WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

JUN 23 11 27 AM '95
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SECRETARY OF STATE
FILED

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code § 11-10-5

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: Business and Occupation Tax

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 24, 1995 AT 5:00 P.M.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Legal Division
Dept. of Tax and Revenue
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

by Robert H. Hoffman
James H. Paige III
State Tax Commissioner

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

9.40

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State of West Virginia
Department of Tax and Revenue

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

GASTON CAPERTON
GOVERNOR

JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

June 16, 1995

To Whom It May Concern:

Title of Rule: Business and Occupation Tax.

Title Number: 110

Series Number: 13

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 16th day of June, 1995.

James H. Paige III

James H. Paige, III
Secretary, Tax and Revenue

STATEMENT OF CIRCUMSTANCES

Committee Substitute for House Bill 2267, enacted March 11, 1995, amended Article 13, Chapter 11 of the West Virginia Code, the Business and Occupation Tax. As a result, the regulations governing the administration of that tax are being amended.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Business and Occupation Tax

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: State Tax Division
Address: P.O. Box 1005
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$	$	$	$	$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The amendments to the Rule should have no impact on Division expenses.

3. Objectives of these rules:

Explain and clarify amendments to Article 13, Chapter 11 of the West Virginia Code which result from Committee Substitute for House Bill 2267.

Rule Title: Business and Occupation Tax.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There should be no impact other than that envisioned with the passage of Committee Substitute for H.B. 2267.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

There should be no impact other than that envisioned with the passage of Committee Substitute for H.B. 2267.

C. Economic Impact on Citizens/Public at Large.

There should be no impact other than that envisioned with the passage of Committee Substitute for H.B. 2267.

Date: June 22, 1995

Signature of Agency Head or Authorized Representative

by Robert A. Hoffman

James H. Paige ~~III~~
Secretary of Tax and Revenue,
State Tax Commissioner

STATEMENT OF PROPOSED RULE

The rule explains and clarifies the Business and Occupation Tax, Article 13, Chapter 11 of the West Virginia Code, and the amendments relate to the imposition of that tax on the businesses of gas storage and the generation or production of electricity.

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WEST VIRGINIA LEGISLATIVE RULE
TAX DEPARTMENT

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 110
SERIES 13

BUSINESS AND OCCUPATION TAX

§ 110-13-1. General.

1.1 Scope. - These legislative rules explain and clarify the West Virginia Business and Occupation Tax, W. Va. Code § 11-13-1 et seq. These legislative rules are intended to repeal and reenact 110 C.S.R. 13.

1.2 Authority. - W. Va. Code §§ 11-10-5 and 29A-3-15.

1.3 Filing Date. - ~~April 2, 1990~~

1.4 Effective Date. - ~~April 2, 1990~~

§ 110-13-1a. Definitions.

1a.1 For purposes of these rules ~~and regulations, the~~ terms ~~defined in Section 1a.2 of these regulations~~ shall have the meaning given to them by this Section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition elsewhere in these rules.

1a.2 Terms defined.

1a.2.1 "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" includes the rendering of gas storage service by any person for the gain or economic benefit of any person, including, but not limited to, the storage operator, whether or not incident to any other business activity.

1a.2.1.1 The business and occupation tax act imposes taxes upon persons engaged in business. The term "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.

1a.2.1.2 In determining whether a business is engaged in for direct or indirect economic gain or benefit, the lack of profit suffered in said activity is not relevant; nor is it material that the business was engaged without profit as the primary motivation.

1a.2.2 "Company use" means that amount of electrical energy, excluding station use and line loss, used to construct, maintain or operate generation, transmission, office or other facilities of the taxpayer in West Virginia, used in the conduct of any electric utility business in West Virginia or any electric energy generation business in West Virginia.

1a.2.3 "Dekatherm" means the thermal energy unit equal to one million British thermal units (BTU's) or the equivalent of one thousand cubic feet of gas having a heating content of one thousand BTU's per cubic foot.

1a.2.3.1 For the purpose of calculating the tax imposed upon any gas storage business, the number of dekatherms of gas injected into or withdrawn from such a gas storage reservoir during a tax month shall not include:

1a.2.3.1.a Any gas consumed by a gas storage operation as fuel for compressors used to pump gas into or out of storage, including gas used in a recycling operation, whether or not that gas was temporarily placed into storage prior to its withdrawal for such use as fuel; or

1a.2.3.1.b Any gas used in a recycling operation of the storage reservoir.

1a.2.3.2 All other gas injected into or withdrawn from a storage reservoir shall be included in the number of dekatherms constituting the measure of the tax base, and such measure shall not be decreased to reflect any loss of gas from storage or any gas which may escape or otherwise be lost.

1a.2.4 "Ferroalloy" - See Section 2n.2.

~~1a.2.4~~ 1a.2.5 "Gas" means either natural gas unmixed, or any mixture of natural and artificial gas or any other gas.

~~1a.2.5~~ 1a.2.6 "Gas storage operator" means any person who operates a storage reservoir or provides a storage service as defined herein, either as owner or lessee.

~~1a.2.6~~ 1a.2.7 "Gas storage service" means the injection of gas into a storage reservoir, the storage of gas for any period of time in a storage reservoir, or the withdrawal of gas from a storage reservoir. Such gas may be owned by the storage operator or any other person.

~~1a.2.7~~ 1a.2.8 "Gross income" means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

~~1a.2.8~~ 1a.2.9 "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property or the providing of services without any deduction on account of the cost of property sold or expenses of any kind.

~~1a.2.9~~ 1a.2.10 "Gross West Virginia electric energy generation" means the total amount of electric energy produced by a generating station located in West Virginia without reduction for station use, company use, line loss or any other use, loss or deduction.

1a.2.11 "Inactive reserve." - See Section 2o.

~~1a.2.10~~ 1a.2.12 "Kilowatt hours of electricity sold to consumers in this State that were not generated or produced in this State" means total kilowatt hours of electricity sold to consumers located in West Virginia less net kilowatt hours generated or produced in West Virginia as defined in Section 1a.2.14 of these regulations.

~~1a.2.11~~ 1a.2.13 "Kilowatt hours of net generation available for sale that was generated or produced in this State" means gross West Virginia electric energy generation less station use, as defined in these regulations. "Kilowatt hours of net generation available for sale that was generated or produced in this State" shall not be reduced by company use, line loss or any other use, loss or deduction, except station use, as defined in these regulations.

~~1a.2.12~~ 1a.2.14 "Line loss" means loss of electrical energy by electrical resistance and electromagnetism occurring from or in electrical transmission lines or apparatus between any two points along such transmission lines or apparatus.

1a.2.15 "Maximum possible annual generation." - See Section 2o.

~~1a.2.13~~ 1a.2.16 "Month" or "tax month" means the calendar month.

1a.2.17 "Net generation." - See Section 2o.

~~1a.2.14~~ 1a.2.18 "Net Kilowatt hours generated or produced in West Virginia" means kilowatt hours of net generation available for sale that was generated or produced in this State, as defined in Section 1a.2.11 of these regulations.

~~1a.2.15~~ 1a.2.19 "Net number of dekatherms of gas injected" means the sum of the daily injections of dekatherms of gas in excess of the sum of the daily withdrawals of dekatherms of gas during a tax month.

~~1a.2.16~~ 1a.2.20 "Net number of dekatherms of gas withdrawn" means the sum of the daily withdrawals of dekatherms of gas in excess of the sum of the daily injections of dekatherms of gas during a tax month.

1a.2.21 "Official capability." - See Section 2o.

1a.2.22 "Peaking unit." - See Section 2o.

~~1a.2.17~~ 1a.2.23 "Person" or the term "company," herein used interchangeably, includes any individual, firm, partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

~~1a.2.18~~ 1a.2.24 "Recycling operation" means the withdrawal of gas from a storage reservoir and the subsequent reinjection of gas into the same reservoir solely for the purpose of regulating the pressure of the storage reservoir or portion thereof.

1a.2.25 "Retired from service." - See Section 2o.

~~1a.2.19~~ 1a.2.26 "Sale," "sales" or "selling" includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

~~1a.2.20~~ 1a.2.27 "State" or "this State" means the State of West Virginia.

~~1a.2.21~~ 1a.2.28 "Station" or "generating station" means a station at which electrical generators, dynamos or other equipment or apparatus are used to convert mechanical, chemical, solar, geothermal or nuclear energy into electrical energy. The term shall include, but not be limited to, those generating stations producing electrical energy by means of coal fired, gas fired, wood fired, gob fired, coal waste fired, coal refuse fired or waste fired electrical energy generation technology; and shall also include, but not be limited to, stations producing electrical energy by means of nuclear fission or fusion, magnetohydrodynamic, fluidized bed combustion, solar, biomass, wind, fuel cell, steam turbine, fluid turbine, gas turbine, hydroelectric or pumped-storage hydroelectric electrical energy generation technology.

~~1a.2.22~~ 1a.2.29 "Station use" or "plant use" means that amount of electric energy used by a generating station in the production of electricity and general operation of the generating station. The term "station use" or "plant use" includes the energy used for pumping water for purposes of providing stored energy at a pumped storage hydroelectric plant. "Station use" or "plant use" does not include company use or line loss.

~~1a.2.23~~ 1a.2.30 "Storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is, was or may have been injected for the purpose of storage prior to March 1, 1989.

1a.2.31 "Storage Utilization Index." - See Section 2e.1.

1a.2.32 "Taxable generating capacity." - See Section 2o.

1a.2.33 "Tax" means Business and Occupation Tax imposed pursuant to W. Va. Code § 11-13-1 et seq.

~~1a.2.24~~ 1a.2.34 "Taxpayer" means any person liable for any tax hereunder.

~~1a.2.25~~ <u>1a.2.35</u> "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under W. Va. Code § 11-13-1 <u>et</u> <u>seq</u>. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of W. Va. Code § 11-13-1 <u>et</u> <u>seq</u>., or under these regulations, the period for which such return is made.

§ 110-13-2. Imposition of Privilege Tax.

~~2.1 For taxable years or months beginning after June 30, 1987, there is levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in W. Va. Code §§ 11-13-2d and 11-13-2m.~~

~~2.2~~ <u>2.1 Until June 1, 1995,</u> for taxable months or taxable years beginning after February 28, 1989, there is levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in W. Va. Code §§ 11-13-2d, 11-13-2e, 11-13-2m and 11-13-2n.

<u>2.2 For taxable months or taxable years beginning after May 31, 1995, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against the measure of the tax as set forth in Sections 2d, 2e, 2m, 2n and 2o.</u>

2.3 Sales to affiliates.

2.3.1 In determining value in sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax shall be levied upon the fair market value of the subject matter sold, corresponding as nearly as possible to the gross proceeds which have been or would be realized from the sale of the same or similar electrical energy, utility service or products of like quality or character where no common interest exists between a buyer and a seller but the circumstances and conditions, including time and place of sale, are otherwise similar. The term "affiliated companies or persons" includes but is not limited to "affiliated groups" as defined by Internal Revenue Code 1504(a) and "parent and subsidiary corporations" as defined by W. Va. Code § 11-23-3.

2.3.2 In determining value in regard to sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the vendor and vendee is such that gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the following rules shall be applied in the order stated.

2.3.2.1 Whenever sales are made to affiliates, the value shall correspond to the gross proceeds from the sale of similar electrical energy, utility service or products of like quality and character and in similar quantities between persons of no common interest.

2.3.2.2 If there are no sales between parties of no common interest by which the taxpayer may value his sales to affiliates, the value shall correspond to the gross proceeds from sales by the taxpayer to nonrelated purchasers of similar electrical energy, utility service or products of like quality and character and in similar quantities and shall include all subsidies and bonuses.

2.3.2.3 In the absence of sales of similar electrical energy, utility service or products as a guide to value, such value may be determined by a cost basis. In such cases there shall be included every item of cost attributable to the particular matter sold, including direct and indirect overhead, costs. There shall be added to this total cost the average markup realized by the taxpayer on all electrical energy, utility service or products sold.

§ 110-13-2d. Public Service or Utility Business.

2d.1 Persons engaged within this State in certain public service or utility business are taxable on the privilege of engaging in such businesses and are required to report the gross income from such business activities under the appropriate classification on the business and occupation tax form. Only gross income derived from the supplying of public services shall be reported under the public service classifications.

2d.2 There are certain persons who are not subject to tax under W. Va. Code § 11-13-2d even though such persons may be subject to the control of this State's Public Service Commission. These statutorily exempt persons are railroads, railroad car companies, express companies, pipeline companies, motor carriers, telephone and telegraph companies and water carriers by steamboat or steamship. Municipally-owned water companies and municipally-owned electric distribution systems are not subject to the tax under W. Va. Code § 11-13-2d.

2d.3 Upon any person engaged 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 due under in W. Va. Code § 11-13-2d shall be equal to the gross income of the business derived from such activity or activities multiplied by the respective rates as follows:

2d.3.1 Street and interurban and electric railways, one and four-tenths percent (1.4%);

2d.3.2 Water companies, four and four-tenths percent (4.4%, except as to income received by municipally owned water plants;

2d.3.3 Electric light and power companies:

2d.3.3.1 A person who generates electric power in this State and then sells that power generation in regulated transactions in this State, shall pay tax at the rate of four percent (4%) on sales and demand charges derived from the sale of such power in this State, except as otherwise provided in these regulations.

2d.3.3.2 A person who sells electric power in this State in regulated transactions which such person does not generate in this State, shall pay tax at the rate of three percent (3%) on sales and demand charges derived from the sale of such power in this State, except as otherwise provided in these regulations.

