BOT-301E

INSTRUCTIONS FOR ANNUAL BUSINESS AND OCCUPATION TAX RETURN FOR ELECTRIC POWER

These instructions are to assist in the preparation of the tax return and are not a substitute for tax law and regulations.

To determine the amount of tax due Schedule A must be completed.

COMPUTATION OF TAX LIABILITY

Line 1 Enter the applicable amount from Schedule A, Line 11.

Line 2a-d Enter the amount for each applicable credit. A copy of the certification for the Electric Utility Reduction Credit from the Public Service Commission and Windmill Credit must be attached to the annual return.

Line 3 Enter total credits (Total of Lines 2a through 2d).

Line 4 Adjusted tax (Line 1 minus Line 3).

Line 5 Enter exemption of $500.00 per year, $41.67 per month, or $1.37 per day. This exemption is allowed only for the period you were actually engaged in business.

Line 6 Enter net amount of tax (Line 4 minus Line 5).

Line 7 Enter estimated payments made during period covered by the return.

Line 8 Enter the balance of tax due (Line 6 minus Line 7). If Line 7 is less than Line 6, enter 0.

Line 9-11 Internal use only.

Line 12 Enter total amount of Line 8.

Line 13 Enter amount of overpayment designating refund or credit. Credit for overpayments should not be taken on future tax returns until a letter authorizing the claim has been received.

Line 14 If an overpayment exists; enter the amount to be credited to next year's tax.

Line 15 Enter the amount of (Line 13 minus Line 14) to be refunded.

Schedule A

Only use if electric power sold is generated or produced in West Virginia.

COLUMN 1

Line 3 Enter the annual gross generating capacity (KW) for electric power generated from Gob or Mine Refuse available for sale.

Line 4a Enter the annual gross generating capacity (KW) for electric power generated or produced in West Virginia with sales and demand charges exceeding 200,000 Kilowatts per hour/year/customer.

COLUMN 2

Line 3 Enter the amount of exclusions (Column 1 Line 3 multiplied by 21/26)

Line 4a Enter the amount of exclusions (Column 1 Line 4a multiplied by 21/26)

COLUMN 3

Line 1 Enter the annual taxable capacity for electric power generated or produced in West Virginia regardless of place of sale.

Line 2 Enter the annual taxable capacity for electric power generated or produced in West Virginia at desulfurization units on or after January 31, 1996.

Line 3 Enter the annual taxable capacity for electric power generated from gob or mine refuse available for sale (Column 1 Line 3 minus Column 2 Line 3).

Line 4a Enter the annual taxable capacity for electric power generated or produced in West Virginia with sales and demand charges exceeding 200,000 Kilowatts per hour/year/customer (Column 1 Line 4a minus Column 2 Line 4a).

Line 4b Enter the amount of Kilowatts hours sold in Column 3 Line 4b.

COLUMN 4

Lines 1, 2, 3, 4–Tax Rates, provided

COLUMN 5

Line 1 Enter the amount of tax due for electric power generated or produced in West Virginia regardless of place of sale (Column 3 Line 1 times Column 4 Line 1).

Line 2 Enter the amount of tax due for electric power generated or produced in West Virginia at desulfurization units on or after January 31, 1996.(Column 3 Line 2 times Column 4 Line 2).

Line 3 Enter the amount of tax due after exemptions for electric power generated from gob or mine refuse (Column 3 Line 3 times Column 4 Line 3).

Line 4a Enter the amount of tax due after exemptions for electric power generated or produced in West Virginia with Sales and demand charges exceeding 200,000 Kilowatts per Hour/Year/Customer (Column 3 Line 4 times Column 4 Line 4)

Line 4b Enter the amount of tax due for Kilowatt hours sold (Column 3 line 4b times Column 4 line 4b).

Line 4c Enter the lesser of the tax of lines 4a or 4b.

Line 5 Enter the gross amount of tax for Schedule A, Section 1 (Total of Lines 1, 2, 3, and 4c).

