

WEST virginia legislature

2019 regular session

ENROLLED

House Bill 3142

By Delegates Householder, Criss, Rowan, Linville and Maynard

[Passed March 9, 2019; in effect ninety days from passage.]

AN ACT to amend and reenact §11-13A-3, §11-13A-6 and §11-13A-6a of the Code of West Virginia, 1931, as amended, all relating to severance taxes; reducing the severance tax on thermal or steam coal to incrementally over three years; providing for a total reduction of two percent of the coal severance tax at the conclusion of the three year period; providing for a reduction of thirty-five percent of the two percent reduction in the first year; providing for a reduction of sixty-five percent of the two percent reduction in the second year; providing for a the full two percent reduction in the third year; providing for an elimination of the severance tax on limestone or sandstone; and establishing minimum amounts of distribution of portion of severance taxes on coal dedicated for use and benefit of coal-producing counties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

(a) *Imposition of tax.* — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) *Rate and measure of tax.* — Subject to the provisions of subsection (h) of this section, the tax imposed in subsection (a) of this section is five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article: *Provided*, That effective July 1, 2019, the tax rate imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced incrementally over the next three tax years for a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent of the two percent reduction. In the case of coal, the rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code and the additional severance tax on coal imposed by the state for the benefit of coal-producing counties as provided in §11-13A-6a of this code.

(c) *“Thermal or steam coal” defined.* - For purposes of this section the term “thermal or steam coal” means coal sold for the purpose of generating electricity.

(d) *“Certain health care services” defined.* — For purposes of this section, the term “certain health care services” means, and is limited to, behavioral health services.

(e) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (d) of this section and shall be in addition to all other taxes imposed by law.

(f) *Effective date.* — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

(g) *Reduction of severance tax rate.* — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

(1) For coal mined by underground methods from seams with an average thickness of 37 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

(2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than 45 inches in average thickness or any existing mine that has not produced coal from seams 45 inches or less in thickness in the 180 days immediately preceding the effective date of this subsection.

(3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

(h)(1) *Termination and expiration of the behavioral health severance and business privilege tax.* — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection does not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) *Refunds made.* — The Tax Commissioner shall issue a requisition on the Treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

(i) *Termination and expiration of the privilege tax on limestone or sandstone.* — The taxes imposed under this section for persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of the termination.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of State Treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

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(a) Additional coal severance tax. -- Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or preparing coal (or both severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an additional severance tax, the amount of which shall be equal to the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of this article is measured as shown by the gross proceeds derived from the sale of the coal by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection is in addition to the tax imposed by section three of this article, and this additional tax is referred to in this section as the "additional tax on coal".

(b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article ten of the West Virginia Constitution. Seventy-five percent of the net proceeds of this additional tax on coal shall be distributed by the State Treasurer in the manner specified in this section to the various counties of this state in which the coal upon which this additional tax is imposed was located at the time it was severed from the ground. Those counties are referred to in this section as the "coal-producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by section three of this article, and all of the enforcement and other provisions of this article shall apply to the additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-seven, article two, chapter twenty-two-a of this code, the Tax Commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The Tax Commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section: Provided, That notwithstanding any language contained in this code to the contrary, the gross amount of additional tax on coal collected under this article shall be paid over and distributed without the application of any credits against the tax imposed by this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of the additional tax on coal to the coal-producing counties, the special fund known as the "county coal revenue fund" established in the State Treasurer's office by chapter one hundred sixty-two, acts of the Legislature, 1985 regular session, as amended and reenacted in subsequent acts of the Legislature, is hereby continued. In order to provide a procedure for the distribution of the remaining twenty-five percent of the net proceeds of the additional tax on coal to all counties and municipalities of the state, without regard to coal having been produced therein, the special fund known as the "all counties and municipalities revenue fund" established in the State Treasurer's office by chapter one hundred sixty-two, acts of the Legislature, 1985 regular session, as amended and reenacted in subsequent acts of the Legislature, is hereby redesignated as the "all counties and municipalities coal revenue fund" and is hereby continued.

Seventy-five percent of the net proceeds of such additional tax on coal shall be deposited in the county coal revenue fund and twenty-five percent of the net proceeds shall be deposited in the all counties and municipalities coal revenue fund, from time to time, as the proceeds are received by the Tax Commissioner. The

moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

(e) The moneys in the county coal revenue fund and the moneys in the all counties and municipalities coal revenue fund shall be allocated among and distributed quarterly to the counties and municipalities entitled to the moneys by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which a coal-producing county is entitled from the county coal revenue fund shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality is entitled from the all counties and municipalities coal revenue fund shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor for the sum due to each county or municipality shall issue and a check drawn thereon making payment of such amount shall thereafter be distributed to each such county or municipality.

(f) The amount to which a coal-producing county is entitled from the county coal revenue fund shall be determined by: (1) Dividing the total amount of moneys in the fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter; and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in the county during the preceding quarter.

(g) The amount to which each county and municipality is entitled from the all counties and municipalities coal revenue fund shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the all counties and municipalities coal revenue fund by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county's "base share".