2d.3.3.3 Notwithstanding the provisions of Sections 2.3.3.1 and 2.3.3.2, if electric power is sold in this State:

(1) to a plant location of a customer engaged in manufacturing activity and the contract demand or usage at such plant location exceeds two hundred thousand kilowatts per hour per year or two hundred thousand kilowatts per hour in a year, then the rate of tax on the sales and demand charges derived from such sales shall be two percent (2%);

(2) to a plant location in this State that consumes such power in an electrolytic process for the manufacture of chlorine, then to the extent the electric power consumed in the electrolytic process is separated metered from all other electric power consumed at that location, the demand charges for such power shall be exempt from the tax imposed by W. Va. Code § 11-13-2;

(3) to a plant location in this State that consumes such power in the manufacture of ferroalloy, then to the extent the electric power consumed in manufacturing ferroalloy is separately metered from all other electric power consumed at that location, the sales and demand charges for such power are exempt from the tax imposed by W. Va. Code § 11-13-2; or

(4) by a municipally owned plant producing or purchasing electricity and distributing the same, the income it receives from such power shall be exempt from the tax imposed by W. Va. Code § 11-13-2.

2d.3.3.4 As used in this Section, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel, but does not include the final production of steel.

2d.3.4 Natural gas companies, four and twenty-nine hundredths percent (4.29%) on the gross income, except (1) that the sale of natural gas under W. Va. Code § 11-13-2d shall be exempt from the tax due under W. Va. Code § 11-13-2d 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 and (2) 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;

2d.3.5 Toll bridge companies, four and twenty-nine hundredths percent (4.29%); and

2d.3.6 Upon all other public service or utility business, two and eighty-six hundredths percent (2.86%).

2d.4 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 activity of supplying public service.

2d.5 Until June 1, 1995, on and after March 1, 1989, electric light and power companies shall also determine their liability for payment of tax under W. Va. Code §§ 11-13-2d, 11-13-2m and 11-13-2n. If for taxable months beginning on or after the March 1, 1989 liability for tax under W. Va. Code § 11-13-2n is equal to or greater than the sum if the power company's liability for payment of tax under W. Va.

Code §§ 11-13-2d and 11-13-2m, then the company shall pay the tax due only under W. Va. Code § 11-13-2n. But if tax liability under W. Va. Code § 11-13-2n is less, then tax shall be paid under W. Va. Code §§ 11-13-2d and 11-13-2m and the tax under W. Va. Code § 11-13-2n shall not be paid. The provisions of this paragraph and ~~paragraph~~ Section 2d.3.3 ~~and Section 2d.5~~ of this rule shall expire and become null and void for taxable years beginning on or after January 1, 1998.

2d.6 Beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of Section 2d.3.3 or Section 2m for every taxable month in 1994 shall determine their liability for payment of tax in accordance with Section 2d.6.1. All other electric light and power companies shall determine their liability for payment of tax exclusively under Section 2o.

2d.6.1 If for taxable months beginning on or after June 1, 1995, liability for tax under Section 2o is equal to or greater than the sum of the power company's liability for payment of tax under Section 2d.3.3 and Section 2m, then the company shall pay the tax due under Section 2o and not the tax due under 2d.3.3 and Section 2m. If tax liability under Section 2o is less, then the tax shall be paid under Section 2d.3.3 and Section 2m and the tax due under Section 2o shall not be paid.

2d.6.2 The provisions of Section 2d.3.3 shall expire and become null and void for taxable years beginning on or after January 1, 1998.

§ 110-13-2e. Business of Gas Storage; Effective Date.

2e.1 **Rate of tax.** - Until July 1, 1995, upon every person engaged or continuing within this State in any gas storage business utilizing one or more gas storage reservoirs located within this State, ~~the tax due under by W. Va. Code § 11-13-2e shall be equal to five cents (.05%) multiplied by the sum of (1) the number of dekatherms of gas injected into such a gas storage reservoir during a tax month and (2) the number of dekatherms of gas withdrawn from such a gas storage reservoir during a tax month, whether or not such gas is owned by, or is injected or withdrawn for, the storage operator or any other person. Provided, however, That for taxable years beginning on or after April 6, 1989~~ the tax due under W. Va. Code § 11-13-2e shall be five cents (.05) multiplied by either (1) the net number of dekatherms of gas injected into a gas storage reservoir during a tax month or (2) the net number of dekatherms of gas withdrawn from a gas storage reservoir during a tax month, whichever is applicable for that month, whether or not such gas is owned by, or is injected or withdrawn for, the storage operator or any other person; Provided, That Effective July 1, 1995, the net number of dekatherms of gas injected or the net number of dekatherms withdrawn shall not exceed the storage utilization index as defined in this Section. For purposes of this Section, storage utilization means the utilization of storage reservoir, through the operation of existing and functional facilities available for storage use during the five (5) year base period ending December 31, 1994, and the "storage utilization index" shall be the five year average of taxable dekatherms as determined for each taxable period of the stated base period.

2e.2 **Fractional parts of dekatherms.** - The number of dekatherms of gas injected or withdrawn from a gas storage reservoir shall include fractional parts of dekatherms to be taxed at the following rates:

2e.2.1 From 0 up to but not including .2 dekatherms at one cent.

2e.2.2 From .2 up to but not including .4 dekatherms at two cents.

2e.2.3 From .4 up to but not including .6 dekatherms at three cents.

2e.2.4 From .6 up to but not including .8 dekatherms at four cents.

2e.2.5 From .8 up to and including 1 dekatherm at five cents.

2e.3 **Measurement.** - At each point where gas may be injected or withdrawn from gas storage reservoirs located within this State, the taxpayer must install meters or other appropriate means to determine the number of dekatherms of gas injected into and withdrawn from storage. In order for gas consumed as fuel or gas for compressors used to pump gas into or out of storage or used in a recycling operation to be excluded from the gas subject to this tax, the operator of a storage facility must measure the amount of the gas injected into or withdrawn from storage which is used as fuel or in the recycling operation.

2e.4 **Administration; installment payments.** - The tax due under W. Va. Code § 11-13-2e shall be submitted in accordance with instructions and forms provided by the Tax Commissioner and shall be administered, collected and enforced as provided in the West Virginia Tax Crimes and Penalties Act, W. Va. Code § 11-9-1 et seq; and W. Va. Code § 11-13-1 et seq., and these regulations promulgated pursuant thereto. The tax due under W. Va. Code § 11-13-2e shall be remitted in periodic installment payments as provided in Section 4 of these regulations, except that such payments shall be remitted on or before the twentieth (20th) day of the month following the month or quarter in which the tax accrued.

2e.5 Notice of retirement from service. - A taxpayer subject to the tax due under this Section shall provide written notice to the Joint Committee on Government and Finance and the Department of Tax and Revenue eighteen (18) months prior to the retirement from service of a storage reservoir.

2e.5.1 Failure to provide notice may result in liability for tax for months in which notice was required.

§ 110-13-2m. Business Of Generating Or Producing Electric Power; Exception; Rates.

2m.1 Every person engaging within this State in the business of generating electric power when the sale thereof is not subject to tax under W. Va. Code § 11-13-2d, shall be liable for tax on the gross proceeds from the sale thereof at a rate of four percent (4%), except that the rate shall be two percent (2%) on that portion of the gross proceeds on the sale of electric power to a plant 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.

2m.2 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 municipally owned plants generating or producing electricity shall not be subject to tax under these regulations.

2m.3 Until June 1, 1995, beginning March 1, 1989, every person taxable under this Section shall determine their liability for payment of tax under W. Va. Code §§ 11-13-2m and 11-13-2d and under W. Va. Code § 11-13-2n. If for taxable months beginning on or after March 1, 1989, such person's liability for payment of tax under W. Va. Code §§ 11-13-2m and 11-13-2d is less than the amount of such person's liability for payment of tax under W. Va. Code § 11-13-2n, then such person shall pay the tax under W. Va. Code § 11-13-2n and not the sum of the amount of tax due under W. Va. Code §§ 11-13-2m and 11-13-2d. If the tax due under W. Va. Code § 11-13-2n is less, then the amount of tax due under W. Va. Code §§ 11-13-2m and 11-13-2d shall be the tax due. The provisions of this Section of these regulations shall expire and become null and void for taxable years beginning on or after January 1, 1998.

2m.4 Beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of Section 2d.3.3 or this Section for every taxable month in 1994 shall determine their liability for payment of tax under these rules in accordance with Section 2m.4.1. All other electric light and power companies shall determine their liability for payment of tax under these rules exclusively under Section 2o.

2m.4.1 If for taxable months beginning on or after June 1, 1995, liability for tax under Section 2o of this Article is equal to or greater than the sum of the power company's liability for payment of tax under Section 2d.3.3 and this Section, then the company shall pay the tax due under Section 2o and not the tax due under Section 2d.3.3. If tax liability under Section 2o is less, then the tax shall be paid under Section 2d.3.3 and this Section and the tax due under Section 2o shall not be paid.

2m.4.2 The provisions of this Section shall expire and become null and void for taxable years beginning on or after January 1, 1998. Notwithstanding this Section or any other provision of Chapter 11 of the West Virginia Code to the contrary, an electric light and power company that generates and produces power in this State shall continue to be deemed to be an "industrial taxpayer" for purposes of W. Va. Code § 11-13D-2(b)(8), and gross income of an electric light and power company from the generation and production of power in this State and sales and demand charges for electric power sold in this State shall continue to be deemed "gross income of the business subject to tax under Article thirteen of this Chapter" for purposes of W. Va. Code § 11-23-17(b), all to the extent of and in accordance with the law in effect immediately preceding June 1, 1995.

§ 110-13-2n. Business of Generating or Producing or Selling Electric Power; Exemptions; Rates.

2n.1 **Rate of tax.** - Until June 1, 1995, upon every person engaging or continuing within this State in the business of generating 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 due under W. Va. Code § 11-13-2n shall be equal to:

2n.1.1 ~~Two-tenths cents ($.002)~~ Twenty-six hundredths of one cent ($.0026) times the kilowatt hours of net generation available for sale that was generated in this State by the taxpayer during the taxable year. This rate shall be five hundredths cents ($.0005) times the kilowatt hours of net generation available for sale that was generated in this State by the taxpayer and sold to a plant of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year. Tax due under W. Va. Code § 11-13-2n for any person generating electric power and an alternative form of energy at a facility located within this State substantially from gob or other mine refuse shall be five hundredths cents ($.0005) times the kilowatt hours of net generation or production available for sale. The measure of tax under this paragraph shall be total kilowatt hours of net generation available for sale that was generated or produced in this State by the taxpayer ~~after February 28, 1989,~~ 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.

2n.1.2 ~~Fifteen hundredths cents ($.00015)~~ Nineteen hundredths of one cent ($ .0019) times the kilowatt hours of electricity sold to consumers in this State that were not generated or produced in this State by the taxpayer. The rate shall be five hundredths cents ($.0005) times the kilowatt hours electricity not generated in this State by the taxpayer which is sold to a plant 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 hundred thousand kilowatts per hour in a year. The measure of tax ~~under W. Va. Code § 11-13-2n(a)(2)~~ shall be 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 during the taxable year, the net kilowatt hours of electricity generated or produced in the State by the taxpayer during that year. ~~: Provided, That for calendar year 1989, the measure of tax shall be the total kilowatt hours of electricity sold to consumers in this State after February 29, 1989, 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 this State during calendar year 1989 but after February 28, 1989, the net kilowatt hours of electricity generated or produced in this State during calendar Year 1989 but after February 28, 1989.~~

2n.1.3 The West Virginia Public Service Commission shall, upon application of a public utility, allow an immediate 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 session, 1990, in the tax imposed by W. Va. Code § 11-13-1 et seq. upon electricity generated or produced in this State and sold to consumers in this State and upon electricity not generated or produced in this State that is sold to consumers in this State.

2n.2 **Exemptions.** - The provisions of W. Va. Code § 11-13-2n shall not apply to:

2n.2.1 Kilowatt hours of electricity generated and sold, or purchased and resold, by a municipally owned plant.

2n.2.2 Kilowatt hours of electric power that are separately metered and consumed in an electrolytic process for the manufacture of chlorine.

2n.2.3 Kilowatt hours of electric power that are separately metered and consumed in the manufacture of ferroalloy. As used in this Section, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel but shall not include electric power used in the production of steel.

2n.2.4 The full economic benefits provided to the taxpayer by ~~W. Va. Code §§ 11-13-2n(b)(2) and (3)~~ Sections 2n.2.2 and 2n.2.3 shall be passed on to the manufacturer of the chlorine or ferroalloy.

2n.3 **Credit.** - Any person taxable under W. Va. Code § 11-13-2n(a)(2) shall be allowed a credit against the amount of tax due under that Section for any electric power generation taxes paid by the taxpayer with respect to the generation of such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under W. Va. Code § 11-13-2n(a)(2) with respect to the sale of kilowatt hours of such power in a regulated transaction in this State when that same kilowatt hour was taxed by the state of generation.

2n.4 **Transition rule.** - Until June 1, 1995, beginning March 1, 1989, electric light and power companies shall determine their liability for payment of tax under W. Va. Code §§ 11-13-2n, 11-13-2d and 11-13-2m. If for taxable months beginning on or after March 1, 1989, liability for tax under W. Va. Code § 11-13-2n is equal to or greater than the sum of the power company's liability for payment of tax under W. Va. Code §§ 11-13-2d(a)(3) and 11-13-2m, then the company shall pay the tax due under W. Va. Code § 11-13-2n and not the tax due under W. Va. Code §§ 11-13-2d(a)(3) or 11-13-2m. If tax liability under W. Va. Code § 11-13-2n is less, then tax shall be paid under W. Va. Code §§ 11-13-2d(a)(3) and 11-13-2m, as applicable, and the tax due under W. Va. Code § 11-13-2n shall not be paid. The provisions of this Section of these regulations shall expire and become null and void for taxable years beginning on or after January 1, 1998.

