Enr. CS for H.B. 2823

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2823

(By Delegates Walters, Blair, Upson, Phillips, J. Nelson,
Hanshaw, E. Nelson, Boggs and Caputo)

[Passed March 8, 2016; in effect ninety days from passage.]
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[Passed March 8, 2016; in effect ninety days from passage.]
AN ACT to amend and reenact §11-13-2d of the Code of West Virginia, 1931, as amended, relating to eliminating a certain tax on persons engaging or continuing within this state in the service or business of street and interurban and electric railways.

Be it enacted by the Legislature of West Virginia:

That §11-13-2d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within approved this the 11th day of March, 2016.

Governor