

No. 2002

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



ENROLLED

HOUSE BILL No. 2002

(By Mr. Speaker, Mr. Albright & Del Swann
[By request of the Executive])



Passed March 8, 1986

In Effect July 1, 1986 ~~Passage~~

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H. B. 2002

(By MR. SPEAKER, MR. ALBRIGHT, and DELEGATE SWANN)
[By request of the Executive]

[Passed March 8, 1986; in effect July 1, 1986.]

AN ACT to amend and reencat section two-d, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said article by adding thereto a new section, designated section three-g; and to further amend chapter eleven of said code, by adding thereto a new article, designated article thirteen-g, all relating to sales of electricity from an electric light and power company seller to a manufacturing company purchaser utilizing such electricity in an electrolytic process for the manufacture of chlorine in this state being exempt from business and occupation tax to such seller and with the full amount of such tax exemption being passed on in the purchase price to such manufacturer purchaser; providing a credit against business and occupation taxes for electric power companies that generate electricity in this state from coal, which electricity is not sold by them to utility customers in this state, making allowance of credit dependent on an increase in the number of kilowatts of electricity generated from coal in this state over and above the number of kilowatts so generated by the taxpayer during the base year; limiting the credit to kilowatts of electricity generated from coal produced from mines employing West Virginia miners; making legislative findings; defining terms; providing formula for computation of credit; requiring certification that coal was produced from an eligible mine; and providing

effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2d. Public service or utility business.

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, there is likewise hereby
6 levied and shall be collected taxes on account of the
7 business engaged in equal to gross income of the
8 business multiplied by the respective rates as follows:

9 (1) Street and interurban and electric railways, one
10 and four-tenths percent;

11 (2) Water companies, four and four-tenths percent,
12 except as to income received by municipally owned
13 water plants;

14 (3) Electric light and power companies, four percent
15 on sales and demand charges for domestic purposes and
16 commercial lighting and four percent on sales and
17 demand charges for all other purposes, except as to
18 income received by municipally owned plants producing
19 or purchasing electricity and distributing same: *Pro-*
20 *vided*, That electric light and power companies which
21 engage in the supplying of public service but which do
22 not generate or produce electric power shall be taxed
23 on the gross income derived therefrom at the rate of
24 three percent on sales and demand charges for domestic
25 purposes and commercial lighting and three percent on
26 sales and demand charges for all other purposes, except
27 as to income received by municipally owned plants:

28 *Provided, however,* That the sale of electric power under
29 this section shall be taxed at the rate of two and forty-
30 six hundredths percent on that portion of the gross
31 proceeds derived from the sale of electric power to a
32 plant location of a customer engaged in a manufacturing
33 activity, if the contract demand at such plant location
34 exceeds two hundred thousand kilowatts per hour per
35 year, or if the usage of such plant location exceeds two
36 hundred thousand kilowatts per hour in a year: *Provided*
37 *further,* That such two and forty-six hundredths percent
38 rate will be reduced to a rate of two and three hundred
39 thirty-seven thousandths percent through occurrence of
40 the contemplated five percent reduction of rates on the
41 first day of July, one thousand nine hundred eighty-five,
42 and with such rate to thereafter, on the first day of July,
43 one thousand nine hundred eighty-seven, become two
44 percent: *Provided further,* That the sale of electric power
45 under this section shall be exempt from the tax imposed
46 by section two if it is separately metered and consumed
47 in an electrolytic process for the manufacture of chlorine
48 in this state, and the rate reduction herein provided to
49 the taxpayer shall be passed on to the manufacturer of
50 the chlorine;

51 (4) Natural gas companies, four and twenty-nine
52 hundredths percent on the gross income;

53 (5) Toll bridge companies, four and twenty-nine
54 hundredths percent; and

55 (6) Upon all other public service or utility business,
56 two and eighty-six hundredths percent.

57 (b) The measure of this tax shall not include gross
58 income derived from commerce between this state and
59 other states of the United States or between this state
60 and foreign countries. The measure of the tax under this
61 section shall include only gross income received from the
62 supplying of public service. The gross income of the
63 taxpayer from any other activity shall be included in the
64 measure of the tax imposed upon such other activity by
65 the appropriate section or sections of this article.

**§11-13-3g. Tax credit for increased generation of elec-
tricity from coal.**

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

8 (b) The tax commissioner may prescribe such regula-
9 tions as he deems necessary to carry out the purposes
10 of this section and article thirteen-g of this chapter.

**ARTICLE 13G. BUSINESS AND OCCUPATION TAX CREDIT FOR
INCREASED GENERATION OF ELECTRICITY.**

§11-13G-1. Legislative finding.