2n.5 Termination Date. - Beginning June 1, 1995 and thereafter, electric light and power companies shall not determine their tax liability under this Section.

§ 11-13-2o. Business of generating or producing or selling electricity on and after June 1, 1995; definitions; rate of tax.

2o.1 Definitions. - As used in this Section:

2o.1.1 "Average four-year generation" is computed by dividing by four (4) the sum of a generating unit's net generation, expressed in kilowatt hours, for calendar years 1991, 1992, 1993, and 1994. For any generating unit which was newly installed and placed into commercial operation after January 1, 1991 and prior to the effective date of this Section, June 1, 1995, "average four-year generation" is computed by dividing such unit's net generation for the period beginning with the month in which the unit was placed into commercial operation and ending with the month preceding the effective date of this Section by the number of months in such period and multiplying the resulting amount by twelve (12) with the result being a representative twelve-month average of the unit's net generation while in an operational status.

2o.1.2 "Capacity factor" means a fraction, the numerator of which is average four-year generation and the denominator of which is the maximum possible annual generation.

2o.1.3 "Generating unit" means a mechanical apparatus or structure which through the operation of its component parts is capable of generating or producing electricity and is regularly used for this purpose.

2o.1.4 "Inactive reserve" means the removal of a generating unit from commercial service for a period of not less than twelve (12) consecutive months as a result of lack of need for generation from the generating unit or as a result of the requirements of State or federal law or the removal of a generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

2o.1.5 "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times 8760 hours [i.e., the number of hours in a year.]

2o.1.6 "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

2o.1.7 "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.

2o.1.8 "Retired from service" or "retiring from service" means the removal of a generating unit from commercial service for a period of at least twelve (12) consecutive months with the intent that the unit will not thereafter be returned to active service.

2o.1.9 "Taxable generating capacity" means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, [i.e., average four-year generation in kilowatt hours ÷ 8760 hours] subject to the modifications set forth in Sections 2o.3.2 [new generating units] and 2o.3.3 [peaking units]. Taxable generating capacity is the measure of tax under Section 2o.

2o.1.10 "Net generation" for a period means the "kilowatt hours of net generation available for sale that was generated or produced in this State" by the generating unit during such period less the following adjustments:

2o.1.10.1 Twenty-one twenty-sixths (21/26 or .8077) of the kilowatt hours of electricity generated at the generating unit and sold during such period to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds 200,000 kilowatts per hour in a year or where the usage at such plant location exceeds 200,000 kilowatts per hour in a year;

2o.1.10.2 Twenty-one twenty-sixths (21/26 or .8077) of the kilowatt hours of electricity produced or generated at the generating unit during such period by any person producing electric power and an alternative form of energy at a facility located in this State substantially from gob or other mine refuse;

2o.1.10.3 The total kilowatt hours of electricity generated at the generating unit exempted from tax during such period by Section 2n.2.

2o.1.10.3.1 Taxpayers paying under Section 2o who received any of these exemptions in calendar years 1991 through 1994 receive the exemption under Section 2o automatically when they calculate their "average four-year generation" values for calendar years 1991 through 1994. Therefore, no additional exemption is allowable for kilowatt hours generated in calendar years after 1994.

2o.1.11 "Net generation" for a period shall not be reduced by company use, line loss or any other use or loss or deduction, except station use, as defined in Section 1a.

2o.2 **Rates of tax.** - Upon every person engaging or continuing within this State in the business of generating 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 2 shall be equal to:

2o.2.1 For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of $22.78 multiplied by the taxable generating capacity of each generating unit in this State owned or leased by the taxpayer, subject to the modifications set forth in Section 2o.3: **Provided**, That with respect to each generating unit in this State which has installed a flue gas desulfurization system, the tax imposed by Section 2 of this Article shall, on and after January 31, 1996, be equal to the product of $20.70 cents multiplied by the taxable generating capacity of the units, subject to the modifications set forth in Section 2o.3: **Provided, however** That with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at such plant location exceeds 200,000 kilowatts per hour per year or if the usage at such plant location exceeds 200,000 kilowatts per hour in a year, in no event shall the tax imposed by this Article with respect to the sale or use of such electricity exceed five hundredths of one cent (.05¢) times the kilowatt hours sold to or used by a plant engaged in such a manufacturing activity; and,

2o.2.1.1 Taxpayers with a flue gas desulfurization system installed as of January 31, 1996 shall file a separate return at the new rate for that one (1) day, together with their return for January at the old rate reflecting only the previous consecutive thirty (30) days.

2o.2.2 For taxpayers who sell electricity to consumers in this State that is not generated or produced in this State by the taxpayer, nineteen hundredths of one cent (.19¢) 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 (.05¢) 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 200,000 kilowatts per hour per year or if the usage at such plant location exceeds 200,000 kilowatts per hour in a year. The measure of tax under this Section 2o.2.2 shall be equal to the total kilowatt hours of electricity sold to consumers in the 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 provisions of this Section 2o.2.2 shall not apply to those kilowatt hours exempt under Section 2n.2. Any person taxable under this Section 2o.2.2 shall be allowed a credit against the amount of tax due under this Section 2o.2.2 for any electric power generation taxes or a tax similar to the tax imposed by Section 2o.2.1 paid by the taxpayer with respect to such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under this Section 2o.2.2 with respect to the sale of such power.

2o.2.3 Taxpayers subject to two or more rates shall segregate their average four-year generation by tax category.

Example.

A company's total net generation for calendar years 1991 through 1994 is 5 billion kilowatt-hours, of which 2.2 billion kilowatt-hours were subject to the lower rate for large customers (i.e., 200,000 kilowatts per hour per year) and for power generated from gob or other mine refuse. Taxable generating capacity at the lower rate ($4.38) would be 251,141.55 kilowatts (i.e., 2.2 billion kilowatt-hours ÷ 8,760 hours.) Taxable generating capacity at the regular rate ($22.78) would be 319,634.70 kilowatts (i.e., 2.8 billion kilowatt hours ÷ 8760 hours.)

2o.3 The following provisions are applicable to taxpayers subject to tax under Section 2o.2.1:

2o.3.1 Retired units; inactive reserve. - If a generating unit is retired from service or placed in inactive reserve, a taxpayer shall not be liable for tax computed with respect to the taxable generating capacity of the unit for the period that the unit is inactive or retired. The taxpayer shall provide written notice to the

Joint Committee on Government and Finance and to the Tax Division, as well as to any other entity as may be otherwise provided by law, eighteen (18) months prior to retiring any generating unit from service in this State.

2o.3.1.1 Units removed from commercial operation for less than twelve (12) consecutive months are neither retired from service nor in an inactive reserve status, and are taxable without proration or allocation pursuant to Section 2o.3.5.

2o.3.1.2 Failure to provide notice may result in liability for tax for months in which notice was required.

2o.3.2 New generating units. - If a new generating unit, other than a peaking unit, is placed in initial service on or after June 1, 1995, the generating unit's taxable generating capacity shall equal forty percent (40%) of the official capability of the unit.

2o.3.3 Peaking units. - If a peaking unit is placed in initial service on or after June 1, 1995, the generating unit's taxable generating capacity shall equal five percent (5%) of the official capability of the unit.

2o.3.4 Transfers of interests in generating units. - If a taxpayer acquires an interest in a generating unit, the taxpayer shall include the computation of taxable generating capacity of said unit in the determination of the taxpayer's tax liability as of the date of the acquisition. Conversely, if a taxpayer transfers an interest in a generating unit, the taxpayer shall not for periods thereafter be liable for tax computed with respect to the taxable generating capacity of such transferred unit.

2o.3.5 Proration, allocation. -

(a) It being the intent of the Legislature to prohibit multiple taxation of the same taxable generating capacity, taxes shall be equitably (1) prorated for the taxable year in which a generating unit is first placed in service, retired or placed in inactive reserve, or in which a taxpayer acquires or transfers an interest in a generating unit; (2) allocated and reallocated with respect to adjustments to net generation; and (3) allocated among multiple taxpayers with interests in a single generating unit.

(b) To provide for an orderly transition with respect to the rate- making effect of this Section, those electric light and power companies which, as of June 1, 1995, are permitted by the West Virginia Public Service Commission to utilize deferred accounting for purposes of recovery from ratepayers of any portion of Business and Occupation Tax expense under W. Va. Code § 11-13-1 et seq. and these rules shall be permitted, until such time that action pursuant to a rate application or order of the Commission provides for appropriate alternative rate-making treatment for such expense, to recover by means of deferred accounting the tax expense imposed by this Section to the extent that the tax expense imposed by this Section exceeds the level of Business and Occupation Tax allowed in rates as of March 11, 1995.

2o.3.5.1 When calculating the average four year generation for a generating unit first placed in service after January 1, 1991 and prior to June 1, 1994; retired or placed in inactive reserve; or in which a taxpayer acquires or transfers an interest in the generating unit, net generation (including adjustments) for the month in which such event occurs on a day other than the first day thereof shall be computed by dividing net generation during that month by the number of days in that month in which such generation occurred, and multiplying the resulting amount by the total number of days in that month.

2o.3.5.2 The amount of tax liability among multiple taxpayers with interests in a single generating unit shall be allocated between them in direct proportion to the percentage interest owned by each taxpayer.

2o.3.5.3 When a taxpayer acquires an interest in a generating unit on any date other than the first day of the month, the acquiring taxpayer is liable for tax only for those days of the month in which it owns such interest. The tax liability for such month is allocated between acquiring and transferring taxpayers by multiplying taxable generating capacity for the entire month by a fraction, the numerator of which is the number of days during the month the taxpayer owned such interest, and the denominator of which is the total number of days in the month. For tax purposes the interest transferred shall be deemed to have been owned for the entire day on which the transfer occurred.

2o.3.6 **Electricity generated by manufacturer or affiliate for use in manufacturing activity.** - When electricity used in a manufacturing activity is generated in this State by the person who owned the manufacturing facility in which the electricity is used and the electricity generating unit or units producing the electricity so used are owned by such manufacturer, or by a member of the manufacturer's controlled group, as defined in Section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity shall not be taxable under W. Va. Code § 11-13-1 et seq. and these rules. Any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this Section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity.

2o.4 Beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of Section 2d.3.3 or 2m as then in effect for every taxable month in 1994 shall determine their liability for payment of tax under W. Va. Code § 11-13-1 et seq. and in accordance with Sections 2o.4.1 and 2o.4.2 below. All other electric light and power companies shall determine their liability for payment of tax exclusively under this Section beginning June 1, 1995 and thereafter.

2o.4.1 If for taxable months beginning on or after June 1, 1995, liability for tax under Section 2o is equal to or greater than the sum of the power company's liability for payment of tax under Sections 2d.3.3 and 2m, then the company shall pay the tax due under Section 2o and not the tax due under Sections 2d and 2m. If tax liability under this Section is less, then the tax shall be paid under Sections 2d and 2m and the tax due under this Section shall not be paid.

2o.4.2 Notwithstanding Section 2o.4.1, for taxable years beginning on or after January 1, 1998, all electric light and power companies shall determine their liability for payment of Business and Occupation tax exclusively under this Section 2o.

§ 110-13-3. Exemptions.

3.1 **Monthly exemptions from tax.** - Each taxpayer shall be granted an exemption in every case of forty-one dollars and sixty-seven cents ($41.67) per month of tax computed under the business and occupation tax law. From the total taxes due the monthly exemption of forty-one dollars and sixty-seven cents ($41.67) per month is deducted. Inasmuch as the law grants each person a monthly exemption of forty-one dollars and sixty-seven cents ($41.67) per month, only one ~~annual~~ exemption per tax period can be claimed even though such person may conduct more than one business.

3.2 **Business exempt by specific statutes.**

3.2.1 Public service district for water and sewage services. Public service districts for water and sewage services organized in compliance with the provisions of W. Va. Code § 16-3-1 et seq., entitled, "Public Service Districts for Water and Sewage Services," are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those public service districts that have complied with all the requirements as set forth in the aforecited provisions of the Code.

3.2.2 **Municipal waterworks.** - Waterworks in the State of West Virginia which are organized by a municipal corporation in compliance with the provision of W. Va. Code § 8-12-1 et seq., entitled, "Waterworks," are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those municipal waterworks that have complied with all requirements as set forth in the aforecited provisions of the Code.

3.2.3 **Municipal combined waterworks and sewage systems.** - Waterworks and sewage systems in the State of West Virginia which are organized or operated by a municipal corporation in compliance with the provisions of W. Va. Code § 8-13-1 et seq., entitled Combined Waterworks and Sewage Systems, are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those municipal waterworks and sewage systems that have complied with all the requirements as set forth in the aforecited provisions of the Code.

3.2.4 **Municipal and sanitary district sewage works.** - Sewage works in the State of West Virginia which are organized or operated by any municipal corporation or sanitary district in compliance with the provisions of W. Va. Code § 16-13-1 et seq., entitled, "Sewage Works of Municipal Corporations and Sanitary Districts", are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those sewage works of municipal corporations and sanitary districts that have complied with all the requirements as set forth in the aforecited provisions of the Code.

§ 110-13-3a. Reserved For Future Use.

§ 110-13-3b. Reserved For Future Use.

