WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED
Committee Substitute for
SENATE BILL NO. 357

(By Senators Boley & Burdette, Mr. President)

PASSED March 10, 1994
In Effect from Passage
AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two-d, two-m and two-n, article thirteen of said chapter, all relating to taxation of municipally-owned property; and making it clear that the property tax exemption for property owned by political subdivisions of other states applies only if such property is used for West Virginia public purposes and that business and occupation taxes for municipally-owned power generating facilities is applied to municipalities established under the laws of this state.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two-d, two-m and two-n, article thirteen of said chapter be amended and reenacted, all to read as follows:
ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: Property belonging to the United States, other than property permitted by the United States to be taxed under state law; property belonging exclusively to the state; property belonging exclusively to any county, district, city, village or town in this state, and used wholly for public purposes: Provided, That property belonging to such subdivision prior to the effective date of amendment of this section enacted by the Legislature during its regular session in the year one thousand nine hundred ninety-four shall be exempt from taxation if such property is used in whole or in part for public purposes as otherwise provided in this code; property located in this state, belonging to any city, town, village, county or any other political subdivision of another state, and used wholly for public purposes of this state or any subdivision thereof; property used exclusively for divine worship; parsonages and the household goods and furniture pertaining thereto; mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship or for the purpose of paying indebtedness thereon; cemeteries; property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture; property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university; public and family libraries;
property used for charitable purposes and not held or leased out for profit; property used for the public purposes of distributing water or natural gas or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit; property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit; all real estate not exceeding one-half acre in extent, and the buildings thereon, and used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not leased or otherwise used with a view to profit; all property belonging to benevolent associations, not conducted for private profit; property belonging to any public institution for the education of the deaf, dumb or blind or any hospital not held or leased out for profit; house of refuge, lunatic or orphan asylum; homes for children or for the aged, friendless or infirm, not conducted for private profit; fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies; all property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year; household goods to the value of two hundred dollars, whether or not held or used for profit; bank deposits and money; household goods (which term is deemed for purposes of this section to mean only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property) when not held or used for profit and personal effects (which term is deemed for purposes of this section to mean only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person) when not held or used for profit; dead victuals laid away for family use and any other property or security exempted by any other provision of law; but no property shall be exempt from taxation which shall have been purchased or procured for the purpose of evading taxation, whether temporarily holding the same over the first day of the
Enr. Com. Sub. for S. B. No. 357] 4

Provided, That real property which is exempt from taxation by this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes shall be levied upon the same or extended upon the assessor's books.

Notwithstanding any other provisions of this section, however, no language herein shall be construed to exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of such corporations or organizations.

The tax commissioner shall, by issuance of regulations, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§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 plants owned by a municipality, as defined in section two, article one, chapter eight of this code: 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 per 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 the first day of March, one thousand nine hundred eighty-nine, 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 the first day of March, one thousand nine hundred eighty-nine, 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 the first day of January, one thousand nine hundred ninety-eight.

§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 a municipality, as defined in section two, article one, chapter eight of this code, from plants owned by the municipality and generating or producing electricity shall not be subject to tax under this article.

(c) Beginning the first day of March, one thousand nine hundred eighty-nine, 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 the first day of March, one thousand nine
hundred eighty-nine, such person's liability for pay-
ment 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), subsec-
tion (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 the
first day of January, one thousand nine hundred
ninety-eight.

§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 gener-
atting 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 taxpay-
er 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 devel-
opment 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 avail-
able for sale. The measure of tax under this subdivi-
sion 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 hun-
dred thousand 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 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 immedi-
ate 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
Enr. Com. Sub. for S. B. No. 357] 10

61 session, one thousand nine hundred ninety, in the tax
62 imposed by this article upon electricity generated or
63 produced in this state and sold to consumers in this
64 state and upon electricity not generated or produced in
65 this state that is sold to consumers in this state.
66
67 (b) Exemptions. — The provisions of this section
68 shall not apply to:
69
70 (1) Kilowatt hours of electricity generated and sold,
71 or purchased and resold, by a plant owned by a
72 municipality, as defined in section two, article one,
73 chapter eight of this code.
74
75 (2) Kilowatt hours of electric power that are separ-
76 ately metered and consumed in an electrolytic process
77 for the manufacture of chlorine.
78
79 (3) Kilowatt hours of electric power that are separ-
80 ately metered and consumed in the manufacture of
81 ferroalloy. As used in this subdivision, the term
82 "ferroalloy" means any of the various alloys of iron
83 and one or more other elements used as a raw
84 material in the production of steel but shall not
85 include electric power used in the production of steel.
86
87 (4) The full economic benefits provided to the
88 taxpayer by subdivisions (2) and (3) of this subsection
89 shall be passed on to the manufacturer of the chlorine
90 or ferroalloy.
91
92 (c) Credit. — Any person taxable under subdivision
93 (2), subsection (a) of this section shall be allowed a
94 credit against the amount of tax due under that
95 subdivision for any electric power generation taxes
96 paid by the taxpayer with respect to such electric
97 power to the state in which such power was generated
98 or produced. The amount of credit allowed shall not
99 exceed the tax liability arising under subdivision (2),
100 subsection (a) of this section with respect to the sale of
101 such power.
102
103 (d) Transition rule. — Beginning the first day of
104 March, one thousand nine hundred eighty-nine, elec-
105 tric light and power companies shall determine their
106 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 the first day of March, one thousand nine hundred eighty-nine, 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 subdivision (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 shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

(e) Effective date. — The amendments to this section made in the year one thousand nine hundred ninety shall take effect on the first day of October, one thousand nine hundred ninety: 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved as the 30th day of ....... 1994.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/30/94
Time 1:07 PM