WEST VIRGINIA CODE: §11-13-2F

§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia Development Office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.

(a) Rate and measure of tax. –- There is hereby imposed an annual tax, in accordance with section two of this article, upon every person engaging or continuing within this state in the business of manufacturing or producing synthetic fuel from coal for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, and the amount of the tax shall be equal to 50¢ per ton of synthetic fuel manufactured or produced for sale, profit or commercial use during the taxable year. When a fraction of a ton is included in the measure of tax, the rate of tax as to that fraction of a ton shall be proportional. The measure of tax is the total number of tons of synthetic fuel product manufactured or produced in this state during the taxable year for sale, profit or commercial use regardless of the place of sale or the fact that deliveries may be made to points outside this state. Liability for payment of this tax shall accrue when the synthetic fuel product is sold by the manufacturer or producer, determined by when the producer or manufacturer recognizes gross receipts for federal income tax purposes. When there is no sale of the synthetic fuel product, liability for tax shall accrue when the synthetic fuel product is shipped from the manufacturing facility for commercial use, whether by the taxpayer or by a related party, except as otherwise provided in legislative rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a of this code.

(b) Definitions. -- For purposes of this section:

(1) "Fiscal year" means the fiscal year of this state.

(2) "Fuel" means material that produces usable heat or power upon combustion.

(3) "Fuel manufactured or produced from coal" means liquid, gaseous or solid fuels produced from coal, including, but not limited to, such fuels when used as feedstocks.

(4) "Office of chief inspector" means the State Auditor as ex officio chief inspector and supervisor of local government offices in accordance with section eleven, article nine, chapter six of this code.

(5) "Provisional share" means the portion of the Synthetic Fuel-Producing Counties Grant Fund that is available for possible distribution to each synthetic fuel-producing county. The amount of each county's provisional share is derived by dividing the share computation base by the number of synthetic fuel-producing counties in this state during the fiscal year. The

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share computation base is the sum of: (A) Net revenues deposited in the synthetic fuel-producing counties grant fund for the fiscal year; and (B) any amounts repooled for the fiscal year into the synthetic fuel-producing counties grant fund under this section; less (C) the amount dedicated and allotted to the director of the Development Office under this section for administration of the synthetic fuel-producing counties grant program. A county shall be counted as a synthetic fuel-producing county only if a synthetic fuel-manufacturing plant actively produced synthetic fuel in the county during the fiscal year.

(6) "Synthetic fuel manufactured or produced from coal" or "synthetic fuel" means and includes, but is not limited to, any fuel that is made or formed into a briquette, fragment, sheet, flake or other solid form by combining a binder or binding substance with coal dust, coal fines, crushed coal, pulverized coal, stoker fines, waste coal, coal or material derived from slurry ponds, coal or material derived from gob piles or any combination of the aforementioned materials without regard to whether any federal tax credit is, or would have been, available for or with relation to the production of such fuel. The term "synthetic fuel manufactured or produced from coal" or "synthetic fuel" also means, but is not limited to, fuel manufactured or produced from coal for which credit is allowable for federal income tax purposes under section twenty-nine of the United States Internal Revenue Code, as in effect on January 1, 2001, or for which credit would have been allowable if the synthetic fuel was produced from a facility, or expansion of a facility, that meets the requirement of section twenty-nine of the Internal Revenue Code or would have met the requirements on January 1, 2001, notwithstanding that such facility or expansion of a facility may have been placed in service either prior to or subsequent to January 1, 2001. "Synthetic fuel" does not include coke or coke gas.

(7) "Synthetic fuel-producing county" means a county of this state in which a synthetic fuel-manufacturing plant is physically located that actively produces synthetic fuel during the fiscal year. For purposes of determining whether a county is a synthetic fuel-producing county, the location of the synthetic fuel-manufacturing company headquarters, the state of incorporation or organization of the company or the location of any managerial office or facility or other office or facility of the company, other than the synthetic fuel-manufacturing plant, and the physical location where the coal or other material used in synthetic fuel manufacturing is extracted from the earth shall not be determinative of the designation of a county as a synthetic fuel-producing county.

(8) "Synthetic fuel-nonproducing county" means any county of this state other than a synthetic fuel-producing county.

(9) "Ton" means two thousand pounds.

(10) "Director of the Development Office" or "director" means the director of the West Virginia Development Office created and continued under article two, chapter five-b of this code.

(c) Credits not allowed against tax. -- When determining the amount of tax due under this

section, no credit shall be allowed under section three-c or three-d of this article or under any other article of this chapter or any other chapter of this code unless it is expressly provided that the credit applies to the business and occupation tax on the privilege of manufacturing or producing synthetic fuel.