SECTION II

Only used if electric power sold in West Virginia was not Generated or Produced in West Virginia.

COLUMN 1

Line 6 Enter the number of kilowatt hours for electric power sold in West Virginia but not generated or produced in the State by taxpayer.

Line 7 Enter the number of kilowatt hours for electric power not generated or produced in West Virginia with sales and demand charges exceeding 200,000 kilowatts per hour/year/customer.

COLUMN 2

Line 6 Enter the amount of exemptions for electric power sold in West Virginia but not generated or produced in the State by taxpayer.

Line 7 Enter the amount of exemptions for electric power not generated or produced in West Virginia with sales and demand charges exceeding 200,000 kilowatts per hour/year/customer.

COLUMN 3

Line 6 Enter the net amount of Kilowatt hours (Column 1 line 6 minus Column 2 line 6).

Line 7 Enter the net amount of Kilowatt hours (Column 1 line 7 minus Column 2 line 7).

COLUMN 4

Line 6 & 7 Tax rate, provided.

COLUMN 5

Line 6 Enter the amount of tax due (Column 3 line 6 times Column 4 line 6).

Line 7 Enter the amount of tax due (Column 3 line 7 times Column 4 line 7).

Line 8 Enter the gross amount of tax (Schedule A Section II Column 5 line 6 plus line 7).

Line 9 Enter the amount of credit for electric power generation tax paid to other states

Line 10 Enter the net amount of Tax for Schedule A Section II (Column 5 line 8 minus line 9).

Line 11 Enter the gross amount of tax (Schedule A section I plus Section II (Column 5 line 5 plus Column 6 line 10).

Exclusions

Enter any exclusion claimed on the Schedule A for Column 2 in both sections I and II.

Please be sure to answer all the questions on page 3 and sign and date the return.

Payment of Tax

The full amount of tax owed is due and payable on the due date of the tax return. Failure to pay the full amount of tax by the due date will result in interest and penalties being added to any unpaid amount of tax.

Due Date and Extension of Time for Filing Annual Return: The annual return is due on or before the expiration of one month after the end of the taxable year. The Tax Commissioner may, upon written request received on or prior to the due date of the return, grant a reasonable extension of time for filing the tax return. An extension of time for filing of this return is required whether or not any tax is due. **An extension of time for filing does not extend the time for payment of the tax.**

Accounting Periods and Methods of Accounting: The taxable year and method of accounting are the same as that used for federal tax purposes.

Interest and Penalties to Tax: Interest and additions to tax attach by law to any amount of tax not paid by the due date of the tax return. The law requires the Tax Commissioner to establish interest rates for tax underpayment based on the adjusted prime rate. This rate will never be less than eight percent per year and is determined every six months.

Additions to Tax: Additions to tax are imposed for failure to file a required tax return by the due date and/or late payment of the tax due. The rate for late filing is five percent (.05) per month or any part of a month; the rate for late payment of tax is one-half of one percent (.005) per month or any part of a month. **An extension of time for filing does not extend the time for payment of the tax.** Where both the five percent (.05) penalty for late filing and the one-half of one percent (.005) penalty for late payment of tax are imposed, the maximum monthly percent is five percent (.05) The maximum amount of additions to tax imposed under either penalty is twenty-five percent (.25). The maximum amount under both penalties is forty-seven and one-half percent (.475) of the tax due.

Completion, Signatures, and Dates: All applicable sections of the tax return must be completed and substantiating documents attached when required. The Business and Occupation Tax return of a corporation must be signed and dated by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer authorized to act on behalf of the corporation. The Business and Occupation Tax return of a partnership must be signed and dated by one of the partners. An individual's name signed on the return is prima facie evidence that the individual is authorized to sign the return. An incomplete return will not be accepted as timely filed.

Assistance: For additional information, please contact the West Virginia State Tax Department, Taxpayer Services Division, P.O. Box 3784, Charleston, West Virginia 25337-3784. To call, dial toll free 1-800-982-8297. Charleston and vicinity residents may call at (304) 558-3333. Internet address: tax.wv.gov.

