WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13A

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§11-13A-1. Short title; arrangement and classification.

This article may be cited as the "Severance and Business Privilege Tax Act of 1993". No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection, subdivision or paragraph of this article.

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§11-13A-2. Definitions.

(a) *General rule*. — When used in this article, or in the administration of this article, the terms defined in subsection (b), (c) or (d) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used or by specific definition.

(b) *General terms defined*. — Definitions in this subsection apply to all persons subject to the taxes imposed by this article.

(1) "Business" includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: *Provided*, That "business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership and services by a member of any other business entity on behalf of that entity are the business of the employer or partnership, or other business entity as the case may be, and reportable as such for purposes of the taxes imposed by this article.

(2) "Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engage in activities taxable under this article.

(3) "Delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the state Tax Division of the Department of Tax and Revenue duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(4) "Fiduciary" means and includes a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(5) "Gross proceeds" means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, without any deduction for the cost of property sold or leased or expenses of any kind.

(6) "Includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(7) "Partner" includes a member of a syndicate, group, pool, joint venture or other organization which is a "partnership" as defined in this section.

(8) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised and which is not within the meaning of this article a trust or estate or corporation.

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"Partnership" includes a limited liability company which is treated as a partnership for federal income tax purposes.

(9) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or other entity, 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 declared by the context.

(10) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof. "Sale" includes a lease of property, whether the transaction be characterized as a rental, lease, hire, bailment or license to use. "Sale" also includes rendering services for a consideration, whether direct or indirect.

(11) "Service" includes all activities engaged in by a person for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property: *Provided*, That "service" does not include: (A) Services rendered by an employee to his or her employer under a contract of employment; (B) contracting; or (C) severing or processing natural resources.

(12) "Tax" means any tax imposed by this article and, for purposes of administration and collection of such tax, it includes any interest, additions to tax or penalties imposed with respect thereto under article ten of this chapter.

(13) "Tax commissioner" or "commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(14) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which a tax liability is computed under this article. In the case of a return made under this article, or regulations of the Tax Commissioner, for a fractional part of a year, the term "taxable year" means the period for which such return is made.

(15) "Taxpayer" means any person subject to any tax imposed by this article.

(16) "This code" means the Code of West Virginia, 1931, as amended.

(17) "This state" means the State of West Virginia.

(18) "Withholding agent" means any person required by law to deduct and withhold any tax imposed by this article or under regulations promulgated by the Tax Commissioner.

(c) *Specific definitions for producers of natural resources.* —

(1) "Barrel of oil" means forty-two U.S. gallons of two hundred thirty-one cubic inches of liquid at a standard temperature of sixty degrees Fahrenheit.

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(2) “Coal” means and includes any material composed predominantly of hydrocarbons in a solid state.

(3) “Cubic foot of gas” means the volume of gas contained in one cubic foot at a standard pressure base of fourteen point seventy-three pounds per square inch (absolute) and a standard temperature of sixty degrees Fahrenheit.

(4) “Economic interest” for the purpose of this article is synonymous with the economic interest ownership required by Section 611 of the Internal Revenue Code in effect on December 31, 1985, entitling the taxpayer to a depletion deduction for income tax purposes: *Provided*, That a person who only receives an arm’s length royalty shall not be considered as having an economic interest.

(5) “Extraction of ores or minerals from the ground” includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold.

(6) “Gross value” in the case of natural resources means the market value of the natural resource product, in the immediate vicinity where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, “gross value” is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

(B) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and sale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually

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severing the natural resource. If severed natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the amount of any federal energy tax imposed upon the taxpayer after June 1, 1993, but shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(H) For limestone or sandstone quarried or mined, gross value is the value of such stone immediately upon severance from the earth.

(7) "Mining" includes not merely the extraction of ores or minerals from the ground, but also those treatment processes necessary or incidental thereto.

(8) "Natural resources" means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state and includes standing timber. For the purposes of the severance tax levied in this article, salt produced solely for human consumption as food is not classified as a mineral subject to this tax.

(9) "Processed" or "processing" as applied to:

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(10) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the Tax Commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he or she determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(11) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: *Provided*, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural

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gas has been mechanically injected following its initial removal from earth: *Provided*, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(12) "Stock" includes shares in an association, joint-stock company or corporation.

(13) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource immediately after its severance or has an economic interest therein is the taxpayer.

(d) *Specific definitions for persons providing health care items or services*. —

"Behavioral health services" means services provided for the care and treatment of persons with mental illness, mental retardation, developmental disabilities or alcohol or drug abuse problems in an inpatient, residential or outpatient setting, including, but not limited to, habilitative or rehabilitative interventions or services and cooking, cleaning, laundry and personal hygiene services provided for such care: *Provided*, That gross receipts derived from providing behavioral health services that are included in the provider's measure of tax under article twenty-seven of this chapter shall not be include in that provider's measure of tax under this article. The amendment to this definition in the year 2004 is intended to clarify the intent of the Legislature as to the activities that qualify as behavioral health services, and this clarification shall be applied retrospectively to the effective date of the amendment to this section in which the definition of "behavioral health services" was originally provided as enacted during the first extraordinary session of the Legislature in the year 1993.

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§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

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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.

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§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is levied and shall be collected from every person exercising the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section: *Provided,* That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That effective for taxable periods beginning on or after January 1, 2020:

(1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable year, and for oil produced from any well which produced an average in excess of 10 barrels of oil per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer;

(2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is two and five tenths percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer; and

(3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from wells

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utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer.

(c) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons severing gas or oil in this state, and is in addition to all other taxes imposed by law.

(d) For purposes of this section, in determining the average amount of production of gas and oil in any given calendar year, a taxpayer must calculate the actual production of such well in the calendar year and divide the same by the number of days the well was in operation and producing gas or oil in such calendar year.