~~**§ 110-13-3c. Business And Occupation Tax Credit For Industrial Expansion.**~~

~~3c.1 A credit against business and occupation tax is allowed to certain industrial taxpayers who make qualified investment for industrial expansion.~~

~~3c.2 Definitions.~~

~~3c.2.1 The term "Industrial Taxpayer" means any person who exercises any privilege taxable or formerly taxable under the manufacturing classification of the business and occupation tax law or any person who exercises any privilege taxable or formerly taxable under the service classification of such law; **Provided,** That the business activity is manufacturing for another, which activity would be taxable or formerly taxable under the manufacturing classification if title to the goods and materials were vested in the person performing the manufacturing service.~~

~~3c.2.2 The terms "Qualified Property" and "Property Purchased for Industrial Expansion" means real property and improvements thereto and tangible personal property constructed or purchased for the use as a component part of a new or expanded business of an industrial taxpayer. Such property must be located within West Virginia. Such terms include only tangible personal property with respect to which depreciation or amortization is allowable in determining the industrial taxpayer's West Virginia personal income tax or West Virginia corporation net income tax. Said property must have a useful life at the time the property is placed in service of four (4) years or more.~~

~~3c.2.2.1 The terms defined within this Section 3c.2.2 do not include replacement property, motor vehicles licensed by the Department of Motor Vehicles, airplanes, off premises transportation equipment or property which is used outside this State.~~

~~3c.2.2.2 The terms do not include property purchased prior to July 25, 1969, nor property the construction, reconstruction or erection of which began (or the contract therefor was let) prior to July 25, 1969.~~

~~3c.2.2.3 Nor do the terms include property which is acquired incident to the purchase of the stock or asset, of an industrial taxpayer which property has been used by the vendor in such business in this State, or which property has been previously designated "Property Purchased for Industrial Expansion" and so used to qualify for the tax credit.~~

~~3c.2.3 "Property Purchased for Industrial Expansion" includes property acquired by lease for a term of ten (10) years or longer, if the leased property would otherwise qualify if purchased outright. Lease renewal, subleases or assignments are not considered "Property Purchased for Industrial Expansion."~~

~~3c.2.4 The term "Cost" does not include the value of any property given in trade or exchange for new property which qualifies for this industrial expansion~~

~~credit. The "Cost" of leased property is one hundred percent (100%) of the rent reserved for the primary term of the lease but not to exceed twenty (20) years.~~

~~3c.2.5 The term "Property Acquired for Multiple Business Use" mean qualified property placed in service by an industrial taxpayer as a component part of a new or expanded business together with some other business or occupation not qualifying for the credit. Property acquired for multiple business use must be apportioned between the qualifying and nonqualifying business and occupations and the proportion allocated to qualifying businesses of industrial taxpayers shall be considered as "Qualified Investments" subject to the conditions and limitations of this Section 3c.~~

~~**3c.3 Computation of and amount of credit allowable.**~~

~~3c.3.1 The amount of credit allowed to industrial taxpayers shall be equal to ten percent (10%) of the cost of qualified investment made for industrial expansion and shall be applied over a ten (10) year period to reduce the business and occupation tax at the rate of one-tenth (1/10th) of the amount of such credit per taxable year. The credit shall commence with the taxable year that such qualified investment is first placed in service or use. In other words, the credit is limited to ten percent (10%) (one percent (1%) for each of the ten (10) consecutive taxable years) of the total qualified investment.~~

~~3c.3.2 The amount of credit employed in any taxable year may not reduce business and occupation tax liability by more than fifty percent (50%) of the tax computed before applying the credit.~~

~~3c.3.3 When making a claim for credit for industrial expansion, the industrial taxpayer must explain in detail the purpose of the facility, the anticipated increased production, the anticipated additional employment generated, the products to be manufactured, the type of qualified property purchased and the cost thereof, etc. Failure to provide detailed information will result in the credit being disallowed.~~

~~**3c.4 Qualified investment.** If the qualified property has a useful life of eight (8) years or more, the industrial taxpayer may consider one hundred percent (100%) of the cost of the property as qualified investment. If the useful life is six (6) years or more but less than eight (8) years, the industrial taxpayer may consider two thirds (66-2/3%) of the cost of the property as qualified investment. If the property has a useful life of four (4) years or more but less than six (6) years, the industrial taxpayer may consider one third (33-1/3%) of the cost of the property as qualified investment.~~

~~Property with a useful life of less than four (4) years does not qualify for the purposes of the credit.~~

~~3c.5 Forfeiture of unused tax credits.~~

~~3c.5.1 If during any taxable year, an industrial taxpayer disposes of or ceases to use property with respect to which a tax credit has been claimed, or ceases operation of such business before expiration of the useful life of the property, then that portion of the unused annual credit attributable to the remainder of the taxable year subsequent to such disposition shall be forfeited for the taxable year in which such event occurs, and remaining unused credit shall be forfeited for all ensuing years.~~

~~3c.5.2 If an industrial taxpayer trades in qualified property on a purchase of new qualified property, he loses the unused credit on the trade-in property but is permitted to compute the credit on the new qualified property. However, the cost of the new qualified property shall not include the value of that property traded in.~~

~~3c.5.3 No carryover shall be allowed for the amount of any unused portion of the credit; nor shall any credit be allowed against any tax liability for any year prior to July 25, 1969, by reason of an assessment issuing within any period after such date, which assessment is, in whole or part, for any period prior to July 25, 1969.~~

§ 110-13-3c. Tax Credit for Business Investment and Jobs Expansion. - There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the amount determined under W. Va. Code § 11-13C-1 et seq., relating to B&O tax credit for business investment and jobs expansion.

§ 110-13-3d. Tax Credit for Industrial Expansion and Industrial Revitalization and Eligible Research and Development Projects. - There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the amount determined under W. Va. Code § 11-13D-1 et seq., relating to B&O tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

§ 110-13-3e. Tax Credit for Coal Loading Facilities.

3e.1 There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the amount determined under W. Va. Code § 11-13E-1 et seq., relating to tax credit for new or expanded or revitalized coal loading facilities.

<u>§ 110-13-3f. Tax Credit for Reducing Electric and Natural Gas Utility Rates for Low-Income Residential Customers.</u>

<u>3f.1 There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the cost of providing electric or natural gas utility service, or both, at reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.</u>

§ 110-13-4. Computation of Tax; Payment.

4.1 Except for those amounts due under W. Va. Code § 11-13-2e, the taxes levied under W. Va. Code § 11-13-1 <u>et</u> <u>seq</u>. shall be due and payable as follows:

4.1.1 For taxpayers whose estimated tax under W. Va. Code § 11-13-1 <u>et</u> <u>seq</u>. exceeds one thousand dollars ($1,000) per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which he is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the Office of the Commissioner: **Provided**, That the installment payment otherwise due under this Section on or before June 30th each year shall be remitted to the Tax Commissioner on or before the June 15th each year, beginning June 15, 1988. In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth (1/12th) of any applicable tax credits allowable for the taxable year and one twelfth (1/12th) of the total exemption allowed for such.

4.1.2 For taxpayers whose estimated tax under W. Va. Code § 11-13-1 <u>et</u> <u>seq</u>. does not exceed one thousand dollars ($1,000) per month, the tax shall be due and payable in quarterly installments within one (1) month from the expiration of each quarter in which the tax accrued. Each such taxpayer shall, within one (1) month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the Office of the Commissioner. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth (1/4th) of any applicable tax credits allowable for the taxable year and one fourth (1/4th) of the total exemption allowed for such year.

4.1.3 When the total tax for which any person is liable under W. Va. Code § 11-13-1 <u>et</u> <u>seq</u>. does not exceed two hundred dollars ($200) in any year the taxpayer may pay the same quarterly as aforesaid, or, with the consent in writing of the Tax Commissioner, at the end of the month next following the close of the tax year.

4.1.4 The above provisions of this Section notwithstanding, the Tax Commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this Section for periods of shorter duration than those prescribed above.

4.2 Taxpayers owing taxes on amounts due under W. Va. Code § 11-13-2e shall, on or before the twentieth (20th) of each month in which such tax is due and payable, make out an estimate of the tax for which the taxpayer is liable during the period for which the amount is due, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the Office of the Commissioner.

4.2.1 The amount of tax due under W. Va. Code § 11-13-2e shall be due and payable in monthly installments on or before the twentieth (20th) day of the month following the month in which the tax accrued. Estimated tax due under W. Va. Code § 11-13-2e shall be calculated based on the actual number of dekatherms of gas injected or withdrawn from a gas storage reservoir during the month in which the tax accrued. **Provided,** That for taxable years beginning on or after April 6, 1989, tax due under W. Va. Code § 11-13-2e shall be calculated based on the actual net number of dekatherms of gas injected or net number of dekatherms of gas withdrawn from a gas storage reservoir during each month. Estimated tax due under W. Va. Code § 11-13-2e may not be arrived at by averaging out an estimated or actual yearly total. In estimating the amount of tax due each month, the taxpayer may deduct one twelfth (1/12th) of any applicable tax credits allowable for the taxable year and one twelfth (1/12th) of the total exemption allowed for such year.

4.2.2 For taxpayers whose estimated tax due as calculated under Section 4.2.1 of these regulations is less than one thousand dollars ($1,000) in each month of a quarter, the taxpayer may elect to make a quarterly installment payment in lieu of the monthly installment, due and payable on the twentieth (20th) day of the month following the quarter in which the tax accrued. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth (1/4th) of any applicable tax credits allowable for the taxable year and one fourth (1/4th) of the total exemption allowed for such year. Should the taxpayer have a monthly estimated tax due of over one thousand dollars ($1,000) prior to deducting the allowable credit and exemption deductions for that month, then all previous monthly installments shall be retroactively due and payable at the time they would have otherwise been due and payable under Section 4.2.1 of these regulations, subject to interest and additions.

4.2.3 For taxpayers whose total tax due under W. Va. Code § 11-13-2e does not exceed two hundred dollars ($200) in any year, the taxpayer may pay the same quarterly or monthly as aforesaid, or with the consent in writing of the Tax Commissioner, on the twentieth (20th) day of the month next following the close of the tax year.

4.2.4 The above provisions of this Section notwithstanding, the Tax Commissioner, if he deems it necessary to insure payment of the tax, may require the return and payment under this Section for periods of shorter duration than those prescribed above.

§ 110-13-5. Return and Remittance by Taxpayer.

5.1 Annual return.

5.1.1 Every taxpayer shall, on or before the expiration of one (1) month after the end of the tax year, file a business and occupation tax return for the entire taxable year. Said return must show the gross proceeds of sales, gross income of business or other measure of tax in dekatherms, kilowatts or kilowatt hours, as appropriate, and the taxpayer must compute the amount of tax chargeable against him. Such return must be signed by the taxpayer.

5.1.2 For a taxpayer maintaining records and paying taxes on a calendar year basis, the annual return is due on or before January 31 of the following year. The annual return is filed at the close of the taxable year and replaces the fourth (4th) quarterly estimate. The annual return is a recompilation of the three (3) quarterly estimates and the fourth (4th) quarter's business. It provides a medium for making such adjustments on the quarterly estimates as may be necessary.

5.2 Extension of time.

5.2.1 Any taxpayer desiring an extension of time for filing his annual business and occupation tax return must make such request in writing to the Tax ~~Department~~ Division. The request must be postmarked before the due date of the return and must state the reason for such request and the period of extension required. The taxpayer will then be advised in writing as to whether or not such extension is granted. No extension shall be granted for a period of time longer than ninety (90) days from the due date of the annual return.

5.2.1.1 The written request for an extension of time shall be signed by the taxpayer if made by an individual, or by the president, vice president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the written request for an extension of time on behalf of the taxpayer.

5.2.2 No extension of time may be granted for filing of monthly or quarterly estimated returns.

§§ 110-13-6 through 110-13-8. Reserved for Future Use.

§ 110-13-9. Tax Year and Method of Accounting.

9.1 Taxable year. - For purposes of the B&O tax imposed under W. Va. Code § 11-13-1 et seq., a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

9.2 Method of accounting. - A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the tax under this article shall be computed under such method that in the opinion of the Tax Commissioner clearly reflects such income.

9.3 Adjustments. - In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined by the Tax Commissioner to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

§§ 110-13-10 through 110-13-26. Reserved for Future Use.

§ 110-13-27. General Procedure and Administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in W. Va. Code § 11-10-1 et seq. shall apply to the tax imposed by W. Va. Code § 11-13-1 et seq. with like effect as if said act were applicable only to the tax imposed by W. Va. Code § 11-13-1 et seq. and were set forth in extenso therein.

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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JUN 23 11 29 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Aug. 2, 1995

NOTICE OF AN EMERGENCY RULE

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY: W. Va. Code §§ 11-10-5 & 11-13-2o(c)(6)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: Business and Occupation Tax

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY:

TITLE OF RULE BEING FILED AS AN EMERGENCY:

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS: See Attached

Robert A. Hoffman

Signature
James H. Paige III
State Tax Commissioner

Use additional sheets if necessary

9.80

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

June 16, 1995

To Whom It May Concern:

Title of Rule:	Business and Occupation Tax.
Title Number:	110
Series Number:	13

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 16th day of June, 1995.

James H. Paige, III

James H. Paige, III
Secretary, Tax and Revenue

STATEMENT OF EMERGENCY RULE

Committee Substitute for House Bill 2267, effective March 11, 1995, enacted West Virginia Code § 11-13-2o. Section 11-13-2o(c)(6) requires that certain aspects of the rules relating to that Section be filed as emergency rules. As the subject matter of Section 11-13-2o(c)(6) cannot logically and reasonably be separated from the remainder of the rule, the entire rule is being filed as an emergency rule.