GENERAL INFORMATION

The Business and Occupation tax applies to certain utility businesses, including businesses which generate, provide, distribute, or sell electric power. Municipally-owned electric power plants are exempt from tax.

The measure of the tax is either the kilowatt hours of electric power generated or distributed, or taxable generation capacity.

TAX BASE DETERMINATION

Electric Power Producers - The tax base for in-State producers is generally a **fixed tax** based upon average taxable generating capacity (kilowatts) for the 1991 through 1994 calendar years.

Taxable generating capacity is defined as a generating unit's capacity factor (i.e., average four year generation divided by the unit's maximum possible annual generation) multiplied by its official capability (i.e. nameplate capacity). Taxable generating capacity may also be mathematically expressed as the average four year generation (i.e., 1991-1994) of a generating unit divided by the number of hours in a year (i.e., 8,760 hours).

If the generating unit was newly installed after January 1, 1991 but prior to December 31, 1994, then the average four-year generation is computed through the annualization of the average monthly net generation of such unit during its months of operation between 1991 and 1994.

If a new generating unit, other than a peaking unit is placed into service after March 10, 1995, that unit's taxable generating capacity equals 40 percent of its nameplate capacity.

If a peaking unit is placed in service after March 10, 1995, that unit's taxable generating capacity equals 5 percent of its nameplate capacity. A peaking unit is a unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.

If a generating unit is retired from service or placed in inactive reserve, the taxpayer is no longer liable for the tax on such unit. These units must be out-of-service for a period of at least 12 months in order to qualify for either the retired or inactive status.

If a generating unit produced electricity for sale to a plant location of a customer engaged in manufacturing activity and such sale exceeded an average of 200,000 kilowatts per hour between 1991 and 1994, then that generating unit qualifies for a partial exclusion from tax. This annual exclusion equals twenty-one twenty-sixths of the average annual kilowatt hours of electricity generated and sold to such customer between 1991 and 1994. Taxable generation capacity for such a generation unit must be split between average generation attributable to the large volume user and average generation attributable to all other uses. The large user exclusion is a **fixed** amount based upon average activity between 1991 and 1994. **There is no additional exclusion attributable to current activity.** However, an alternative kilowatt-hour tax calculation ensures that the total tax on taxable capacity attributable to large volume sales does not exceed an amount equal to $0.0005 per kilowatt hour. If a new 200,000 kilowatt per hour customer appears, there is no additional twenty-one twenty-sixths exclusion for the generating unit supplying power to such customer. However, such additional sale should result in no incremental increase in the fixed taxable generating capacity tax.

A twenty-one twenty-sixths exclusion applies to generating units producing electric power and alternative energy forms from gob or other mine refuse.

The tax base (i.e., taxable generating capacity) already incorporates average exclusion values (1991-94 period) for separately metered power consumed in either an electrolytic process for the manufacture of chlorine or in the manufacture of ferroalloy. Therefore, there is no additional exclusion for current activity.

In most cases, the annual rate on taxable generating capacity is $22.78 per kilowatt. The rate of tax on generating units with a flue gas desulfurization system is $20.70 per kilowatt.

Effective July 13, 2001, the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind is to be equal to five percent of the official capability of the unit.

Electric Power Distributors - The tax is based upon kilowatt-hours of electric power distribution.

DEFINITIONS

Average four-year generation is determined by dividing by four the sum of the 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, “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 in commercial operation and ending with the month of May, 1991, by the number of months in such period and multiplying the result by 12. This establishes a representative 12-month average of the unit’s net generation while in operational status.

Capacity factor is a fraction, the numerator of which is the **average four-year generation** of the generating unit expressed in kilowatt hours, and the denominator of which is the **maximum possible annual generation** of the unit.

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.

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. **Inactive reserve** means removal of a generating unit from commercial service for a period of not less than 12 consecutive months as a result of (i) lack of need for generation from the generating unit, or (ii) as a result of the requirements of State or Federal law, or (iii) as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

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.

