WEST VIRGINIA CODE: §11-13A-6B

§11-13A-6b. Severance tax on coal extracted incident to highway construction performed under §17-27-1 et seq. of this code.

(a) Notwithstanding any other provision of this code, severance tax paid on coal extracted incident to the construction of any highway financed, in whole or in part, by this state or any agency of the government of the United States, and subject to the provisions of 30 CFR §912.707 or §22-3-26 of this code shall be deposited on a quarterly basis by the Tax Commissioner in a special fund in the State Treasury to be managed by the Commissioner of the Division of Highways and held in escrow until such time as the conditions specified in this section are complied with.

(b) *Coal severance tax subject to escrow*. —

The severance tax subject to escrow under this section includes:

(A) The 4.65 percent state portion of severance tax on coal imposed under $11-13A-3 of this code; and

(B) The 1.65 percent state portion of the coal severance tax on coal extracted from seams having a thickness of 37 to 45 inches; and

(C) The 0.65 percent state portion of the coal severance tax on coal extracted from seams having a thickness of less than 37 inches; and

(D) The 2.65 percent state portion of the coal severance tax on thermal coal imposed under §11-13A-3(b) of this code; and

(E) If the minimum severance tax set forth in §11-12B-1 *et seq*. of this code is paid or due owing and payable, the minimum severance tax.

(c) *Coal severance tax not subject to escrow*. — The severance tax on coal imposed under §11-13A-3 and §11-13A-6 of this code for the benefit of counties and municipalities may not be subject to escrow under this section, but shall be distributed for the benefit of counties and municipalities as mandated by law.

(d) The moneys accumulated in escrow pursuant to the provisions of this section shall be paid to each participant in a public-private partnership related to transportation facilities under §17-27-1 *et seq*. of this code.

(e) The amount paid to each such private entity shall be equal to the severance tax paid by each entity that was deposited into the escrow fund, with interest at the statutory rate of interest on tax overpayments established under the West Virginia Tax Procedure and Administration Act, §11-10-1 *et seq*. of this code.

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(f) Moneys to be paid out of the escrow fund to each such private entity shall only be paid when the Commissioner of the Division of Highways has certified that:

(1) All contracted work of the private entity for construction of the highway that yielded the coal extracted incident to the construction has been satisfactorily completed, and that the work meets all applicable highway construction standards;

(2) All taxes due and owing to this state by the private entity have been paid;

(3) All rights-of-way relating to the highway have been satisfactorily settled;

(4) All subcontractors, laborers, and obligees of the private entity have been properly paid;

(5) All legal and contractual obligations undertaken by the private entity under §17-27-1 *et seq*. of this code have been satisfactorily fulfilled; and

(6) The private entity is in compliance with all state and federal laws applicable to the construction project.

(g) Upon a determination by the Commissioner of the Division of Highways that moneys in the escrow fund may not be paid, or that the moneys have remained unpaid for a period of not less than one year, the moneys shall be removed from the escrow fund and paid into the General Fund.

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