STATEMENT OF CIRCUMSTANCES

Committee Substitute for House Bill 2267, effective March 11, 1995, amended Article 13, Chapter 11 of the West Virginia Code, the Business and Occupation Tax. The Bill requires the filing of an emergency rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Business and Occupation Tax

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: State Tax Division
Address: P.O. Box 1005
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$	$	$	$	$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The amendments to the Rule should have no impact on Division expenses.

3. Objectives of these rules:

Explain and clarify amendments to Article 13, Chapter 11 of the West Virginia Code which result from Committee Substitute for House Bill 2267.

Rule Title: Business and Occupation Tax.

4. Explanation of Overall Economic Impact of Proposed Rule.

   A. Economic Impact on State Government.

      There should be no impact other than that envisioned with the passage of Committee Substitute for H.B. 2267.

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

      There should be no impact other than that envisioned with the passage of Committee Substitute for H.B. 2267.

   C. Economic Impact on Citizens/Public at Large.

      There should be no impact other than that envisioned with the passage of Committee Substitute for H.B. 2267.

Date: June 22, 1995

Signature of Agency Head or Authorized Representative

by Robert A. Hoffman

James H. Paige ~~III~~
Secretary of Tax and Revenue,
State Tax Commissioner

DATE: June 23, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: Business and Occupation Tax

1. Date of Filing: June 23, 1995

2. Statutory authority for promulgating emergency rule:

   W. Va. Code §§ 11-10-5 and 11-13-2o(c)(6).

3. Date of filing of proposed legislative rule: June 23, 1995.

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule:

   Yes

5. Has the same or similar emergency rule previously been filed and expired?

   No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

   N/A

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

   W. Va. Code § 11-13-2o(c)(6) requires the filing of an emergency rule.

EMERGENCY RULE TITLE: International Fuel Tax Agreement

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

N/A

FILED

JUN 23 11 29 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY

WEST VIRGINIA LEGISLATIVE RULE
TAX DEPARTMENT

TITLE 110
SERIES 13

BUSINESS AND OCCUPATION TAX

§ 110-13-1. General.

1.1 **Scope.** - These legislative rules explain and clarify the West Virginia Business and Occupation Tax, W. Va. Code § 11-13-1 et seq. These legislative rules are intended to repeal and reenact 110 C.S.R. 13.

1.2 **Authority.** - W. Va. Code §§ 11-10-5 and 29A-3-15.

1.3 **Filing Date.** - ~~April 2, 1990~~

1.4 **Effective Date.** - ~~April 2, 1990~~

§ 110-13-1a. Definitions.

1a.1 For purposes of these rules ~~and regulations, the~~ terms ~~defined in Section 1a.2 of these regulations~~ shall have the meaning given to them by this Section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition elsewhere in these rules.

1a.2 Terms defined.

1a.2.1 "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" includes the rendering of gas storage service by any person for the gain or economic benefit of any person, including, but not limited to, the storage operator, whether or not incident to any other business activity.

1a.2.1.1 The business and occupation tax act imposes taxes upon persons engaged in business. The term "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.

1a.2.1.2 In determining whether a business is engaged in for direct or indirect economic gain or benefit, the lack of profit suffered in said activity is not relevant; nor is it material that the business was engaged without profit as the primary motivation.

1a.2.2 "Company use" means that amount of electrical energy, excluding station use and line loss, used to construct, maintain or operate generation, transmission, office or other facilities of the taxpayer in West Virginia, used in the conduct of any electric utility business in West Virginia or any electric energy generation business in West Virginia.

1a.2.3 "Dekatherm" means the thermal energy unit equal to one million British thermal units (BTU's) or the equivalent of one thousand cubic feet of gas having a heating content of one thousand BTU's per cubic foot.

1a.2.3.1 For the purpose of calculating the tax imposed upon any gas storage business, the number of dekatherms of gas injected into or withdrawn from such a gas storage reservoir during a tax month shall not include:

1a.2.3.1.a Any gas consumed by a gas storage operation as fuel for compressors used to pump gas into or out of storage, including gas used in a recycling operation, whether or not that gas was temporarily placed into storage prior to its withdrawal for such use as fuel; or

1a.2.3.1.b Any gas used in a recycling operation of the storage reservoir.

1a.2.3.2 All other gas injected into or withdrawn from a storage reservoir shall be included in the number of dekatherms constituting the measure of the tax base, and such measure shall not be decreased to reflect any loss of gas from storage or any gas which may escape or otherwise be lost.

<u>1a.2.4 "Ferroalloy" - See Section 2n.2.</u>

~~1a.2.4~~ <u>1a.2.5</u> "Gas" means either natural gas unmixed, or any mixture of natural and artificial gas or any other gas.

~~1a.2.5~~ <u>1a.2.6</u> "Gas storage operator" means any person who operates a storage reservoir or provides a storage service as defined herein, either as owner or lessee.

~~1a.2.6~~ 1a.2.7 "Gas storage service" means the injection of gas into a storage reservoir, the storage of gas for any period of time in a storage reservoir, or the withdrawal of gas from a storage reservoir. Such gas may be owned by the storage operator or any other person.

~~1a.2.7~~ 1a.2.8 "Gross income" means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

~~1a.2.8~~ 1a.2.9 "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property or the providing of services without any deduction on account of the cost of property sold or expenses of any kind.

~~1a.2.9~~ 1a.2.10 "Gross West Virginia electric energy generation" means the total amount of electric energy produced by a generating station located in West Virginia without reduction for station use, company use, line loss or any other use, loss or deduction.

1a.2.11 "Inactive reserve." - See Section 2o.

~~1a.2.10~~ 1a.2.12 "Kilowatt hours of electricity sold to consumers in this State that were not generated or produced in this State" means total kilowatt hours of electricity sold to consumers located in West Virginia less net kilowatt hours generated or produced in West Virginia as defined in Section 1a.2.14 of these regulations.

~~1a.2.11~~ 1a.2.13 "Kilowatt hours of net generation available for sale that was generated or produced in this State" means gross West Virginia electric energy generation less station use, as defined in these regulations. "Kilowatt hours of net generation available for sale that was generated or produced in this State" shall not be reduced by company use, line loss or any other use, loss or deduction, except station use, as defined in these regulations.

~~1a.2.12~~ 1a.2.14 "Line loss" means loss of electrical energy by electrical resistance and electromagnetism occurring from or in electrical transmission lines or apparatus between any two points along such transmission lines or apparatus.

1a.2.15 "Maximum possible annual generation." - See Section 2o.

~~1a.2.13~~ 1a.2.16 "Month" or "tax month" means the calendar month.

1a.2.17 "Net generation." - See Section 2o.

~~1a.2.14~~ 1a.2.18 "Net Kilowatt hours generated or produced in West Virginia" means kilowatt hours of net generation available for sale that was generated or produced in this State, as defined in Section 1a.2.11 of these regulations.

~~1a.2.15~~ 1a.2.19 "Net number of dekatherms of gas injected" means the sum of the daily injections of dekatherms of gas in excess of the sum of the daily withdrawals of dekatherms of gas during a tax month.

~~1a.2.16~~ 1a.2.20 "Net number of dekatherms of gas withdrawn" means the sum of the daily withdrawals of dekatherms of gas in excess of the sum of the daily injections of dekatherms of gas during a tax month.

1a.2.21 "Official capability." - See Section 2o.

1a.2.22 "Peaking unit." - See Section 2o.

~~1a.2.17~~ 1a.2.23 "Person" or the term "company," herein used interchangeably, includes any individual, firm, partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

~~1a.2.18~~ 1a.2.24 "Recycling operation" means the withdrawal of gas from a storage reservoir and the subsequent reinjection of gas into the same reservoir solely for the purpose of regulating the pressure of the storage reservoir or portion thereof.

1a.2.25 "Retired from service." - See Section 2o.

~~1a.2.19~~ 1a.2.26 "Sale," "sales" or "selling" includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

~~1a.2.20~~ 1a.2.27 "State" or "this State" means the State of West Virginia.

~~1a.2.21~~ 1a.2.28 "Station" or "generating station" means a station at which electrical generators, dynamos or other equipment or apparatus are used to convert mechanical, chemical, solar, geothermal or nuclear energy into electrical energy. The term shall include, but not be limited to, those generating stations producing electrical energy by means of coal fired, gas fired, wood fired, gob fired, coal waste fired, coal refuse fired or waste fired electrical energy generation technology; and shall also include, but not be limited to, stations producing electrical energy by means of nuclear fission or fusion, magnetohydrodynamic, fluidized bed combustion, solar, biomass, wind, fuel cell, steam turbine, fluid turbine, gas turbine, hydroelectric or pumped-storage hydroelectric electrical energy generation technology.

~~1a.2.22~~ 1a.2.29 "Station use" or "plant use" means that amount of electric energy used by a generating station in the production of electricity and general operation of the generating station. The term "station use" or "plant use" includes the energy used for pumping water for purposes of providing stored energy at a pumped storage hydroelectric plant. "Station use" or "plant use" does not include company use or line loss.

~~1a.2.23~~ 1a.2.30 "Storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is, was or may have been injected for the purpose of storage prior to March 1, 1989.

1a.2.31 "Storage Utilization Index." - See Section 2e.1.

1a.2.32 "Taxable generating capacity." - See Section 2o.

1a.2.33 "Tax" means Business and Occupation Tax imposed pursuant to W. Va. Code § 11-13-1 et seq.

~~1a.2.24~~ 1a.2.34 "Taxpayer" means any person liable for any tax hereunder.

~~1a.2.25~~ 1a.2.35 "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under W. Va. Code § 11-13-1 et seq. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of W. Va. Code § 11-13-1 et seq., or under these regulations, the period for which such return is made.

§ 110-13-2. Imposition of Privilege Tax.

~~2.1 For taxable years or months beginning after June 30, 1987, there is levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in W. Va. Code §§ 11-13-2d and 11-13-2m.~~

~~2.2~~ 2.1 Until June 1, 1995, for taxable months or taxable years beginning after February 28, 1989, there is levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in W. Va. Code §§ 11-13-2d, 11-13-2e, 11-13-2m and 11-13-2n.

2.2 For taxable months or taxable years beginning after May 31, 1995, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against the measure of the tax as set forth in Sections 2d, 2e, 2m, 2n and 2o.

2.3 Sales to affiliates.

2.3.1 In determining value in sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax shall be levied upon the fair market value of the subject matter sold, corresponding as nearly as possible to the gross proceeds which have been or would be realized from the sale of the same or similar electrical energy, utility service or products of like quality or character where no common interest exists between a buyer and a seller but the circumstances and conditions, including time and place of sale, are otherwise similar. The term "affiliated companies or persons" includes but is not limited to "affiliated groups" as defined by Internal Revenue Code 1504(a) and "parent and subsidiary corporations" as defined by W. Va. Code § 11-23-3.

2.3.2 In determining value in regard to sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the vendor and vendee is such that gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the following rules shall be applied in the order stated.

2.3.2.1 Whenever sales are made to affiliates, the value shall correspond to the gross proceeds from the sale of similar electrical energy, utility service or products of like quality and character and in similar quantities between persons of no common interest.

2.3.2.2 If there are no sales between parties of no common interest by which the taxpayer may value his sales to affiliates, the value shall correspond to the gross proceeds from sales by the taxpayer to nonrelated purchasers of similar electrical energy, utility service or products of like quality and character and in similar quantities and shall include all subsidies and bonuses.

2.3.2.3 In the absence of sales of similar electrical energy, utility service or products as a guide to value, such value may be determined by a cost basis. In such cases there shall be included every item of cost attributable to the particular matter sold, including direct and indirect overhead, costs. There shall be added to this total cost the average markup realized by the taxpayer on all electrical energy, utility service or products sold.

§ 110-13-2d. Public Service or Utility Business.

2d.1 Persons engaged within this State in certain public service or utility business are taxable on the privilege of engaging in such businesses and are required to report the gross income from such business activities under the appropriate classification on the business and occupation tax form. Only gross income derived from the supplying of public services shall be reported under the public service classifications.

2d.2 There are certain persons who are not subject to tax under W. Va. Code § 11-13-2d even though such persons may be subject to the control of this State's Public Service Commission. These statutorily exempt persons are railroads, railroad car companies, express companies, pipeline companies, motor carriers, telephone and telegraph companies and water carriers by steamboat or steamship. Municipally-owned water companies and municipally-owned electric distribution systems are not subject to the tax under W. Va. Code § 11-13-2d.

2d.3 Upon any person engaged 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 due under in W. Va. Code § 11-13-2d shall be equal to the gross income of the business derived from such activity or activities multiplied by the respective rates as follows:

2d.3.1 Street and interurban and electric railways, one and four-tenths percent (1.4%);

2d.3.2 Water companies, four and four-tenths percent (4.4%, except as to income received by municipally owned water plants;

2d.3.3 Electric light and power companies:

2d.3.3.1 A person who generates electric power in this State and then sells that power generation in regulated transactions in this State, shall pay tax at the rate of four percent (4%) on sales and demand charges derived from the sale of such power in this State, except as otherwise provided in these regulations.

2d.3.3.2 A person who sells electric power in this State in regulated transactions which such person does not generate in this State, shall pay tax at the rate of three percent (3%) on sales and demand charges derived from the sale of such power in this State, except as otherwise provided in these regulations.