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. 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.

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.

Maximum possible generation means the product, expressed in kilowatt hours, of official capability times 8,760 hours.

Net generation for the 1991-1994 historic period means the kilowatt hours of net generation available for sale generated or produced by the generating unit in this State during such period less:

(1) twenty-one twenty-sixths (0.8076923) of the kilowatt hours of electricity generated at the generating unit sold during the period to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds 200 thousand kilowatts per hour of a year;

(2) twenty-one twenty-sixths (0.8076923) of the kilowatt hours of electricity produced or generated at the generating unit during the period produced by any person producing electricity and an alternative form of energy at a facility located in this State substantially from gob or other mine refuse;

(3) kilowatt hours of electricity generated and sold or purchased and resold by a municipally owned plant;

(4) kilowatt hours of electricity that are separately metered and consumed in an electrolytic process for the manufacture of chlorine; and

(5) kilowatt hours of electricity that are separately metered and consumed in the manufacture of ferroalloy.

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.

Official capability means the nameplate capacity rating of the generating unit expressed in kilowatt hours.

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

Retired from service means the removal of a generating unit from commercial service for a period of at least 12 consecutive months with the intent that the unit will not thereafter be returned to active service.

Sale, sales or selling includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

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 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, magneto hydrodynamic, fluidized bed combustion, solar biomass, wind, fuel cell, steam turbine, fluid turbine, gas turbine, hydroelectric or pumped-storage hydroelectric electrical energy generation technology.

Station use or plant use means that amount of electric energy used by a generation 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.

ANNUAL EXEMPTION

Each taxpayer shall be granted an exemption. This exemption is allowed for the period you were actually engaged in business. Monthly exemption is $41.67 or annual exemption of $500.00 Only one exemption may be claimed even though operations occur at more than one location.

TAX CREDITS

Description of several West Virginia tax credits that can be used to offset Business and Occupation Tax liabilities are given below.

Electric and Gas Utilities Rate Reduction Credit (WV Code § 11-13-3f)

Public utilities that provide electric and gas utility service at special reduced rates to low income residential customers for the billing months of December through April are eligible to claim the credit. The West Virginia Public Service Commission will determine the revenue deficiency resulting from the reduced rates, and certify the amount of allowable credit.

However, the credit is first claimed against the West Virginia Business and Occupation Tax liability, then against West Virginia Corporation Net Income Tax liability. Any portion of credit remaining may be carried over to the next year’s Business and Occupation Tax liability and is applied before any other credit for that year. There is no provision for carryover to the Corporation Net Income Tax.

Windmill Credit (WV Code § 11-13-2p)

For taxable periods beginning on or after the first day of January, two thousand eight, a credit shall be allowed against tax imposed by this article and calculated based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind. The total credit shall be equal to the amount of qualified contractually agreed contributions as defined in this section. The amount of total credit shall be reduced each year by the amount of credit annually applied to reduce tax under this section.

Economic Opportunity Tax Credit (WV Code §11-13Q)

The Economic Opportunity Tax Credit is available to qualified businesses that make a qualified investment in a new or expanded business facility in West Virginia and, as a result of this investment, create at least twenty (20) new jobs. Qualified businesses include only those engaged in the activities of manufacturing, information processing, warehousing, non-retail goods distribution, qualified research and development, the relocation of a corporate headquarters, or destination-oriented recreation and tourism. The credit can offset a portion of the tax attributable to qualified investment for the Business and Occupation Tax (electric power generation taxes only), Corporation Net Income Tax, and Personal Income Tax (tax on flow through business profits only), in the order stated. All taxpayers wishing to qualify for the Economic Opportunity Tax Credit must file an application for such credit (form WV/EOTC-A). This application is due by no later than the due date of the Taxpayer’s Annual State Income Tax Return (corporate or personal) for the tax year the investment was placed into service or use, including lawful extensions of time to file.