(2) Each county's base share shall then be subdivided into two portions. One portion is determined by multiplying the base share by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the base share by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion is the "municipalities' portion" of the county's base share. The percentage of the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) All counties and municipalities shall create a "coal severance tax revenue fund" which shall be the depository for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in the coal severance tax revenue fund, in compliance with subsection (i) of this section, may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality.

(i) All unexpended balances remaining in coal severance tax revenue fund at the close of a fiscal year shall be reappropriated to the budget of the county commission or governing body for the subsequent fiscal year. The reappropriation shall be entered as an amendment to the new budget and submitted to the Tax Commissioner on or before July 15, of the current budget year.

(j) The State Tax Commissioner shall retain for the benefit of the state from the additional taxes on coal collected the amount of \$35,000 annually as a fee for the administration of such additional tax by the Tax

Commissioner.

§11-13A-6a. Reallocation and dedication of percentage of severance tax for benefit of coal-producing counties; phase-in period; permissible uses of distributed revenues; duties of State Treasurer and State Tax Commissioner; audits; rulemaking.

(a) The purpose of this section is to provide for the reallocation and dedication of a portion of the tax attributable to the severance of coal imposed by section three of this article for the use and benefit of the various counties of this state in which the coal upon which that tax is imposed was located at the time it was severed from the ground. Those counties are referred to in this section as the coal-producing counties or, in the singular, as a coal-producing county.

(b)(1) Effective July 1, 2012, one percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2013, two percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2014, three percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2015, four percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2016, and thereafter, five percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2019, and thereafter, the portion of the severance tax on coal imposed by §11-13A-3 of this code dedicated and to be distributed for the use and benefit of the coal-producing counties as provided in this subsection shall not be less than the amount distributed pursuant to this subsection for the fiscal year beginning July 1, 2018.

(2) In no fiscal year may the proceeds dedicated in subdivision (1) of this subsection exceed the sum of \$20 million.

(3) For purposes of this subsection, the tax attributable to the severance of coal imposed by section three of this article does not include the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(c) The amounts of the tax dedicated in subsection (b) of this section shall be deposited, from time to time, into a special fund known as the Coal County Reallocated Severance Tax Fund, which is hereby established in the State Treasury, as the proceeds are received by the State Tax Commissioner.

(d) The net proceeds of the deposits made into the Coal County Reallocated Severance Tax Fund shall be allocated among and distributed quarterly to the coal-producing counties by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys that will be available for distribution to the respective counties entitled to the moneys on that distribution date. The amount to which a coal-producing county is entitled from the Coal County Reallocated Severance Tax Fund shall be determined in accordance with subsection (e) of this section. After determining as set forth in subsection (e) of this section the amount each coal-producing county is entitled to receive from the fund, a warrant of the State Auditor for the sum due to each coal-producing county shall be issued and a check drawn thereon making payment of that amount shall thereafter be distributed to each such coal-producing county by hand, mail commercial delivery or electronic transmission.

(e) The amount to which a coal-producing county is entitled from the Coal County Reallocated Severance Tax Fund shall be determined by:

(1) Dividing the total amount of moneys in the fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter; and

(2) Multiplying the quotient thus obtained by the number of tons of coal removed from the ground in the county during the preceding quarter.

(f) (1) No distribution made to a county under this section may be deposited into the county's general revenue fund. The county commission of each county receiving a distribution under this section shall establish a special account to be known as the "(Name of County) Coal County Reallocated Severance Tax Fund" into which all distributions made to that county under this section shall be deposited.

(2) Moneys in the county's coal county reallocated severance tax fund shall be expended by the county commission solely for economic development projects and infrastructure projects.

(3) For purposes of this section:

(A) "Economic development project" means a project in the state which is likely to foster economic growth and development in the area in which the project is developed for commercial, industrial, community improvement or preservation or other proper purposes.

(B) "Infrastructure project" means a project in the state which is likely to foster infrastructure improvements including, but not limited to, post-mining land use, any water or wastewater facilities or any part thereof, storm water systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development or buildings that promote job creation and retention.

(4) A county commission may not expend any of the funds available in its coal county reallocated severance tax fund for personal services, for the costs of issuing bonds, or for the payment of bond debt service, and shall direct the total funds available in its coal county reallocated severance tax fund to project development, which may include the costs of architectural and engineering plans, site assessments, site remediation, specifications and surveys, and any other expenses necessary or incidental to determining the feasibility or practicability of any economic development project or infrastructure project.

(5) On or before December 31, 2013, and December 1 of each year thereafter, the county commission of each county receiving a distribution of funds under this section shall deliver to the Joint Committee on Government and Finance a written report setting forth the specific projects for which those funds were expended during the next preceding fiscal year, a detailed account of those expenditures, and a showing that the expenditures were made for the purposes required by this section.

(g) An audit of any funds distributed under this section may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the county commission or county commissions audited.

(h) The State Tax Commissioner shall propose for promulgation legislative rules pursuant to article three, chapter twenty-nine-a of this code for the administration of the provisions of this section, and is authorized to promulgate emergency rules for those purposes pursuant to that article.

NOTE: The purpose of this bill is to reduce the severance tax on thermal or steam coal to three percent and eliminating restrictions on counties and municipalities expending and reporting the expenditure of the county and municipality portion of the severance tax.

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