2d.3.3.3 Notwithstanding the provisions of Sections 2.3.3.1 and 2.3.3.2, if electric power is sold in this State:

(1) to a plant location of a customer engaged in manufacturing activity and the contract demand or usage at such plant location exceeds two hundred thousand kilowatts per hour per year or two hundred thousand kilowatts per hour in a year, then the rate of tax on the sales and demand charges derived from such sales shall be two percent (2%);

(2) to a plant location in this State that consumes such power in an electrolytic process for the manufacture of chlorine, then to the extent the electric power consumed in the electrolytic process is separated metered from all other electric power consumed at that location, the demand charges for such power shall be exempt from the tax imposed by W. Va. Code § 11-13-2;

(3) to a plant location in this State that consumes such power in the manufacture of ferroalloy, then to the extent the electric power consumed in manufacturing ferroalloy is separately metered from all other electric power consumed at that location, the sales and demand charges for such power are exempt from the tax imposed by W. Va. Code § 11-13-2; or

(4) by a municipally owned plant producing or purchasing electricity and distributing the same, the income it receives from such power shall be exempt from the tax imposed by W. Va. Code § 11-13-2.

2d.3.3.4 As used in this Section, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel, but does not include the final production of steel.

2d.3.4 Natural gas companies, four and twenty-nine hundredths percent (4.29%) on the gross income, except (1) that the sale of natural gas under W. Va. Code § 11-13-2d shall be exempt from the tax due under W. Va. Code § 11-13-2d 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 and (2) 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;

2d.3.5 Toll bridge companies, four and twenty-nine hundredths percent (4.29%); and

2d.3.6 Upon all other public service or utility business, two and eighty-six hundredths percent (2.86%).

2d.4 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 activity of supplying public service.

2d.5 Until June 1, 1995, on and after March 1, 1989, electric light and power companies shall also determine their liability for payment of tax under W. Va. Code §§ 11-13-2d, 11-13-2m and 11-13-2n. If for taxable months beginning on or after the March 1, 1989 liability for tax under W. Va. Code § 11-13-2n is equal to or greater than the sum if the power company's liability for payment of tax under W. Va.

Code §§ 11-13-2d and 11-13-2m, then the company shall pay the tax due only under W. Va. Code § 11-13-2n. But if tax liability under W. Va. Code § 11-13-2n is less, then tax shall be paid under W. Va. Code §§ 11-13-2d and 11-13-2m and the tax under W. Va. Code § 11-13-2n shall not be paid. The provisions of this paragraph and ~~paragraph~~ Section 2d.3.3 ~~and Section 2d.5~~ of this rule shall expire and become null and void for taxable years beginning on or after January 1, 1998.

2d.6 Beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of Section 2d.3.3 or Section 2m for every taxable month in 1994 shall determine their liability for payment of tax in accordance with Section 2d.6.1. All other electric light and power companies shall determine their liability for payment of tax exclusively under Section 2o.

2d.6.1 If for taxable months beginning on or after June 1, 1995, liability for tax under Section 2o is equal to or greater than the sum of the power company's liability for payment of tax under Section 2d.3.3 and Section 2m, then the company shall pay the tax due under Section 2o and not the tax due under 2d.3.3 and Section 2m. If tax liability under Section 2o is less, then the tax shall be paid under Section 2d.3.3 and Section 2m and the tax due under Section 2o shall not be paid.

2d.6.2 The provisions of Section 2d.3.3 shall expire and become null and void for taxable years beginning on or after January 1, 1998.

§ 110-13-2e. Business of Gas Storage; Effective Date.

2e.1 Rate of tax. - Until July 1, 1995, upon every person engaged or continuing within this State in any gas storage business utilizing one or more gas storage reservoirs located within this State, ~~the tax due under by W. Va. Code § 11-13-2e shall be equal to five cents (.05%) multiplied by the sum of (1) the number of dekatherms of gas injected into such a gas storage reservoir during a tax month and (2) the number of dekatherms of gas withdrawn from such a gas storage reservoir during a tax month, whether or not such gas is owned by, or is injected or withdrawn for, the storage operator or any other person. Provided, however, That for taxable years beginning on or after April 6, 1989~~ the tax due under W. Va. Code § 11-13-2e shall be five cents (.05) multiplied by either (1) the net number of dekatherms of gas injected into a gas storage reservoir during a tax month or (2) the net number of dekatherms of gas withdrawn from a gas storage reservoir during a tax month, whichever is applicable for that month, whether or not such gas is owned by, or is injected or withdrawn for, the storage operator or any other person; Provided, That Effective July 1, 1995, the net number of dekatherms of gas injected or the net number of dekatherms withdrawn shall not exceed the storage utilization index as defined in this Section. For purposes of this Section, storage utilization means the utilization of storage reservoir, through the operation of existing and functional facilities available for storage use during the five (5) year base period ending December 31, 1994, and the "storage utilization index" shall be the five year average of taxable dekatherms as determined for each taxable period of the stated base period.

2e.2 **Fractional parts of dekatherms.** - The number of dekatherms of gas injected or withdrawn from a gas storage reservoir shall include fractional parts of dekatherms to be taxed at the following rates:

2e.2.1 From 0 up to but not including .2 dekatherms at one cent.

2e.2.2 From .2 up to but not including .4 dekatherms at two cents.

2e.2.3 From .4 up to but not including .6 dekatherms at three cents.

2e.2.4 From .6 up to but not including .8 dekatherms at four cents.

2e.2.5 From .8 up to and including 1 dekatherm at five cents.

2e.3 **Measurement.** - At each point where gas may be injected or withdrawn from gas storage reservoirs located within this State, the taxpayer must install meters or other appropriate means to determine the number of dekatherms of gas injected into and withdrawn from storage. In order for gas consumed as fuel or gas for compressors used to pump gas into or out of storage or used in a recycling operation to be excluded from the gas subject to this tax, the operator of a storage facility must measure the amount of the gas injected into or withdrawn from storage which is used as fuel or in the recycling operation.

2e.4 **Administration; installment payments.** - The tax due under W. Va. Code § 11-13-2e shall be submitted in accordance with instructions and forms provided by the Tax Commissioner and shall be administered, collected and enforced as provided in the West Virginia Tax Crimes and Penalties Act, W. Va. Code § 11-9-1 et seq; and W. Va. Code § 11-13-1 et seq., and these regulations promulgated pursuant thereto. The tax due under W. Va. Code § 11-13-2e shall be remitted in periodic installment payments as provided in Section 4 of these regulations, except that such payments shall be remitted on or before the twentieth (20th) day of the month following the month or quarter in which the tax accrued.

2e.5 **Notice of retirement from service.** - A taxpayer subject to the tax due under this Section shall provide written notice to the Joint Committee on Government and Finance and the Department of Tax and Revenue eighteen (18) months prior to the retirement from service of a storage reservoir.

2e.5.1 Failure to provide notice may result in liability for tax for months in which notice was required.

§ 110-13-2m. Business Of Generating Or Producing Electric Power; Exception; Rates.

2m.1 Every person engaging within this State in the business of generating electric power when the sale thereof is not subject to tax under W. Va. Code § 11-13-2d, shall be liable for tax on the gross proceeds from the sale thereof at a rate of four percent (4%), except that the rate shall be two percent (2%) on that portion of the gross proceeds on the sale of electric power to a plant 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.

2m.2 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 municipally owned plants generating or producing electricity shall not be subject to tax under these regulations.

2m.3 Until June 1, 1995, beginning March 1, 1989, every person taxable under this Section shall determine their liability for payment of tax under W. Va. Code §§ 11-13-2m and 11-13-2d and under W. Va. Code § 11-13-2n. If for taxable months beginning on or after March 1, 1989, such person's liability for payment of tax under W. Va. Code §§ 11-13-2m and 11-13-2d is less than the amount of such person's liability for payment of tax under W. Va. Code § 11-13-2n, then such person shall pay the tax under W. Va. Code § 11-13-2n and not the sum of the amount of tax due under W. Va. Code §§ 11-13-2m and 11-13-2d. If the tax due under W. Va. Code § 11-13-2n is less, then the amount of tax due under W. Va. Code §§ 11-13-2m and 11-13-2d shall be the tax due. The provisions of this Section of these regulations shall expire and become null and void for taxable years beginning on or after January 1, 1998.

2m.4 Beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of Section 2d.3.3 or this Section for every taxable month in 1994 shall determine their liability for payment of tax under these rules in accordance with Section 2m.4.1. All other electric light and power companies shall determine their liability for payment of tax under these rules exclusively under Section 2o.

2m.4.1 If for taxable months beginning on or after June 1, 1995, liability for tax under Section 2o of this Article is equal to or greater than the sum of the power company's liability for payment of tax under Section 2d.3.3 and this Section, then the company shall pay the tax due under Section 2o and not the tax due under Section 2d.3.3. If tax liability under Section 2o is less, then the tax shall be paid under Section 2d.3.3 and this Section and the tax due under Section 2o shall not be paid.

2m.4.2 The provisions of this Section shall expire and become null and void for taxable years beginning on or after January 1, 1998. Notwithstanding this Section or any other provision of Chapter 11 of the West Virginia Code to the contrary, an electric light and power company that generates and produces power in this State shall continue to be deemed to be an "industrial taxpayer" for purposes of W. Va. Code § 11-13D-2(b)(8), and gross income of an electric light and power company from the generation and production of power in this State and sales and demand charges for electric power sold in this State shall continue to be deemed "gross income of the business subject to tax under Article thirteen of this Chapter" for purposes of W. Va. Code § 11-23-17(b), all to the extent of and in accordance with the law in effect immediately preceding June 1, 1995.

§ 110-13-2n. Business of Generating or Producing or Selling Electric Power; Exemptions; Rates.

2n.1 **Rate of tax.** - Until June 1, 1995, upon every person engaging or continuing within this State in the business of generating 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 due under W. Va. Code § 11-13-2n shall be equal to:

2n.1.1 ~~Two tenths cents ($.002)~~ Twenty-six hundredths of one cent ($.0026) times the kilowatt hours of net generation available for sale that was generated in this State by the taxpayer during the taxable year. This rate shall be five hundredths cents ($.0005) times the kilowatt hours of net generation available for sale that was generated in this State by the taxpayer and sold to a plant of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year. Tax due under W. Va. Code § 11-13-2n for any person generating electric power and an alternative form of energy at a facility located within this State substantially from gob or other mine refuse shall be five hundredths cents ($.0005) times the kilowatt hours of net generation or production available for sale. The measure of tax under this paragraph shall be total kilowatt hours of net generation available for sale that was generated or produced in this State by the taxpayer ~~after February 28, 1989,~~ 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.

2n.1.2 ~~Fifteen hundredths cents ($.00015)~~ Nineteen hundredths of one cent ($ .0019) times the kilowatt hours of electricity sold to consumers in this State that were not generated or produced in this State by the taxpayer. The rate shall be five hundredths cents ($.0005) times the kilowatt hours electricity not generated in this State by the taxpayer which is sold to a plant 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 hundred thousand kilowatts per hour in a year. The measure of tax ~~under W. Va. Code § 11-13-2n(a)(2)~~ shall be 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 during the taxable year, the net kilowatt hours of electricity generated or produced in the State by the taxpayer during that year.~~: **Provided,** That for calendar year 1989, the measure of tax shall be the total kilowatt hours of electricity sold to consumers in this State after February 29, 1989, 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 this State during calendar year 1989 but after February 28, 1989, the net kilowatt hours of electricity generated or produced in this State during calendar Year 1989 but after February 28, 1989.~~

2n.1.3 The West Virginia Public Service Commission shall, upon application of a public utility, allow an immediate 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 session, 1990, in the tax imposed by W. Va. Code § 11-13-1 et seq. upon electricity generated or produced in this State and sold to consumers in this State and upon electricity not generated or produced in this State that is sold to consumers in this State.

2n.2 **Exemptions.** - The provisions of W. Va. Code § 11-13-2n shall not apply to:

2n.2.1 Kilowatt hours of electricity generated and sold, or purchased and resold, by a municipally owned plant.

2n.2.2 Kilowatt hours of electric power that are separately metered and consumed in an electrolytic process for the manufacture of chlorine.

2n.2.3 Kilowatt hours of electric power that are separately metered and consumed in the manufacture of ferroalloy. As used in this Section, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel but shall not include electric power used in the production of steel.

2n.2.4 The full economic benefits provided to the taxpayer by ~~W. Va. Code §§ 11-13-2n(b)(2) and (3)~~ Sections 2n.2.2 and 2n.2.3 shall be passed on to the manufacturer of the chlorine or ferroalloy.

2n.3 **Credit.** - Any person taxable under W. Va. Code § 11-13-2n(a)(2) shall be allowed a credit against the amount of tax due under that Section for any electric power generation taxes paid by the taxpayer with respect to the generation of such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under W. Va. Code § 11-13-2n(a)(2) with respect to the sale of kilowatt hours of such power in a regulated transaction in this State when that same kilowatt hour was taxed by the state of generation.

2n.4 **Transition rule.** - Until June 1, 1995, beginning March 1, 1989, electric light and power companies shall determine their liability for payment of tax under W. Va. Code §§ 11-13-2n, 11-13-2d and 11-13-2m. If for taxable months beginning on or after March 1, 1989, liability for tax under W. Va. Code § 11-13-2n is equal to or greater than the sum of the power company's liability for payment of tax under W. Va. Code §§ 11-13-2d(a)(3) and 11-13-2m, then the company shall pay the tax due under W. Va. Code § 11-13-2n and not the tax due under W. Va. Code §§ 11-13-2d(a)(3) or 11-13-2m. If tax liability under W. Va. Code § 11-13-2n is less, then tax shall be paid under W. Va. Code §§ 11-13-2d(a)(3) and 11-13-2m, as applicable, and the tax due under W. Va. Code § 11-13-2n shall not be paid. The provisions of this Section of these regulations shall expire and become null and void for taxable years beginning on or after January 1, 1998.

2n.5 Termination Date. - Beginning June 1, 1995 and thereafter, electric light and power companies shall not determine their tax liability under this Section.

