 (b) "Billing month" shall have two meanings:

16 (1) As applied to a utility employing non-monthly
17 billing cycles and to its customers, a particular "billing
18 month" shall mean the calendar month to which that billing
19 month correlates under section one of this article.

20 (2) As applied to a utility employing monthly billing
21 cycles and to its customers, a particular "billing month"
22 shall mean the period of customer usage reflected on any
23 bill which, in the case of a utility with billing-date billing
24 cycles, is issued during that particular monthly billing
25 cycle, or for which, in the case of a utility with
26 measurement-date billing cycles, the measurement of usage
27 is made during that particular monthly billing cycle.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Harold E. Edinger
.....
Chairman Senate Committee

Donald Auello
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Todd C. Wulfe
.....
Clerk of the Senate

.....
Clerk of the House of Delegates
Walter D. McChesney
.....
President of the Senate

W. M. Lee, Jr.
.....
Speaker House of Delegates

The within *in approved* this the *29*
day of *March*, 1984.

Paul R. Taylor
.....
Governor

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