(e) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: *Provided*, That if on June 1, 2023, or on June 1 of any year thereafter, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of $6 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant to this subsection.

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§11-13A-3b. Imposition of tax on privilege of severing timber.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be three and twenty-two hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: Provided, That as to timber produced after December 31, 2006 the rate of the tax imposed in subsection (a) of this section shall be one and twenty-two hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing timber in this state and shall be in addition to all other taxes imposed by law.

(d) Discontinuation and reestablishment of tax. — Beginning in the tax year 2010 and continuing until June 30, 2016, the tax imposed by this section is discontinued. On and after July 1, 2016, the tax imposed by this section is reestablished and is imposed and shall apply to all persons severing timber in this state at the rate of one and fifty hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article. (e) Termination of taxes imposed by this section. – The taxes imposed under this section 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 shall 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 such termination.

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§11-13A-3c. Imposition of tax on privilege of severing other natural resources.

(a) Imposition of tax. — For 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 any other natural resource product or product not taxed under section three, three-a, three-b or four of this article, there is hereby levied and shall be collected from every person exercising this privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be four percent of the gross value of the natural resource produced, as shown by the gross proceeds derived from the sale thereof by producer, except as otherwise provided in this article: *Provided*, That beginning July 1, 1993, the tax imposed by this section shall be levied and collected at the rate of four and one-half percent, and beginning July 1, 1994, the tax imposed by this section shall be levied and collected at the rate of five percent: *Provided, however*, That there is an exemption from the imposition of the tax provided for in this article for 9 years beginning July 1, 2023, for severing, extracting, reducing to possession and producing for sale, profit or commercial use rare earth elements and critical minerals. For the purposes of this section, "rare earth elements" (also known as rare earth metals or rare earth oxides) are only yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, and scandium, and "critical minerals" are only aluminum, antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, indium, iridium, lithium, magnesium, manganese, nickel, niobium, palladium, platinum, rhodium, rubidium, ruthenium, tantalum, tellurium, tin, titanium, tungsten, vanadium, zinc, zirconium, uranium, osmium, strontium, rhenium, potash, and bauxite.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing other natural resources in this state, and shall be in addition to all other taxes imposed by law.

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

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§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

(a) The Legislature hereby finds and declares the following:

(1) That coalbed methane is underdeveloped and an under-utilized resource within this state which, where practicable, should be captured and not be vented or wasted;

(2) The health and safety of persons engaged in coal mining is a paramount concern to the state. The Legislature intends to preserve coal seams for future safe mining, to facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state, and to ensure the safety of miners by encouraging the advance removal of coalbed methane;

(3) The United States environmental protection agency's coalbed methane outreach program encourages United States coal mines in the United States to remove and use methane that is otherwise wasted during mining. These projects have important economic benefits for the mines and their local economies while they also reduce emissions of methane; and

(4) The initial costs of development of coalbed methane wells can be large in comparison to conventional wells and deoxygenation and water removal increase development expenditures.

The Legislature, therefore, concludes that an incentive to coalbed methane development should be implemented to encourage capture of methane gas that would otherwise be vented to the atmosphere.

(b) Imposition of tax. –- In lieu of the annual privilege tax imposed on the severance of natural gas or oil pursuant to section three-a, article thirteen-a, for the privilege of engaging or continuing within this state in the business of severing coalbed methane for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: Provided, That effective for taxable years beginning on or after January 1, 2001, there is an exemption from the imposition of the tax provided for in this article for a maximum period of five years for all coalbed methane produced from any coalbed methane well placed in service after January 1, 2000. For purposes of this section, the terms "coalbed methane" and "coalbed methane well" have the meaning ascribed to them in section two, article twenty-one, chapter twenty-two of this code. The exemption from tax provided by this section is applicable to any coalbed methane well placed in service before January 1, 2009, subject to the provisions of subsection (f) of this section.

(c) Rate and measure of tax. -- The tax imposed on subsection (b) of this section is five percent of the gross value of the coalbed methane produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(d) Tax in addition to other taxes. -- The tax imposed by this section applies to all persons severing coalbed methane in this state, and is in addition to all other taxes imposed by law.

(e) Except as specifically provided in this section, application of the provisions of this article

apply to coalbed methane in the same manner and with like effect as the provisions apply to natural gas.

(f) Notwithstanding any other provision of this code to the contrary, on and after January 1, 2009, the exemption from the tax on the privilege of severing coalbed methane created in this section will no longer be applicable except that the privilege tax shall not be collected on coalbed methane produced from any coalbed methane well for the remainder of the five-year exemption for any well that was placed in service, including the commencement of actual drilling of the well, before January 1, 2009.

(g) Subject to the exceptions set forth in this section and article thirteen-v of this chapter, on and after January 1, 2009, coalbed methane and methane produced from or by a coalbed methane well is taxable as natural gas for purposes of the taxes imposed by this article and the taxes imposed by article thirteen-v of this chapter.

(h) The Tax Commissioner shall promulgate emergency and legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as necessary to effectuate the purposes of this article.

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§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.

(a) The Legislature hereby finds and declares the following:

(1) That some mining operations in this state process coal to create a saleable clean coal product;

(2) That the by-product, waste or residue created from processing coal is commonly deposited in what are known as refuse or gob piles;

(3) That, as a result of technological developments and other factors, the material contained in some refuse or gob piles located in this state can be recovered and further processed to produce saleable clean coal; and

(4) That, under the existing laws of this state, coal produced from processing material contained in refuse, gob piles, slurry ponds, pond fines or other sources of waste coal would be subject to the annual privilege tax imposed on the severance of coal pursuant to section three of this article and the minimum severance tax imposed by section three, article twelve-b of this chapter.

Based on the findings in this subsection, the Legislature concludes that an incentive to extracting and recovering material contained in refuse, gob piles and other sources of waste coal located in this state and subsequently processing, washing and preparing this material to produce coal should be implemented to encourage the production of this coal from refuse or gob piles located in this state.