§ 11-13-2o. Business of generating or producing or selling electricity on and after June 1, 1995; definitions; rate of tax.

2o.1 **Definitions.** - As used in this Section:

2o.1.1 "Average four-year generation" is computed by dividing by four (4) the sum of a generating unit's net generation, expressed in kilowatt hours, for calendar years 1991, 1992, 1993, and 1994. For any generating unit which was newly installed and placed into commercial operation after January 1, 1991 and prior to the effective date of this Section, June 1, 1995, "average four-year generation" is computed by dividing such unit's net generation for the period beginning with the month in which the unit was placed into commercial operation and ending with the month preceding the effective date of this Section by the number of months in such period and multiplying the resulting amount by twelve (12) with the result being a representative twelve-month average of the unit's net generation while in an operational status.

2o.1.2 "Capacity factor" means a fraction, the numerator of which is average four-year generation and the denominator of which is the maximum possible annual generation.

2o.1.3 "Generating unit" means a mechanical apparatus or structure which through the operation of its component parts is capable of generating or producing electricity and is regularly used for this purpose.

2o.1.4 "Inactive reserve" means the removal of a generating unit from commercial service for a period of not less than twelve (12) consecutive months as a result of lack of need for generation from the generating unit or as a result of the requirements of State or federal law or the removal of a generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

2o.1.5 "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times 8760 hours [i.e., the number of hours in a year.]

2o.1.6 "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

2o.1.7 "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.

2o.1.8 "Retired from service" or "retiring from service" means the removal of a generating unit from commercial service for a period of at least twelve (12) consecutive months with the intent that the unit will not thereafter be returned to active service.

2o.1.9 "Taxable generating capacity" means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, [i.e., average four-year generation in kilowatt hours ÷ 8760 hours] subject to the modifications set forth in Sections 2o.3.2 [new generating units] and 2o.3.3 [peaking units]. Taxable generating capacity is the measure of tax under Section 2o.

2o.1.10 "Net generation" for a period means the "kilowatt hours of net generation available for sale that was generated or produced in this State" by the generating unit during such period less the following adjustments:

2o.1.10.1 Twenty-one twenty-sixths (21/26 or .8077) of the kilowatt hours of electricity generated at the generating unit and sold during such period to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds 200,000 kilowatts per hour in a year or where the usage at such plant location exceeds 200,000 kilowatts per hour in a year;

2o.1.10.2 Twenty-one twenty-sixths (21/26 or .8077) of the kilowatt hours of electricity produced or generated at the generating unit during such period by any person producing electric power and an alternative form of energy at a facility located in this State substantially from gob or other mine refuse;

2o.1.10.3 The total kilowatt hours of electricity generated at the generating unit exempted from tax during such period by Section 2n.2.

2o.1.10.3.1 Taxpayers paying under Section 2o who received any of these exemptions in calendar years 1991 through 1994 receive the exemption under Section 2o automatically when they calculate their "average four-year generation" values for calendar years 1991 through 1994. Therefore, no additional exemption is allowable for kilowatt hours generated in calendar years after 1994.

2o.1.11 "Net generation" for a period shall not be reduced by company use, line loss or any other use or loss or deduction, except station use, as defined in Section 1a.

2o.2 **Rates of tax.** - Upon every person engaging or continuing within this State in the business of generating 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 2 shall be equal to:

2o.2.1 For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of \$22.78 multiplied by the taxable generating capacity of each generating unit in this State owned or leased by the taxpayer, subject to the modifications set forth in Section 2o.3: **Provided**, That with respect to each generating unit in this State which has installed a flue gas desulfurization system, the tax imposed by Section 2 of this Article shall, on and after January 31, 1996, be equal to the product of \$20.70 cents multiplied by the taxable generating capacity of the units, subject to the modifications set forth in Section 2o.3: **Provided, however** That with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at such plant location exceeds 200,000 kilowatts per hour per year or if the usage at such plant location exceeds 200,000 kilowatts per hour in a year, in no event shall the tax imposed by this Article with respect to the sale or use of such electricity exceed five hundredths of one cent (.05¢) times the kilowatt hours sold to or used by a plant engaged in such a manufacturing activity; and,

2o.2.1.1 Taxpayers with a flue gas desulfurization system installed as of January 31, 1996 shall file a separate return at the new rate for that one (1) day, together with their return for January at the old rate reflecting only the previous consecutive thirty (30) days.

2o.2.2 For taxpayers who sell electricity to consumers in this State that is not generated or produced in this State by the taxpayer, nineteen hundredths of one cent (.19¢) 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 (.05¢) 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 200,000 kilowatts per hour per year or if the usage at such plant location exceeds 200,000 kilowatts per hour in a year. The measure of tax under this Section 2o.2.2 shall be equal to the total kilowatt hours of electricity sold to consumers in the 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 provisions of this Section 2o.2.2 shall not apply to those kilowatt hours exempt under Section 2n.2. Any person taxable under this Section 2o.2.2 shall be allowed a credit against the amount of tax due under this Section 2o.2.2 for any electric power generation taxes or a tax similar to the tax imposed by Section 2o.2.1 paid by the taxpayer with respect to such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under this Section 2o.2.2 with respect to the sale of such power.

2o.2.3 Taxpayers subject to two or more rates shall segregate their average four-year generation by tax category.

Example.

A company's total net generation for calendar years 1991 through 1994 is 5 billion kilowatt-hours, of which 2.2 billion kilowatt-hours were subject to the lower rate for large customers (i.e., 200,000 kilowatts per hour per year) and for power generated from gob or other mine refuse. Taxable generating capacity at the lower rate ($4.38) would be 251,141.55 kilowatts (i.e., 2.2 billion kilowatt-hours ÷ 8,760 hours.) Taxable generating capacity at the regular rate ($22.78) would be 319,634.70 kilowatts (i.e., 2.8 billion kilowatt hours ÷ 8760 hours.)

2o.3 The following provisions are applicable to taxpayers subject to tax under Section 2o.2.1:

2o.3.1 **Retired units; inactive reserve.** - If a generating unit is retired from service or placed in inactive reserve, a taxpayer shall not be liable for tax computed with respect to the taxable generating capacity of the unit for the period that the unit is inactive or retired. The taxpayer shall provide written notice to the

Joint Committee on Government and Finance and to the Tax Division, as well as to any other entity as may be otherwise provided by law, eighteen (18) months prior to retiring any generating unit from service in this State.

2o.3.1.1 Units removed from commercial operation for less than twelve (12) consecutive months are neither retired from service nor in an inactive reserve status, and are taxable without proration or allocation pursuant to Section 2o.3.5.

2o.3.1.2 Failure to provide notice may result in liability for tax for months in which notice was required.

2o.3.2 **New generating units.** - If a new generating unit, other than a peaking unit, is placed in initial service on or after June 1, 1995, the generating unit's taxable generating capacity shall equal forty percent (40%) of the official capability of the unit.

2o.3.3 **Peaking units.** - If a peaking unit is placed in initial service on or after June 1, 1995, the generating unit's taxable generating capacity shall equal five percent (5%) of the official capability of the unit.

2o.3.4 **Transfers of interests in generating units.** - If a taxpayer acquires an interest in a generating unit, the taxpayer shall include the computation of taxable generating capacity of said unit in the determination of the taxpayer's tax liability as of the date of the acquisition. Conversely, if a taxpayer transfers an interest in a generating unit, the taxpayer shall not for periods thereafter be liable for tax computed with respect to the taxable generating capacity of such transferred unit.

2o.3.5 **Proration, allocation.** -

(a) It being the intent of the Legislature to prohibit multiple taxation of the same taxable generating capacity, taxes shall be equitably (1) prorated for the taxable year in which a generating unit is first placed in service, retired or placed in inactive reserve, or in which a taxpayer acquires or transfers an interest in a generating unit; (2) allocated and reallocated with respect to adjustments to net generation; and (3) allocated among multiple taxpayers with interests in a single generating unit.

(b) To provide for an orderly transition with respect to the rate- making effect of this Section, those electric light and power companies which, as of June 1, 1995, are permitted by the West Virginia Public Service Commission to utilize deferred accounting for purposes of recovery from ratepayers of any portion of Business and Occupation Tax expense under W. Va. Code § 11-13-1 et seq. and these rules shall be permitted, until such time that action pursuant to a rate application or order of the Commission provides for appropriate alternative rate-making treatment for such expense, to recover by means of deferred accounting the tax expense imposed by this Section to the extent that the tax expense imposed by this Section exceeds the level of Business and Occupation Tax allowed in rates as of March 11, 1995.

2o.3.5.1 When calculating the average four year generation for a generating unit first placed in service after January 1, 1991 and prior to June 1, 1994; retired or placed in inactive reserve; or in which a taxpayer acquires or transfers an interest in the generating unit, net generation (including adjustments) for the month in which such event occurs on a day other than the first day thereof shall be computed by dividing net generation during that month by the number of days in that month in which such generation occurred, and multiplying the resulting amount by the total number of days in that month.

2o.3.5.2 The amount of tax liability among multiple taxpayers with interests in a single generating unit shall be allocated between them in direct proportion to the percentage interest owned by each taxpayer.

2o.3.5.3 When a taxpayer acquires an interest in a generating unit on any date other than the first day of the month, the acquiring taxpayer is liable for tax only for those days of the month in which it owns such interest. The tax liability for such month is allocated between acquiring and transferring taxpayers by multiplying taxable generating capacity for the entire month by a fraction, the numerator of which is the number of days during the month the taxpayer owned such interest, and the denominator of which is the total number of days in the month. For tax purposes the interest transferred shall be deemed to have been owned for the entire day on which the transfer occurred.

2o.3.6 **Electricity generated by manufacturer or affiliate for use in manufacturing activity.** - When electricity used in a manufacturing activity is generated in this State by the person who owned the manufacturing facility in which the electricity is used and the electricity generating unit or units producing the electricity so used are owned by such manufacturer, or by a member of the manufacturer's controlled group, as defined in Section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity shall not be taxable under W. Va. Code § 11-13-1 et seq. and these rules. Any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this Section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity.

2o.4 Beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of Section 2d.3.3 or 2m as then in effect for every taxable month in 1994 shall determine their liability for payment of tax under W. Va. Code § 11-13-1 et seq. and in accordance with Sections 2o.4.1 and 2o.4.2 below. All other electric light and power companies shall determine their liability for payment of tax exclusively under this Section beginning June 1, 1995 and thereafter.

2o.4.1 If for taxable months beginning on or after June 1, 1995, liability for tax under Section 2o is equal to or greater than the sum of the power company's liability for payment of tax under Sections 2d.3.3 and 2m, then the company shall pay the tax due under Section 2o and not the tax due under Sections 2d and 2m. If tax liability under this Section is less, then the tax shall be paid under Sections 2d and 2m and the tax due under this Section shall not be paid.

2o.4.2 Notwithstanding Section 2o.4.1, for taxable years beginning on or after January 1, 1998, all electric light and power companies shall determine their liability for payment of Business and Occupation tax exclusively under this Section 2o.

§ 110-13-3. Exemptions.

3.1 **Monthly exemptions from tax.** - Each taxpayer shall be granted an exemption in every case of forty-one dollars and sixty-seven cents ($41.67) per month of tax computed under the business and occupation tax law. From the total taxes due the monthly exemption of forty-one dollars and sixty-seven cents ($41.67) per month is deducted. Inasmuch as the law grants each person a monthly exemption of forty-one dollars and sixty-seven cents ($41.67) per month, only one ~~annual~~ exemption per tax period can be claimed even though such person may conduct more than one business.

3.2 **Business exempt by specific statutes.**

3.2.1 Public service district for water and sewage services. Public service districts for water and sewage services organized in compliance with the provisions of W. Va. Code § 16-3-1 et seq., entitled, "Public Service Districts for Water and Sewage Services," are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those public service districts that have complied with all the requirements as set forth in the aforecited provisions of the Code.

3.2.2 **Municipal waterworks.** - Waterworks in the State of West Virginia which are organized by a municipal corporation in compliance with the provision of W. Va. Code § 8-12-1 et seq., entitled, "Waterworks," are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those municipal waterworks that have complied with all requirements as set forth in the aforecited provisions of the Code.

3.2.3 **Municipal combined waterworks and sewage systems.** - Waterworks and sewage systems in the State of West Virginia which are organized or operated by a municipal corporation in compliance with the provisions of W. Va. Code § 8-13-1 et seq., entitled Combined Waterworks and Sewage Systems, are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those municipal waterworks and sewage systems that have complied with all the requirements as set forth in the aforecited provisions of the Code.

3.2.4 **Municipal and sanitary district sewage works.** - Sewage works in the State of West Virginia which are organized or operated by any municipal corporation or sanitary district in compliance with the provisions of W. Va. Code § 16-13-1 et seq., entitled, "Sewage Works of Municipal Corporations and Sanitary Districts", are exempt from the payment of the business and occupation tax. This is an exemption provided by specific statute and is only available to those sewage works of municipal corporations and sanitary districts that have complied with all the requirements as set forth in the aforecited provisions of the Code.

§ 110-13-3a. Reserved For Future Use.

§ 110-13-3b. Reserved For Future Use.