(d) Emergency rule authorized. -- The Tax Commissioner may, in the commissioner's discretion, promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the provisions of this section.

(e) Dedication and distribution of proceeds, creation of funds. --

(1) The first $4 million of the net amount of tax collected during each fiscal year for exercise of the privilege taxed under this section shall be deposited into the Mining and Reclamation Operations Fund created in the state Treasury by section thirty-two, article three, chapter twenty-two of this code.

(2) There is hereby created a fund in the state Treasury entitled the Synthetic Fuel-Producing Counties Grant Fund which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first $4 million during each fiscal year, not to exceed $2,060,000, shall be deposited in the Synthetic Fuel-Producing Counties Grant Fund. Moneys in the Synthetic Fuel-Producing Counties Grant Fund in excess of moneys allocated to the director of the Development Office shall be dedicated to and distributed among the synthetic fuel-producing counties under the Synthetic Fuel-Producing Counties Grant Program as provided in this section. The county commission of a synthetic fuel-producing county shall use ninety percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund for infrastructure improvement and ten percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund for economic development.

(3) There is hereby created in the state Treasury a fund entitled the synthetic fuel-nonproducing counties fund which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first $6,060,000 during each fiscal year, not to exceed $2,000,000, shall be deposited in the synthetic fuel-nonproducing counties fund and equally divided and distributed among the synthetic fuel-nonproducing counties. The county commission of a synthetic fuel-nonproducing county shall first use such moneys for Regional Jail and Correctional Facility Authority and county jail expenses, and shall use any remainder for such lawful public purposes as the county commission may prescribe.

(4) The net amount of the tax collected in excess of $8,060,000 during each fiscal year shall be dedicated to the General Revenue Fund.

(5) The office of chief inspector shall annually determine that a county's expenditures of moneys distributed under this section is in compliance with the requirements of this section.

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(6) For purposes of this subsection, "net amount of tax collected" means the gross amount of tax collected under this section less allowed refunds and credits.

(f) Administration of the Synthetic Fuel-Producing Counties Grant Program. --

(1) The Director of the Development Office is hereby authorized and empowered to administer the distribution of moneys in the Synthetic Fuel-Producing Counties Grant Fund.

(A) On or before the plan submission due date prescribed by the Director of the Development Office, the county commission of each synthetic fuel-producing county may annually, or with such frequency as may be prescribed by the Director of the Development Office, submit a plan to the Director of the Development Office for use of the county's provisional share of the synthetic fuel-producing counties grant fund.

(B) A grant of moneys out of the Synthetic Fuel-Producing Counties Grant Fund shall only be distributed to a synthetic fuel-producing county or encumbered for the use of a synthetic fuel-producing county after approval by the Director of the Development Office of the plan for use of the county's provisional share of the fund, submitted to the Director of the Development Office by the county commission. The Director of the Development Office shall approve the synthetic fuel-producing county's plan for use if the plan for use reasonably conforms to the requirements of this section and the rules promulgated with relation thereto.

(C) If the county's plan is approved, the Director of the Development Office may authorize a grant of money out of the Synthetic Fuel-Producing Counties Grant Fund to the county to be used by the county as specified in the approved plan for use.

(D) The Director of the Development Office may authorize distribution of any amount encumbered for the use of the county and carried over from a prior period in accordance with applicable plans for use previously approved.

(E) The Director of the Development Office may authorize encumbrances for any synthetic fuel-producing county of moneys in the Synthetic Fuel-Producing Counties Grant Fund, up to the amount of the county's provisional share for the fiscal year, for one or more qualified uses specified in the county's plan for use if the county's approved plan for use of the moneys sets forth a qualified use for the county's provisional share over a period of several fiscal years or a qualified use of the moneys calling for accumulation and distribution to the county in one or more subsequent fiscal years. Encumbered funds may carry over to succeeding fiscal years and may be used to accumulate reserves over a period of time for use by the county.

(F) In no case may an amount distributed to a synthetic fuel-producing county exceed the amount of a county's provisional share for the fiscal year plus the amount of moneys encumbered in the fund for the use of the particular county and carried over from a prior period.

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(2) The Director of the Development Office may approve distributions of a county's provisional share of the Synthetic Fuel-Producing Counties Grant Fund for use as the county's share for state or federal matching funds programs so long as, in the aggregate, ninety percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund are used for infrastructure improvement and ten percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund are used for economic development: Provided, That no county may use any amount distributed out of the Synthetic Fuel-Producing Counties Grant Fund as money to be matched under the funds matching program authorized by subsection (b), section three, article two, chapter five-b of this code.

(3) Repooling. --

(A) Any synthetic fuel-producing county that has failed to have its plan, or amended and resubmitted plan or plans, approved by the Director of the Development Office for a period of eighteen months immediately subsequent to the initial plan submission date shall lose its entitlement to the provisional share of revenues deposited in the fund and attributable to the fiscal year to which that plan relates and the provisional share that would have been attributable to that county for that fiscal year shall be pooled with all other receipts in the Synthetic Fuel-Producing Counties Grant Fund attributable to revenues for the fiscal year during which the eighteen-month period ends and shall then be reallocated equally to all synthetic fuel-producing counties as part of the provisional share of each, as if the repooled moneys were tax revenues deposited into the fund during the fiscal year in which the eighteen-month period ended. For purposes of this subsection, the "initial plan submission date" means the earlier of: (i) The required submission date, as prescribed by the Director of the Development Office, for the initial plan for use of the county's provisional share of the Synthetic Fuel-Producing Counties Grant Fund for the fiscal year, with such extensions of time to file as may be authorized under rules promulgated by the Director of the Development Office; or (ii) the actual date of submission of the initial plan for the fiscal year. For purposes of this subsection, the term "initial plan" means the first plan for use that was submitted, or that should have been submitted, by a county for the fiscal year, before the submission of any amended, revised or resubmitted plan by the county for that fiscal year.

(B) Any synthetic fuel-producing county which fails to timely submit a plan for use of its provisional share of the Synthetic Fuel-Producing Counties Grant Fund, with such extensions of time to file as may be authorized under rules promulgated by the Director of the Development Office, shall lose its entitlement to its provisional share of revenues deposited in the fund and attributable to that fiscal year and the provisional share that would have been attributable to that county for that year shall be pooled with all other receipts in the Synthetic Fuel-Producing Counties Grant Fund attributable to revenues for the fiscal year and shall be reallocated equally among the remaining synthetic fuel-producing counties other than the county or counties that have failed to timely file the plan for use and shall be made available for distribution to those remaining counties, as part of their provisional share for the fiscal year.

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(C) Funds encumbered pursuant to approval of the Director of the Development Office under this subsection shall not be subject to repooling: Provided, That if the Director of the Development Office determines that moneys previously distributed to a county out of the Synthetic Fuel-Producing Counties Grant Fund have not been used as required under the approved plan for the county or determines that previously distributed moneys derived from encumbered funds have not been used for the qualified purpose for which the encumbrance was originally approved or if there appears to be a reasonable probability that encumbered funds will not be used for that qualified purpose, the Director of the Development Office may revoke the encumbrance of any funds of that synthetic fuel-producing county remaining in the fund and repool the funds so encumbered for reallocation to all synthetic fuel-producing counties. The Director of the Development Office may, in the director's discretion, give the county an opportunity to cure the nonqualified use of moneys derived from the Synthetic Fuel-Producing Counties Grant Fund or to submit an alternative plan for use of the encumbered funds which may be approved by the director if that plan complies with the requirements of this section.

(g) Promulgation of rules by the director of the Development Office authorized. -– The Director of the Development Office, in his or her discretion, may promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the Synthetic Fuel-Producing Counties Grant Program, distribution of moneys out of or encumbrance of moneys in the Synthetic Fuel-Producing Counties Grant Fund. The Director of the Development Office is hereby granted continuing authority to promulgate in accordance with article three, chapter twenty-nine-a of this code such interpretive, legislative or procedural rules, or any combination thereof, for administration of the Synthetic Fuel-Producing Counties Grant Program as the Director of the Development Office may find necessary and appropriate. The director of the Development Office may prescribe criteria for qualification under the infrastructure improvement use requirement and the economic development requirement of this section.

(h) There is hereby dedicated and allocated to the West Virginia Development Office $60,000 annually for administration of the Synthetic Fuel-Producing Counties Grant Program under this section. $60,000 shall be paid out of the Synthetic Fuel-Producing Counties Grant Fund to the director of the Development Office each fiscal year for administration of the Synthetic Fuel-Producing Counties Grant Program.

(i) Effective date. --

(1) This section as enacted in the year 2000 took effect upon enactment. The measure of tax shall include all synthetic fuel sold or shipped after January 1, 2001, regardless of when the synthetic fuel was manufactured or produced in this state.

(2) Amendments to this section enacted during the fifth extraordinary session of the Legislature in the year 2001 shall have retroactive effect to January 1, 2001, and the measure of tax shall include all synthetic fuel sold or shipped after January 1, 2001, regardless of when the synthetic fuel was manufactured or produced in this state.

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