1 The Legislature finds that electricity generated in this
2 state is by and large generated from coal; that this state
3 and this region are blessed with large quantities of
4 mineable coal that is suitable for use as fuel to generate
5 electricity; that there are sound economic purposes to
6 locating electric power generating facilities in the coal
7 fields and to encouraging power companies to operate
8 such plants at their most cost-effective level; and that
9 many West Virginia miners work in mines located in
10 other states and live or reside in this state. Therefore,
11 encouraging greater utilization of existing power plants
12 and their use of coal produced by West Virginia miners
13 at mines located in this or other states, is in the public
14 interest and promotes the general welfare of the people
15 of this state, in that it will increase employment
16 opportunities for West Virginia residents.

§11-13G-2. Definitions.

1 (1) *Base year.*—The term “base year” means the
2 average number of kilowatts of electric power generated
3 in this state from coal by the taxpayer during either (a)
4 the three years immediately preceding the current tax
5 year; or (b) the three tax years immediately preceding
6 the tax year one thousand nine hundred eighty-six,
7 whichever three-year period the taxpayer shall by the
8 first day of July, one thousand nine hundred eighty-six,
9 permanently elect to use as the base year.

10 (2) *Eligible coal*.—The term “eligible coal” means coal
11 produced from an eligible mine, as defined in subsection
12 (3).

13 (3) *Eligible mine*.—The term “eligible mine” means
14 any mine located in this state and any mine which
15 employs at least one hundred West Virginia residents
16 (as defined for personal income taxes in section seven,
17 article twenty-one of this chapter) located in another
18 state.

19 (4) Other terms used in this article shall have the
20 meanings ascribed to them in section four, article ten
21 of this chapter or section one, article thirteen of this
22 chapter, unless the context in which it is used in this
23 article clearly requires another meaning.

§11-13G-3. Credit allowed; amount of credit; effective date.

1 (a) An electric power company that generates elec-
2 tricity at a power plant located in this state, that uses
3 coal as its primary source of fuel to generate such
4 electricity, shall be allowed a credit, as determined
5 under subsection (b) of this section, against its liability
6 for tax under to generate such electricity, shall be
7 allowed a credit, as determined under subsection (b) of
8 this section, against its liability for tax under section
9 two-m, article thirteen of this chapter, if the taxpayer
10 increases the amount of electricity it generates in this
11 state, consuming coal produced from an eligible mine
12 that employs miners who are residents of this state.

13 (b) *Amount of credit*. The credit allowed by this
14 section is an amount equal to the amount determined by:

15 (1) First multiplying the taxpayer’s liability for tax
16 under section two-m, article thirteen of this chapter, for
17 the tax year, by a fraction equal to one minus a fraction
18 in which:

19 (A) The numerator is the kilowatts of electric power
20 generated from coal in this state by the taxpayer during
21 the base year; and

22 (B) The denominator is the kilowatts of electric power

23 generated from coal in this state by the taxpayer during
24 the tax year.

25 (2) Second multiplying the product determined under
26 paragraph (1) by a fraction in which:

27 (A) The numerator is tons of eligible coal purchased
28 by the taxpayer during the tax year to generate
29 electricity in this state; and

30 (B) The denominator is the total tons of coal pur-
31 chased by the taxpayer during the tax year to generate
32 electricity in this state.

33 (c) *Effective date.* The credit allowed by this section
34 shall apply to business and occupation tax liabilities for
35 calendar months beginning after the thirtieth day of
36 June, one thousand nine hundred eighty-six. It shall not
37 apply to liabilities for calendar months or quarters
38 ending before such thirtieth day of June.

§11-13G-4. Certification by producers and sellers of coal.

1 (a) The person selling coal produced from an eligible
2 mine shall certify to the electric power company
3 purchasing the coal the amount thereof that was
4 produced from an eligible mine.

5 (b) If a producer of eligible coal sells that coal to
6 purchaser for resale to an electric power company for
7 consumption in this state, he shall certify to his
8 purchaser the amount thereof that was produced from
9 an eligible mine.

10 (c) All certifications shall be in the form prescribed
11 by the tax commissioner and provide such information
12 as he deems necessary for determining compliance with
13 this article. An employee who signs the certification on
14 behalf of a proprietorship, corporation, partnership or
15 a group or combination acting as a unit shall be
16 presumed to have authority to make and sign the
17 certification on behalf of his or her employer.

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

Bruce C. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

John C. Hinch
.....
Clerk of the Senate

Donald G. Kepp
.....
Clerk of the House of Delegates

Wm. L. ...
.....
President of the Senate

Joseph P. Allright
.....
Speaker of the House of Delegates

The within *approved* this the *26th*
March
day of, 1986.

Arthur A. ...
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/86

Time 4:31 p.m.

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SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/24/86