(b) Imposition of tax. -– In lieu of: (i) The annual privilege tax imposed on the severance of coal imposed by section three of this article; (ii) the additional tax on severance, extraction and production of coal imposed by section six of this article; and (iii) the minimum severance tax imposed by section three, article twelve-b of this chapter for the privilege of engaging or continuing within this state in the business of extracting and recovering material from a refuse, gob pile or other sources of waste coal and subsequently processing, washing and preparing this extracted or recovered material to produce coal for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising that privilege an annual privilege tax.

(c) Rate and measure of tax. -– The tax imposed in subsection (b) of this section is two and one-half percent of the gross value of the coal produced, as shown by the gross proceeds derived from the sale of the coal by the producer, except as otherwise provided in this article.

(d) Tax in addition to other taxes. -– The tax imposed by this section applies to all persons extracting and recovering material from refuse, gob piles or other sources of waste coal located in this state and subsequently processing, washing and preparing this extracted and

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recovered material to produce coal for sale, profit or commercial use and shall be in addition to all other taxes imposed by law: Provided, That the tax imposed by this section is in lieu of the tax imposed by sections three and six of this article and section three, article twelve-b of this chapter.

(e) Exemption. -– The tax imposed in subsection (b) of this section shall not apply to any electrical power cogeneration plant burning material from its wholly owned refuse or gob pile.

(f) Dedication of taxes collected, creation of fund. --

(1) There is continued in the State Treasury a fund entitled the "waste coal-producing counties fund" which shall be a revolving fund that shall carry over each fiscal year. The taxes collected under the provisions of this section shall be deposited in the waste coal-producing counties fund and are dedicated to the county commissions of the counties in which the refuse, gob piles or other sources of waste coal are located from which taxable waste coal production has occurred during the year for use in economic development and infrastructure improvements. The economic and infrastructure projects are to be in accordance with the rules promulgated under the synthetic fuel-producing counties grant fund program, as determined by the director of the West Virginia Development Office: Provided, That the county shall use ninety percent of the funds for infrastructure improvement and ten percent of the funds for economic development.

(2) Moneys in the waste coal-producing counties fund shall be distributed by the State Treasurer annually to the counties in which the refuse, gob piles or other sources of waste coal are located, from which taxable waste coal production has occurred during the year, in an amount prorated to the number of tons of taxable waste coal produced in each county during the preceding year. The distribution shall be paid separate from any other payment of moneys to the county by the treasurer. For purposes of this subdivision, the term "ton" means two thousand pounds.

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

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§11-13A-4. Treatment processes as production.

(a) Treatment processes considered as mining. -- The following treatment processes (and the treatment processes necessary or incidental thereto) when applied by the mine owner or operator to natural resources mined in this state shall be considered as mining and part of the privilege taxed under this article.

(1) Coal. -- In the case of coal: Cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment.

(2) Minerals customarily sold in crude form. -- In the case of other minerals which are customarily sold in crude form: Sorting, concentrating, sintering and substantially equivalent processes to bring them to shipping grade and form, and loading for shipment.

(3) Minerals not customarily sold in crude form. -- In the case of other minerals which are not customarily sold in the form of the crude mineral products: Crushing, grinding and beneficiation by concentration (gravity, flotation, amalgamation or electrostatic or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting or refining), or substantially equivalent processes or combinations of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit.

(4) Oil shale. -- In the case of oil shale: Extraction from the ground, crushing, loading into the retort and retorting, but not hydrogenation, refining or any other process subsequent to retorting; and

(5) Other. -- Any other treatment process provided for in a legislative rule prescribed by the Tax Commissioner which, with respect to the particular ore or mineral, is not inconsistent with the preceding subdivisions of this subsection (a).

(b) Treatment processes not considered as mining. -- Unless such processes are otherwise provided for in subsection (a), or are necessary or incidental to processes provided for in subsection (a), the following treatment processes shall not be considered as "mining": Electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action and molding or shaping.

(c) Treatment processes considered part of production of oil, natural gas and natural gas liquids. -- The privileges of severing and producing oil and natural gas shall not include any conversion or refining process.

(d) Timber production privilege. -- The privilege of severing and producing timber shall end once the tree is severed and delimbed.

(e) Limestone and sandstone quarried or mined production privilege. -- The privilege of

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severing and producing limestone and sandstone by quarrying or mining shall end once the limestone or sandstone is severed from the earth.

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§11-13A-5. Oil and gas operating unit.

(a) For purposes of the production of oil classification and the production of natural gas classification, as set forth in this article, multiple coowners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after its severance, extraction, reduction to possession and production (except royalty recipients in kind) shall be deemed to be a "group or combination acting as a unit" and one "person" as defined in section two of this article, if not otherwise defined therein, whenever engaged in the producing of oil or natural gas through common use (by joint or separately executed contracts) of the same independent contract driller or operator's services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members' accounts or for members of such group or combination to take in kind any proportionate part of such natural resources.

(b) Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties.

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§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities and of three fourths of one percent of oil and gas severance tax for the benefit of the Office of Oil and Gas in the Department of Environmental Protection; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

(a) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this code is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 1997, and thereafter, ten percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 2023, and every year thereafter, three fourths of one percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this code, not to exceed $1,200,000, is hereby dedicated for the use and benefit of regulating the oil and gas industry by the Office of Oil and Gas in the Department of Environmental Protection and shall be deposited in the Oil and Gas Operating Permit and Processing Fund to ensure that the Office of Oil and Gas has sufficient funding to support its regulatory mission of ensuring the safety of the natural environment of this state.

(b) Seventy-five percent of the dedicated tax for counties and municipalities shall be distributed by the State Treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the "oil and gas producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on oil and gas shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The Tax Commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by oil and gas 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.

(d) In order to provide a procedure for the distribution of seventy-five percent of the dedicated tax for counties and municipalities on oil and gas to the oil and gas producing counties, the special fund known as the oil and gas county revenue fund established in State Treasurer's office by chapter two hundred forty-two, acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the Legislature, is hereby

continued. In order to provide a procedure for the distribution of the remaining twenty-five percent of the dedicated tax for counties and municipalities on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, the special fund known as the all counties and municipalities revenue fund established in State Treasurer's office by chapter two hundred forty-two, acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the Legislature, is hereby redesignated as the "all counties and municipalities oil and gas revenue fund" and is hereby continued.

Seventy-five percent of the dedicated tax for counties and municipalities on oil and gas shall be deposited in the oil and gas county revenue fund and twenty-five percent of this dedicated tax on oil and gas shall be deposited in the all counties and municipalities oil and gas 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 oil and gas county revenue fund and the moneys in the all counties and municipalities oil and gas revenue fund shall be allocated among and distributed annually 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 an oil and gas producing county is entitled from the oil and gas county revenue fund shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the all counties and municipalities oil and gas revenue fund shall be determined in accordance with subsection (g) of this section. After determining, as set forth in subsections (f) and (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 the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the county or municipality.

(f) The amount to which an oil and gas producing county is entitled from the oil and gas county revenue fund shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in the county during the preceding year; and

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in the county during the preceding year.

(g) The amount to which each county and municipality is entitled from the all counties and municipalities oil and gas 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 State Treasurer shall first apportion the total amount of moneys available in the all counties and municipalities oil and gas 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 shall be 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) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: *Provided*, That in counties with population in excess of two hundred thousand, at least seventy-five percent of the funds received from the oil and gas county revenue fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the State Tax Commissioner: *Provided, however*, That the moneys distributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

(i) On or before March 28, 1997, and each March 28 thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the Tax Commissioner on forms provided by the Tax Commissioner a special budget, detailing how

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the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expending the moneys unless a subsequent budget is approved by the State Tax Commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the General Fund and may be expended by the county or municipality without restriction.

(j) On or before December 15, 1996, and each December 15 thereafter, the Tax Commissioner shall deliver to the clerk of the Senate and the Clerk of the House of Delegates a consolidated report of the budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July 15, of the current year.

(k) The State Tax Commissioner shall retain for the benefit of the state from the dedicated tax attributable to the severance of oil and gas the amount of $35,000 annually as a fee for the administration of the additional tax by the Tax Commissioner.

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§11-13A-5b. Creation and cessation of West Virginia Future Fund; legislative intent; calculation of deposits from excess severance tax revenues; permissible uses of investment income and limitations on expenditures; definitions.

(a) There is hereby created in the State Treasury a special revenue account, designated the West Virginia Future Fund, which is an interest-bearing account and may be invested by the West Virginia Investment Management Board in the manner permitted by the provisions of §12-6-1 *et seq*. of this code, with the investment income to be credited to the fund and deposited in the special revenue account.

(b) The Legislature declares its intention to use the fund as a means of conserving a portion of the state's revenue derived from the increased revenue proceeds received by the state as a result of any mineral production as well as other funding sources as the Legislature may designate in order to meet future needs. The principal of the fund shall remain inviolate and no portion of the principal may be appropriated, expended or encumbered by the Legislature or any official of the state. Only the investment income of this fund may be appropriated and expended: *Provided*, That no more than the average net investment return for the immediately preceding five fiscal years may be appropriated or expended in any one fiscal year.

(c) Notwithstanding any provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each year thereafter, the secretary of revenue shall cause to be deposited in this fund three percent of the annual severance tax revenue which would otherwise be deposited into the General Revenue Fund which is attributable to the severance of coal, limestone, sandstone, natural gas and oil and collected and received pursuant to the provisions of sections §11-13A-3 and §11-13A-3a of this code: *Provided*, That these deposits shall only be made during fiscal years within which the balance of the Revenue Shortfall Reserve Fund equals or exceeds 13 percent of the state's General Revenue Fund budget for the fiscal year just ended as determined within 60 days of the end of that prior fiscal year as provided by subsection (b), §11B-2-20 of this code: *Provided, however*, That these deposits shall not be made in any fiscal year in which the Governor's General Revenue Fund estimate relies on transfers from the Revenue Shortfall Reserve Fund: *Provided further*, That these deposits shall not be made in any fiscal year for which mid-year spending reductions, hiring freezes, mid-year decreases in appropriations or transfers from the Revenue Shortfall Reserve Fund are necessitated due to revenue shortfalls or would be necessitated if the deposits were to be made: *And provided further*, That amounts that may be deposited into the fund in error or found later to be subject to these limitations shall be redeposited into the General Revenue Fund. The Legislature may, by general appropriation or by designation of other funding sources, deposit into the fund additional moneys as it considers appropriate.

(d) In order to maximize the value of the fund, no money from the fund may be expended or appropriated until fiscal year 2020 and thereafter the Legislature may appropriate, subject to the limitations provided in this section, from the fund solely for enhancing education and workforce development; economic development and diversification; infrastructure improvements; and tax relief measures for the benefit of the citizens and businesses of the

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State of West Virginia.

(e) Cessation of the West Virginia Future Fund. —

(1) On July 1, 2023, the West Virginia Future Fund and any duties regarding its creation, continuation, and expenditure shall be eliminated.

(2) Any funds held in the West Virginia Future Fund on July 1, 2023, shall be transferred into the General Revenue Fund of this state.

(f) For purposes of this section:

(1) "Economic development and diversification" means fostering economic growth and development in the state, including commercial, industrial, community, cultural or historical improvements; or preservation or other proper purposes.

(2) "Infrastructure improvements" means fostering infrastructure improvements including, but not limited to, post-mining land use, water or wastewater facilities or a 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.

(3) "Tax relief" means reducing the tax responsibility of citizens and businesses located in the State of West Virginia, including, but not limited to, increasing the Homestead Exemption and reducing or eliminating the ad valorem property tax on inventory and equipment held for commercial or industrial use.

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§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.

(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

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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.

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§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 §11-13A-3 of this code 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 §11-13A-3 of this code 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 §11-13A-3 of this code 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 §11-13A-3 of this code 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 §11-13A-3 of this code 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 §11-13A-3 of this code 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 §11-13A-3 of this code 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 §11-13A-6 of this code.

(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

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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, or litter cleanup programs.

(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

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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 §29A-3-1 *et seq*. 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.

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§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.

(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:

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(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.

WV Legislature

§11-13A-7. Accounting periods and methods of accounting.

(a) General rule. -- For purposes of the taxes imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer's taxable year under this article.

(b) Change of taxable year. -- If a taxpayer's taxable year is changed for federal income tax purposes, taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with taxpayer's annual return for the taxable year filed under this article.

(c) Methods of accounting same as federal. --

(1) Same as federal. -- 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 accrual method of accounting shall be used, unless the Tax Commissioner, in writing, consents to the use of another method. Accrual basis taxpayers may deduct bad debts only in the year to which they relate, and accrual basis health care providers may not deduct bad debts attributable to services rendered before June 1, 1993.

(2) Change of accounting methods. -- If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service with its annual return for the taxable year filed under this article.

(d) 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, under regulations prescribed by the Tax Commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

WV Legislature

§11-13A-8. Time for filing annual returns and other documents.

On or before the expiration of one month after the end of the taxable year, every taxpayer subject to a tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the Tax Commissioner may require and computing the amount of taxes due under this article for the taxable year. Returns made on the basis of a calendar year shall be filed on or before the thirty-first day of January following the close of the calendar year. Returns made on the basis of a fiscal year shall be filed on or before the last day of the first month following the close of the fiscal year.

WV Legislature

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article; exceptions.

(a) General rule. — Except as provided in subsection (b) of this section, taxes levied under §11-13A-3a, §11-13A-3b, and §11-13A-3c of this code are due and payable in periodic installments as follows:

(1) Tax of $50 or less per month. — If a person's annual tax liability under this article is reasonably expected to be $50 or less per month, no installment payments of tax are required under this section during that taxable year.

(2) Tax of more than $1,000 per month. — For taxpayers whose estimated tax liability under this article exceeds $1,000 per month, the tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued:

(A) Each taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for that year.

(3) Tax of $1,000 per month or less. — For taxpayers whose estimated tax liability under this article is $1,000 per month or less, the tax is due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each taxpayer shall, on or before the last day of the fourth, seventh, and 10th months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same, and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year, and one fourth of any annual exemption allowed for that year.

(b) Exceptions. — (1) Notwithstanding the provisions of subsection (a) of this section, the Tax Commissioner, if he or she considers 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 in subsection (a) of this section.

(2) Notwithstanding the provisions of subsection (a) of this section, taxpayers remitting tax on the privilege of severing timber may deduct the annual tax credit allowed in §11-13A-10 of this code only on the annual return filed for any taxable year beginning on or after July 1,

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1998. These taxpayers may not deduct any portion of the annual tax credit when they determine the amount of periodic installment payments of timber severance tax due during their taxable year.

WV Legislature

§11-13A-9a. Periodic installment payments of tax imposed by section three of this article.

(a) General rule. -- Taxes levied under section three of this article shall be due and payable in periodic installments as follows:

(1) If a person's annual liability under this article can reasonably be expected to be $50 or less per month, no installment payments of tax are required under this section during that taxable year.

(2) If a person's annual tax liability under section three of this article can reasonably be expected to exceed $50 per month, the tax imposed by said section 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: Provided, That the installment payment otherwise due on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15 each year.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer 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 due to the office of the Tax Commissioner: Provided, That the installment payment otherwise due under this paragraph on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15, beginning June 15, 1988.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year and one twelfth of any annual exemption allowed for such year.

(b) Exception. -- Notwithstanding the provisions of subsection (a) of this section, 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 in said subsection.

WV Legislature

§11-13A-10. Paying tax; annual tax credit.

Every taxpayer subject to any tax imposed under this article shall be allowed one annual credit of $500 against the taxes due under this article, to be applied at the rate of $41.67 per month for each month the taxpayer was engaged in business in this state during the taxable year exercising a privilege taxable under this article. Persons providing health care items or services who become subject to the tax imposed by section three of this article beginning June 1, 1993, shall be allowed a proportional credit under this section based on the number of months in their tax year that begin on or after June 1, 1993.

WV Legislature

§11-13A-10a. Tax credit for business investment and jobs expansion; industrial expansion and revitalization; eligible research and development projects; coal loading facilities.

(a) There shall be allowed as a credit against the tax imposed by this article for the taxable year, the amount determined under articles thirteen-c, thirteen-d and thirteen-e of this chapter relating respectively to:

(1) The tax credit for business investment and jobs expansion;

(2) The tax credit for industrial expansion and revitalization and eligible research and development projects; and

(3) The tax credit for coal loading facilities.

(b) The Tax Commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and articles thirteen-c, thirteen-d and thirteen-e of this chapter.

(c) This provision shall take effect on July 1, 1987.

WV Legislature

§11-13A-11. Extension of time for filing returns.

The Tax Commissioner may, upon written request received on or prior to the due date of the annual return or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory to the Tax Commissioner is provided by the taxpayer.

WV Legislature

§11-13A-12. Extension of time for paying tax.

(a) Amount determined on return. -- The Tax Commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency. -- Under regulations prescribed by the Tax Commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the Tax Commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) No extension for certain deficiencies. -- No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

WV Legislature

§11-13A-13. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the Tax Commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: Provided, That the Tax Commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

WV Legislature

§11-13A-14. Time and place for paying tax shown on returns.