~~**§ 110-13-3c. Business And Occupation Tax Credit For Industrial Expansion.**~~

~~3c.1 A credit against business and occupation tax is allowed to certain industrial taxpayers who make qualified investment for industrial expansion.~~

~~**3c.2 Definitions.**~~

~~3c.2.1 The term "Industrial Taxpayer" means any person who exercises any privilege taxable or formerly taxable under the manufacturing classification of the business and occupation tax law or any person who exercises any privilege taxable or formerly taxable under the service classification of such law; **Provided,** That the business activity is manufacturing for another, which activity would be taxable or formerly taxable under the manufacturing classification if title to the goods and materials were vested in the person performing the manufacturing service.~~

~~3c.2.2 The terms "Qualified Property" and "Property Purchased for Industrial Expansion" means real property and improvements thereto and tangible personal property constructed or purchased for the use as a component part of a new or expanded business of an industrial taxpayer. Such property must be located within West Virginia. Such terms include only tangible personal property with respect to which depreciation or amortization is allowable in determining the industrial taxpayer's West Virginia personal income tax or West Virginia corporation net income tax. Said property must have a useful life at the time the property is placed in service of four (4) years or more.~~

~~3c.2.2.1 The terms defined within this Section 3c.2.2 do not include replacement property, motor vehicles licensed by the Department of Motor Vehicles, airplanes, off premises transportation equipment or property which is used outside this State.~~

~~3c.2.2.2 The terms do not include property purchased prior to July 25, 1969, nor property the construction, reconstruction or erection of which began (or the contract therefor was let) prior to July 25, 1969.~~

~~3c.2.2.3 Nor do the terms include property which is acquired incident to the purchase of the stock or asset, of an industrial taxpayer which property has been used by the vendor in such business in this State, or which property has been previously designated "Property Purchased for Industrial Expansion" and so used to qualify for the tax credit.~~

~~3c.2.3 "Property Purchased for Industrial Expansion" includes property acquired by lease for a term of ten (10) years or longer, if the leased property would otherwise qualify if purchased outright. Lease renewal, subleases or assignments are not considered "Property Purchased for Industrial Expansion."~~

~~3c.2.4 The term "Cost" does not include the value of any property given in trade or exchange for new property which qualifies for this industrial expansion~~

~~credit. The "Cost" of leased property is one hundred percent (100%) of the rent reserved for the primary term of the lease but not to exceed twenty (20) years.~~

~~3c.2.5 The term "Property Acquired for Multiple Business Use" mean qualified property placed in service by an industrial taxpayer as a component part of a new or expanded business together with some other business or occupation not qualifying for the credit. Property acquired for multiple business use must be apportioned between the qualifying and nonqualifying business and occupations and the proportion allocated to qualifying businesses of industrial taxpayers shall be considered as "Qualified Investments" subject to the conditions and limitations of this Section 3c.~~

~~**3c.3 Computation of and amount of credit allowable.**~~

~~3c.3.1 The amount of credit allowed to industrial taxpayers shall be equal to ten percent (10%) of the cost of qualified investment made for industrial expansion and shall be applied over a ten (10) year period to reduce the business and occupation tax at the rate of one tenth (1/10th) of the amount of such credit per taxable year. The credit shall commence with the taxable year that such qualified investment is first placed in service or use. In other words, the credit is limited to ten percent (10%) (one percent (1%) for each of the ten (10) consecutive taxable years) of the total qualified investment.~~

~~3c.3.2 The amount of credit employed in any taxable year may not reduce business and occupation tax liability by more than fifty percent (50%) of the tax computed before applying the credit.~~

~~3c.3.3 When making a claim for credit for industrial expansion, the industrial taxpayer must explain in detail the purpose of the facility, the anticipated increased production, the anticipated additional employment generated, the products to be manufactured, the type of qualified property purchased and the cost thereof, etc. Failure to provide detailed information will result in the credit being disallowed.~~

~~**3c.4 Qualified investment.** -- If the qualified property has a useful life of eight (8) years or more, the industrial taxpayer may consider one hundred percent (100%) of the cost of the property as qualified investment. If the useful life is six (6) years or more but less than eight (8) years, the industrial taxpayer may consider two-thirds (66-2/3%) of the cost of the property as qualified investment. If the property has a useful life of four (4) years or more but less than six (6) years, the industrial taxpayer may consider one-third (33-1/3%) of the cost of the property as qualified investment.~~

~~Property with a useful life of less than four (4) years does not qualify for the purposes of the credit.~~

~~3c.5 Forfeiture of unused tax credits.~~

~~3c.5.1 If during any taxable year, an industrial taxpayer disposes of or ceases to use property with respect to which a tax credit has been claimed, or ceases operation of such business before expiration of the useful life of the property, then that portion of the unused annual credit attributable to the remainder of the taxable year subsequent to such disposition shall be forfeited for the taxable year in which such event occurs, and remaining unused credit shall be forfeited for all ensuing years.~~

~~3c.5.2 If an industrial taxpayer trades in qualified property on a purchase of new qualified property, he loses the unused credit on the trade-in property but is permitted to compute the credit on the new qualified property. However, the cost of the new qualified property shall not include the value of that property traded in.~~

~~3c.5.3 No carryover shall be allowed for the amount of any unused portion of the credit; nor shall any credit be allowed against any tax liability for any year prior to July 25, 1969, by reason of an assessment issuing within any period after such date, which assessment is, in whole or part, for any period prior to July 25, 1969.~~

§ 110-13-3c. Tax Credit for Business Investment and Jobs Expansion. - There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the amount determined under W. Va. Code § 11-13C-1 et seq., relating to B&O tax credit for business investment and jobs expansion.

§ 110-13-3d. Tax Credit for Industrial Expansion and Industrial Revitalization and Eligible Research and Development Projects. - There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the amount determined under W. Va. Code § 11-13D-1 et seq., relating to B&O tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

§ 110-13-3e. Tax Credit for Coal Loading Facilities.

3e.1 There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the amount determined under W. Va. Code § 11-13E-1 et seq., relating to tax credit for new or expanded or revitalized coal loading facilities.

<u>§ 110-13-3f. Tax Credit for Reducing Electric and Natural Gas Utility Rates for Low-Income Residential Customers.</u>

<u>3f.1 There shall be allowed as a credit against the B&O tax imposed under W. Va. Code § 11-13-1 et seq., the cost of providing electric or natural gas utility service, or both, at reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.</u>

§ 110-13-4. Computation of Tax; Payment.

4.1 Except for those amounts due under W. Va. Code § 11-13-2e, the taxes levied under W. Va. Code § 11-13-1 <u>et seq</u>. shall be due and payable as follows:

4.1.1 For taxpayers whose estimated tax under W. Va. Code § 11-13-1 <u>et seq</u>. exceeds one thousand dollars ($1,000) per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which he is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the Office of the Commissioner: **Provided**, That the installment payment otherwise due under this Section on or before June 30th each year shall be remitted to the Tax Commissioner on or before the June 15th each year, beginning June 15, 1988. In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth (1/12th) of any applicable tax credits allowable for the taxable year and one twelfth (1/12th) of the total exemption allowed for such.

4.1.2 For taxpayers whose estimated tax under W. Va. Code § 11-13-1 <u>et seq</u>. does not exceed one thousand dollars ($1,000) per month, the tax shall be due and payable in quarterly installments within one (1) month from the expiration of each quarter in which the tax accrued. Each such taxpayer shall, within one (1) month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the Office of the Commissioner. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth (1/4th) of any applicable tax credits allowable for the taxable year and one fourth (1/4th) of the total exemption allowed for such year.

4.1.3 When the total tax for which any person is liable under W. Va. Code § 11-13-1 <u>et seq</u>. does not exceed two hundred dollars ($200) in any year the taxpayer may pay the same quarterly as aforesaid, or, with the consent in writing of the Tax Commissioner, at the end of the month next following the close of the tax year.

4.1.4 The above provisions of this Section notwithstanding, the Tax Commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this Section for periods of shorter duration than those prescribed above.

4.2 Taxpayers owing taxes on amounts due under W. Va. Code § 11-13-2e shall, on or before the twentieth (20th) of each month in which such tax is due and payable, make out an estimate of the tax for which the taxpayer is liable during the period for which the amount is due, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the Office of the Commissioner.

4.2.1 The amount of tax due under W. Va. Code § 11-13-2e shall be due and payable in monthly installments on or before the twentieth (20th) day of the month following the month in which the tax accrued. Estimated tax due under W. Va. Code § 11-13-2e shall be calculated based on the actual number of dekatherms of gas injected or withdrawn from a gas storage reservoir during the month in which the tax accrued. **Provided**, That for taxable years beginning on or after April 6, 1989, tax due under W. Va. Code § 11-13-2e shall be calculated based on the actual net number of dekatherms of gas injected or net number of dekatherms of gas withdrawn from a gas storage reservoir during each month. Estimated tax due under W. Va. Code § 11-13-2e may not be arrived at by averaging out an estimated or actual yearly total. In estimating the amount of tax due each month, the taxpayer may deduct one twelfth (1/12th) of any applicable tax credits allowable for the taxable year and one twelfth (1/12th) of the total exemption allowed for such year.

4.2.2 For taxpayers whose estimated tax due as calculated under Section 4.2.1 of these regulations is less than one thousand dollars ($1,000) in each month of a quarter, the taxpayer may elect to make a quarterly installment payment in lieu of the monthly installment, due and payable on the twentieth (20th) day of the month following the quarter in which the tax accrued. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth (1/4th) of any applicable tax credits allowable for the taxable year and one fourth (1/4th) of the total exemption allowed for such year. Should the taxpayer have a monthly estimated tax due of over one thousand dollars ($1,000) prior to deducting the allowable credit and exemption deductions for that month, then all previous monthly installments shall be retroactively due and payable at the time they would have otherwise been due and payable under Section 4.2.1 of these regulations, subject to interest and additions.

4.2.3 For taxpayers whose total tax due under W. Va. Code § 11-13-2e does not exceed two hundred dollars ($200) in any year, the taxpayer may pay the same quarterly or monthly as aforesaid, or with the consent in writing of the Tax Commissioner, on the twentieth (20th) day of the month next following the close of the tax year.

4.2.4 The above provisions of this Section notwithstanding, the Tax Commissioner, if he deems it necessary to insure payment of the tax, may require the return and payment under this Section for periods of shorter duration than those prescribed above.

§ 110-13-5. Return and Remittance by Taxpayer.

5.1 Annual return.

5.1.1 Every taxpayer shall, on or before the expiration of one (1) month after the end of the tax year, file a business and occupation tax return for the entire taxable year. Said return must show the gross proceeds of sales, gross income of business or other measure of tax in dekatherms, kilowatts or kilowatt hours, as appropriate, and the taxpayer must compute the amount of tax chargeable against him. Such return must be signed by the taxpayer.

5.1.2 For a taxpayer maintaining records and paying taxes on a calendar year basis, the annual return is due on or before January 31 of the following year. The annual return is filed at the close of the taxable year and replaces the fourth (4th) quarterly estimate. The annual return is a recompilation of the three (3) quarterly estimates and the fourth (4th) quarter's business. It provides a medium for making such adjustments on the quarterly estimates as may be necessary.

5.2 Extension of time.

5.2.1 Any taxpayer desiring an extension of time for filing his annual business and occupation tax return must make such request in writing to the Tax ~~Department~~ Division. The request must be postmarked before the due date of the return and must state the reason for such request and the period of extension required. The taxpayer will then be advised in writing as to whether or not such extension is granted. No extension shall be granted for a period of time longer than ninety (90) days from the due date of the annual return.

5.2.1.1 The written request for an extension of time shall be signed by the taxpayer if made by an individual, or by the president, vice president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the written request for an extension of time on behalf of the taxpayer.

5.2.2 No extension of time may be granted for filing of monthly or quarterly estimated returns.

§§ 110-13-6 through 110-13-8. Reserved for Future Use.

§ 110-13-9. Tax Year and Method of Accounting.

9.1 Taxable year. - For purposes of the B&O tax imposed under W. Va. Code § 11-13-1 et seq., a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

9.2 Method of accounting. - A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the tax under this article shall be computed under such method that in the opinion of the Tax Commissioner clearly reflects such income.

9.3 Adjustments. - In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined by the Tax Commissioner to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

§§ 110-13-10 through 110-13-26. Reserved for Future Use.

§ 110-13-27. General Procedure and Administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in W. Va. Code § 11-10-1 et seq. shall apply to the tax imposed by W. Va. Code § 11-13-1 et seq. with like effect as if said act were applicable only to the tax imposed by W. Va. Code § 11-13-1 et seq. and were set forth in extenso therein.

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Deputy Secretary of State

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help we can get)

August 2, 1995

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Tax Division

RULE: Amendment, Series 13, Business & Occupation Tax

DATE FILED AS AN EMERGENCY RULE: June 23, 1995

FILED
AUG 2 3 14 PM '95
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DECISION NO. 11-95

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

Ken Hechler

KEN HECHLER
Secretary of State

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EMERGENCY RULE DECISION
(ERD 11-95)

AGENCY: Tax Division
RULE: Amendments, Series 13, Business & Occupation Tax
FILED AS AN EMERGENCY RULE: June 23, 1995

par. 1 The Tax Division (Division) has filed the above amendments to an existing rule as an emergency rule.

par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b)].

par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State June 23, 1995 and with the LRMRC June 23, 1995.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §11-13-2o(c)(7) reads in part:

The department of tax and revenue shall promulgate rules in accordance with §29a-3 of the code: Provided, That the rules shall be promulgated as emergency rules.

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

HB 2267, effective March 11, 1995, enacted WV Code §11-13-2o. Section 11-13-2o(c)(6) requires that certain aspects of the rules relating to that Section be filed as emergency rules. As the subject matter of this section cannot logically and reasonably be separated from the remainder of the rule, the entire rule is being filed as an emergency rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . mandated by the Legislature.

par. 14 This decision shall be cited as Emergency Rule Decision 11-95 or ERD 11-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Tax Division, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

Entered ______________________________

FILED

AUG 2 3 15 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE