

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Originating

House Bill _____

BY DELEGATES _____

[Originated in the Committee on Energy, February

____, 2020; referred

to the Committee on Finance.]

1 A BILL to amend and reenact §11-13-2q of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §11-13-2r, all relating to
3 business and occupation taxes imposed on operators of certain coal-fired electric
4 generating units located in this state; clarifying application of certain sections of code;
5 providing for recomputation of taxable generating capacity of certain coal-fired electric
6 generating units for business and occupation tax purposes under certain circumstances;
7 defining certain terms, imposing recapture tax under certain circumstances; and specifying
8 effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

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

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

8 (b) *Definition.* — As used in this section, the term "coal-fired merchant power plant" means
9 an a coal-fired electricity generating unit or plant in this state with relation to which the owners,
10 operators, interest holders, or any combination thereof, do not receive regulated cost recovery
11 pursuant to any tariff, regulated rate, or cost recovery fee mandated or authorized by the West
12 Virginia Public Service Commission, or by any rate-making authority of any other state of the
13 United States, and that: (1) Is not subject to regulation of its rates by the West Virginia Public
14 Service Commission, or any rate-making authority of any other state of the United States; (2) sells

15 electricity it generates only on the wholesale market; (3) does not sell electricity pursuant to one
16 or more long-term sales contracts; and (4) does not sell electricity to retail consumers.

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

**§11-13-2r. Recomputation of taxable generating capacity of certain coal-fired electric
generating facilities; imposition of recapture tax.**

1 (a) General. -- Notwithstanding any provision of this article to the contrary, for the taxable
2 year beginning January 1, 2021, the tax on the privilege of generating electricity from coal-fired
3 generating units in operation before January 1, 1995, shall be computed as provided in §11-13-
4 2o of this code and the tax attributable to the months of January through June of 2021 shall be
5 remitted before July 31, 2021, as provided in §11-13-4 of this code. Beginning July 1, 2021, the
6 owner or operator of a coal-fired generating unit in operation before January 1, 1995, may elect
7 to recompute the taxable generating capacity of those coal-fired generating units determined
8 under §11-13-2o of this code, so that the tax attributable to the second half of 2021 is computed
9 and paid on 45 percent of the official capability of those generating units, as defined in §11-13-2o
10 of this code: *Provided*, That this election is an irrevocable election and the owner or operator of
11 the coal-fired generating units for which this election is made shall agree to keep them in operation
12 until at least July 1, 2025. The tax attributable to the months of July through December of 2021,
13 as recomputed under this section, shall be remitted before January 31, 2022, as provided in §11-
14 13-4 of this code. When this election is made, then for taxable years beginning on and after
15 January 1, 2022, the taxable generating capacity of coal-fired generating units in operation before
16 January 1, 1995, shall be 45 percent of the official capability of the generating unit as defined in
17 §11-13-2o of this code.

18 (b) Recapture tax. – Beginning on and after July 1, 2021, but before July 1, 2025, should
19 the coal-fired units impacted by this tax cease to operate, the owner or operator of said plants will
20 remit back to the West Virginia State Tax Department all of the business and occupation tax

21 savings incurred during this time. A recapture tax is imposed by this subsection, which tax is an
22 amount equal to the business and occupation tax savings the owner or operator of the plant
23 realized, or would have realized, due to enactment of this section, on or after July 1, 2021, but
24 before July 1, 2025. The recapture tax shall be due and payable on the date the annual business
25 and occupation tax return is due under this article for the taxable period for which the recapture
26 tax applies. In the event federal law or regulation requires the closing of coal-fired power plants
27 before July 1, 2025, the recapture tax shall not apply to taxable periods beginning subsequent to
28 the federal closure date.

29 (c) *Transfer of generating unit.* – If at any time after the effective date of this section but
30 before July 1, 2025, a coal-fired generating unit whose taxable generating capacity was
31 recomputed under this section is transferred to another entity, the amount of the business and
32 occupation tax benefit the transferor received, or would have received, under this section had the
33 owner continued to own and operated the generating unit shall be recaptured under subsection
34 (b) of this section.

35 (d) *Definitions.* – Terms “taxable generating capacity” and “official capability” used in this
36 section are defined as provided in §11-13-2o of this code except to the extent those definitions
37 are modified by language in this section for taxable periods beginning on and after July 1, 2021.

NOTE: The purpose of this bill is to: Amend §11-13-2q of the business and occupation tax to clarify the provision for merchant power plants; and provide an election for recomputation of the taxable generating capacity of a coal-fired electric power generating units placed in service prior to January 1, 1995. Under current law the taxable generating capacity of those units is currently based on the unit’s net generation during calendar years 1991 through 1994. This bill would allow the owners or operators of those generating units to make an irrevocable election to reduce the taxable generating capacity of those units to 45 percent of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021 provided the owner agrees to keep the generating units in operation until at least January 1, 2025. A recapture tax would be imposed in the event the actual net annual generation of a generating unit for which the election is made is less than 75 percent of the actual coal-fired generation at the plant during calendar year 2019. The recapture tax would also be imposed when ownership of the generating unit is transferred on or after July 1, 2021 but before January 1, 2025. In the event law or regulation requires closure of the generating unit, the recapture tax would not applicable to periods after the closure date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

ABSTRACT

HOUSE BILL NO. _____

BY: Delegates _____

SHORT TITLE: Relating to B&O taxes imposed on certain coal-fired electric generating units.

DATE INTRODUCED: February _____, 2020.

CODE REFERENCE: Amends and reenacts §11-13-2q, Enacts new section §11-13-2r.

PROPOSED LAW PRESENTED TO THE COMMITTEE: The purpose of this bill is to amend the business and occupation tax provisions for power plants in two ways.

First, the bill revisits the new section created in last year's special session (HB207) by revising the merchant power plant language. The new language clarifies that to receive the exemption from the B and O tax, the merchant plant must be "coal-fired," not receiving any regulated cost recovery, and not regulated by the PSC or any other rate-making authority in another state. This clarification is necessary to limit the number of plants which are exempt and is more in line with the intent of last year's bill (HB207).

Second, the bill provides for an election by operators for re-computation of the taxable generating capacity of coal-fired electric power generating units placed in service prior to January 1, 1995. Under current law the taxable generating capacity of those units is based on the unit's net generation during calendar years 1991 through 1994. The current electric market has changed dramatically since those years, and the plants are no longer operating at the levels which are the basis of the tax.

This bill allows the owners or operators of those generating units to make an irrevocable election to reduce the taxable generating capacity of those units to 45% of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021, provided the owner agrees to keep the generating units in operation until at least January 1, 2025.

A recapture tax would be imposed in the event coal-fired units impacted by this tax reduction cease to operate within a specified time period. The recaptured tax is an amount

equal to the business and occupation tax savings the owner or operator of the plant realized, or would have realized, on or after July 1, 2021, but before July 1, 2025. In the event federal law or regulation requires the closing of coal-fired power plants before July 1, 2025, the recapture tax shall not apply to taxable periods beginning subsequent to the federal closure date.

This bill is designed to keep coal-fired power plants in this state operational by reducing the B&O taxes paid from the outdated tax rates set in the early 1990s. The effect of this bill will be lower tax bills for every coal fired power plant, though the amount of the reduction will vary from plant to plant because each had been taxed at differing levels based on their respective net generation during the 90s.

TITLE: Ok.

FISCAL NOTE: Requested.

COMMITTEE AMENDMENT/SUBSTITUTE: None.

GOVERNMENT AGENCIES AFFECTED: Tax

EFFECTIVE DATE: Regular, but retroactive to January 1, 2020, as to section 2r and for taxable periods beginning on and after July 1, 2021, as to section 2q.

OTHER COMMITTEE REFERENCE AND/OR ACTION: Finance

COMMENTS: This bill is a companion bill to SB793 which was introduced in the Senate on February 14, 2020. This bill is being run at the urging of the Executive and was drafted by the Tax Department.