(a) General rule. -- The person required to make the annual return required by this article shall, without assessment or notice and demand from the Tax Commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Date fixed for payment of tax. -- The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(c) Terms of extension. -- Any extension of time for payment of tax under this section may be granted upon such terms as the Tax Commissioner may, by regulation, prescribe or by contract require.

WV Legislature

§11-13A-15. Signing of returns and other documents.

(a) General. -- Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the Tax Commissioner.

(b) Signing of corporation returns. -- The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns. -- The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) Signature presumed authentic. -- The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him

(e) Verification of returns. -- Except as otherwise provided by the Tax Commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

WV Legislature

§11-13A-16. Bond of taxpayer may be required.

(a) Whenever it is deemed necessary to ensure compliance with this article, the Tax Commissioner may require any taxpayer to post a cash or corporate surety bond.

(b) The amount of the bond shall be fixed by the Tax Commissioner but, except as provided in subsection (c) of this section, shall not be greater than three times the average quarterly liability of taxpayers filing returns for quarterly periods, five times the average monthly liability of taxpayers required to file returns for monthly periods, or two times the average periodic liability of taxpayers permitted or required to file returns for other than monthly or quarterly periods.

(c) Notwithstanding the provisions of subsection (b) of this section, no bond required under this section shall be less than $500.

(d) The amount of the bond may be increased or decreased by the Tax Commissioner at any time subject to the limitations provided in this section.

(e) The Tax Commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer's business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid. Such action may be brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.

WV Legislature

§11-13A-16a. Nonresident person severing West Virginia timber owned by the person at time of severance required to notify Tax Commissioner prior to severance and prepay severance tax or post bond.

(a) Business registration certificate required. -- Every nonresident person who owns or purchases standing West Virginia timber who either directly, or indirectly through the activities of others, severs that timber shall apply to the Tax Commissioner for a business registration certificate as provided in article twelve of this chapter, before beginning to do business in this state, whether or not the person has a permanent place of business in this state.

(b) "Nonresident person" defined. -- The term "nonresident person" means a "person" or "company" as defined in section three of this article that, if an individual, is a nonresident of this state for purposes of the tax imposed by article twenty-one of this chapter and, if any other person, does not have its commercial domicile in this state, or during the three months preceding the date the application for business registration certificate is filed with the Tax Commissioner did not have a permanent office in this state for the conduct of timbering operations in this state or any other permanent place of business in this state for the conduct of timbering operations as that term is defined in section three, article one-b, chapter nineteen of this code.

(c) Notice of contract. -- Every nonresident person who severs West Virginia timber, either directly or through the activity of others, which that person owns, in whole or in part, at the time that it is severed, shall give the Tax Commissioner written notice of the nonresident person's intent to sever the West Virginia timber identified in the notice. This notice shall be given no earlier than ninety days before the timbering operation begins and no later than thirty days before the timbering operation begins. The notification shall include all of the information required by section six, article one-b, chapter nineteen of this code, the estimated gross value of the timber described in the notice that will be severed and any other information the Tax Commissioner may require: Provided, That the Tax Commissioner may accept as the notification required by this section, a true copy of the notice the nonresident person gave under section six, article eleven-b, chapter nineteen of this code to the director of forestry, the estimated gross value of the timber described in the notice that will be severed and any additional information the Tax Commissioner may require.

(d) Prepayment of severance tax. -- If the nonresident person owns, in whole or in part, the timber at the time that it is severed, the nonresident person shall, at the time the notice required by subsection (c) of this section is given to the Tax Commissioner, pay to the Tax Commissioner four percent of the estimated gross value of the timber to be severed that is described in the notice: Provided, That the estimated gross value shall not be less than the actual price paid or to be paid for the stumpage. The Tax Commissioner shall deposit this amount in a revolving account in the Treasurer's Office to be known as the "Forestry Tax Fund" pending completion of severance of the timber identified in the notice given under subsection (c) of this section, the filing of all required tax returns and payment of all timber severance taxes due under this article attributable to severance of the timber described in

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the notice given under subsection (c) of this section, including any additions to tax, penalties and interest imposed for failure to timely pay the severance taxes. Within thirty days after the timber identified in the notice is severed, the nonresident person shall file with the Tax Commissioner a report reconciling the amount of prepaid severance tax with the amount of severance taxes actually due on the gross value of the timber at the point where the privilege of severing timber ends. If this report shows that additional timber severance taxes are due, that amount shall be paid when the report is filed with the Tax Commissioner. If the report shows that the amount of timber severance taxes prepaid exceeded the amount actually due, the Tax Commissioner shall refund the difference.

(e) Surety bond. -- In lieu of the prepayment of timber severance tax required by subsection (d) of this section, the nonresident person may furnish to the Tax Commissioner a corporate surety bond in an amount equal to four percent of the estimated gross value of the timber to be severed that is described in the notice: Provided, That the estimated gross value shall not be less than the actual price paid or to be paid for the stumpage, to guarantee timely payment of the taxes due under this article that may be attributable to the timber described in the notice given under subsection (c) of this section. The form of the bond shall be approved by the Tax Commissioner. The surety shall be qualified to do business in this state. The bond shall be conditioned that the nonresident person shall pay all timber severance taxes due under this article attributable to severance of the timber described in the notice given under subsection (c) of this section, including any additions to tax, penalties or interest that may be imposed due to any failure of the nonresident person to pay those taxes as they become due.

(f) Conditions for surety. -- Any surety on a bond furnished under subsection (e) of this section shall be qualified to do business in this state. The surety shall be relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the Tax Commissioner receives the written request of the surety to be discharged. The written request for discharge may be filed with the Tax Commissioner by personal service or by certified mail, postage prepaid, addressed to the Tax Commissioner at his or her office in Charleston, West Virginia. A request for discharge shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before expiration of the sixty-day period. Whenever any surety seeks discharge as provided in this subsection, it is the duty of the principal of the bond to supply the Tax Commissioner with another corporate surety bond.

(g) Penalty for noncompliance. -- (1) A nonresident person who fails to comply, in whole or in part, with the requirements of this section shall forfeit the license issued to that person under section four, article one-b, chapter nineteen of this code for a period of one year for the first offense and for a period of two years for each subsequent violation of this section. When the Tax Commissioner determines that a nonresident person is failing to comply, in whole or in part, with the requirements of this section, the commissioner shall certify those facts to the director of forestry. Upon the facts certified by the Tax Commissioner, or upon facts gathered by the director, demonstrating failure of the nonresident person to comply, in whole or in part, with the requirements of this section the director shall then issue an order

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notifying the nonresident person that the license issued under section four, article one-b, chapter nineteen of this code has been forfeited. A forfeiture order may be appealed as provided in article one-b, chapter nineteen of this code. In addition, the nonresident person shall pay a money penalty equal to fifty percent of the timber severance tax that should have been paid that was not timely paid. This amount shall be in addition to the amount of timber severance taxes not timely paid plus interest and applicable additions to tax. This penalty shall be collected by the Tax Commissioner in the same manner as taxes are collected under this article.

(2) If a nonresident person underestimates the amount of timber severance taxes that must be prepaid under subsection (d) of this section by more than twenty-five percent, the nonresident person shall pay a money penalty equal to fifty percent of the timber severance tax that should have been prepaid that was not prepaid or guaranteed by the surety bond given under subsection (e) of this section. This amount shall be in addition to the amount of timber severance taxes not timely paid plus interest and applicable additions to tax. This penalty shall be collected by the Tax Commissioner in the same manner as taxes are collected under this article.

(h) Effective date. -- The provisions of this section apply to timber severed by a nonresident person on or after July 1, 1998.

WV Legislature

§11-13A-17. Collection of tax; agreement for processor to pay tax due from severor.

(a) General. -- In the case of natural resources, other than natural gas, where the Tax Commissioner finds that it would facilitate and expedite the collection of the taxes imposed under this article, the Tax Commissioner may authorize the taxpayer processing the natural resource to report and pay the tax which would be due from the taxpayer severing the natural resources. The agreement shall be in such form as the Tax Commissioner may prescribe. The agreement must be signed: By the owners, if the taxpayers are natural persons; in the case of a partnership or association, by a partner or member; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application. The agreement may be terminated by any party to the agreement upon giving thirty days' written notice to the other parties to the agreement: Provided, That the Tax Commissioner may terminate the agreement immediately upon written notice to the other parties when either the taxpayer processing the natural resource or the taxpayer severing the natural resource fails to comply with the terms of the agreement.

(b) Natural gas. --

(1) In the case of natural gas, except for those cases:

(A) Where the person severing (or both severing and processing) the natural gas will sell the gas to the ultimate consumer, or

(B) Where the Tax Commissioner determines that the collection of taxes due under this article would be accomplished in a more efficient and effective manner through the severor, or severor and processor, remitting the taxes; the first person to purchase the natural gas after it has been severed, or in the event that the natural gas has been severed and processed before the first sale, the first person to purchase the natural gas after it has been severed and processed, shall be liable for the collection of the taxes imposed by this article. He shall collect the taxes imposed from the person severing (or severing and processing) the natural gas, and he shall remit the taxes to the Tax Commissioner. In those cases where the person severing (or severing and processing) the natural gas sells the gas to the ultimate consumer, the person so severing (or severing and processing) the natural gas shall be liable for the taxes imposed by this article. In those cases where the Tax Commissioner determines that the collection of the taxes due under this article from the severance (or severance and processing) of natural gas would be accomplished in a more efficient and effective manner through the severor (or severor and processor) remitting the taxes, the Tax Commissioner shall set out his determination in writing, stating his reasons for so finding, and so advise the severor (or severor and processor) at least fifteen days in advance of the first reporting period for which such action would be effective.

(2) On or before the last day of the month following each taxable calendar month, each person first purchasing natural gas as described in subdivision (1) above, shall report purchases of natural gas during the taxable month, showing the quantities of gas purchased,

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the price paid, the date of purchase, and any other information deemed necessary by the Tax Commissioner for the administration of the tax imposed by this article, and shall pay the amount of tax due, on forms prescribed by the Tax Commissioner.

(3) On or before the last day of the month following each taxable calendar month, each person severing (or severing and processing) natural gas, shall report the sales of natural gas, showing the name and address of the person to whom sold, the quantity of gas sold, the date of sale, and the sales price on forms prescribed by the Tax Commissioner.

WV Legislature

§11-13A-18. Records.

(a) General. -- Every taxpayer liable for reporting or paying tax under this article shall keep records, receipts, invoices and other pertinent papers in the form required by the Tax Commissioner.

(b) Period of retention. -- Every taxpayer shall keep the records for not less than three years after the annual return is filed under this article, unless the Tax Commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment automatically extends the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

(c) Special rule for purchasers of standing timber or of logs. -- In addition to the records required by subsection (a) of this section, every person purchasing standing timber, logs or wood products sawn or chipped in conjunction with a timber harvesting operation in this state delivered after June 30, 1998, shall obtain from the person from whom the standing timber, logs or wood products sawn or chipped in conjunction with a timbering harvest operation are purchased a true copy of the seller's then current business registration certificate issued under article twelve of this chapter or a copy of federal form 1099 for the year of the purchase. When the seller is a person not required by this chapter to have a business registration certificate, the purchaser shall obtain an affidavit from the seller: (1) Stating that the seller does not have a business registration certificate and that the seller is not required by this chapter to have a business registration certificate; (2) listing the seller's social security number or federal employer identification number; and (3) listing the seller's current mailing address. The Tax Commissioner may develop a form for this affidavit.

WV Legislature

§11-13A-19. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if said act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

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§11-13A-20. Crimes and penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the taxes imposed by this article with like effect as if said act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

WV Legislature

§11-13A-20a. Dedication of tax.

(a) The amount of taxes collected under this article from providers of health care items or services, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the special revenue fund created in the State Treasurer's Office and known as the Medicaid State Share Fund. Said fund shall have separate accounting for those health care providers as set forth in articles four-b and four-c, chapter nine of this code.

(b) Notwithstanding the provisions of subsection (a) of this section, for the remainder of fiscal year 1993 and for each succeeding fiscal year, no expenditures from taxes collected from providers of health care items or services are authorized except in accordance with appropriations by the Legislature.

(c) The amount of taxes on the privilege of severing timber collected under section three-b of this article, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be paid into a special revenue account in the State Treasury to be appropriated by the Legislature for purposes of the Division of Forestry.

(d) Notwithstanding any other provision of this code to the contrary, beginning January 1, 2009, there is hereby dedicated an annual amount not to exceed $4 million from annual collections of the tax imposed by section three-d of this article to be deposited into the West Virginia Infrastructure Fund, created in section nine, article fifteen-a, chapter thirty-one of this code.

(e) Beginning with the fiscal year ending June 30, 2009, and each fiscal year thereafter, the Tax Commissioner shall pay from the taxes imposed in section three-d of this article, on October 1, of each year, to the county economic development entities, as this term is defined in this subsection, or county commissions as provided in subsections (f) through (h) of this section, an amount in the aggregate not to exceed $4 million per fiscal year: Provided, That on July 1, 2012, the Tax Commissioner shall deposit the taxes imposed in section three-d of this article into a special revenue fund, which is hereby created in the State Treasurer's Office and known as the Coalbed Methane Gas Distribution Fund: Provided, however, That such deposit of taxes shall not exceed in the aggregate $4 million per fiscal year and moneys therein shall be distributed by the State Treasurer pursuant to this section. Prior to making any such payment the commissioner shall deduct the amount of refunds lawfully paid and administrative costs authorized by this code. All moneys distributed to the West Virginia Infrastructure Fund pursuant to this section prior to July 1, 2011, shall be returned to the Tax Commissioner and distributed to the county economic development entities, as this term is defined in this subsection, or county commissions as provided in this section. For purposes of this section, the term "county economic development entity" refers to a county economic development authority established pursuant to article twelve, chapter seven of this code or if a county does not have a county economic development authority established pursuant to

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article twelve, chapter seven of this code, an entity designated by resolution of the county commission of the county as the lead entity for economic development activities for the purpose of encouraging economic development in the county which entity may be, but is not limited to being, redevelopment authorities created pursuant to article eighteen, chapter sixteen of this code; county economic development corporations; regional economic development councils, corporations or partnerships.

(f) Notwithstanding any provision of this article to the contrary, prior to the deposit of the proceeds of the tax on coalbed methane with each, county economic development entity or county commission pursuant to subsection (e) of this section, the Tax Commissioner shall undertake the following calculations:

(1) Seventy-five percent of the moneys to be deposited shall be provisionally allocated for the various counties of this state in which the coalbed methane was produced; and

(2) The remaining twenty-five percent of the moneys to be deposited shall be provisionally allocated to the various counties of this state in which no coalbed methane was produced for projects in accordance with subsection (h) of this section.

(3) Moneys shall be provisionally allocated to each coalbed methane producing county in direct proportion to the amount of tax revenues derived from coalbed methane production in the county.

(4) Moneys shall be provisionally allocated to each coalbed methane nonproducing county equally.

(5) Portional adjustments.

(A) If, for any year, a coalbed methane producing county's share of money provisionally allocated to that county is computed to be an amount that is less than the amount provisionally allocated to each of the coalbed methane nonproducing counties, then for purposes of the computations set forth in this subsection, that coalbed methane producing county shall be redesignated a coalbed methane nonproducing county. The money that has been provisionally allocated to that coalbed methane producing county out of the seventy-five percent portion specified in subdivision (1) of this subsection shall be subtracted out of the seventy-five percent portion specified in that subdivision and added to the twenty-five percent portion specified in subdivision (2) of this subsection.

(B) When the adjustment specified in paragraph (A), of this subdivision has been made for each coalbed methane producing county that has been redesignated as a coalbed methane nonproducing county, then the Tax Department shall finalize the calculations of the amounts to be made available for distribution to the respective county economic development entity or county commission of the coalbed methane producing counties that have not been redesignated as coalbed methane nonproducing counties under paragraph (A) of this subdivision as follows: The amount remaining in the provisional seventy-five percent portion

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specified in subdivision (1) of this subsection, as adjusted in accordance with paragraph (A) of this subdivision, shall be allocated, in direct proportion to the amount that tax revenues derived from coalbed methane production in each such county not redesignated as a coalbed methane nonproducing county bears to the total amount of tax revenues derived from coalbed methane production in all coalbed methane producing counties that have not been redesignated as a coalbed methane nonproducing county.

(C) The Tax Commissioner shall then finalize the calculation of the total amount in the twenty-five percent portion specified in subdivision (2) of this subsection, as adjusted in accordance with paragraph (A) of this subdivision equally among the coalbed methane nonproducing counties.

(D) The Tax Commissioner, upon completing the calculation of the total amount of tax to be distributed to all coalbed methane producing counties and to all coalbed methane nonproducing counties, shall deposit an amount equal to the amount so calculated in the Coalbed Methane Gas Distribution Fund, subject to the limitations set forth in this section.

(g) In no case may the total amount distributed in any fiscal year to the aggregate of all coalbed methane producing counties and all coalbed methane nonproducing counties calculated by the Tax Commissioner exceed the total amount of tax on coalbed methane authorized to be remitted to the county economic development entities and county commissions pursuant to subsection (e) of this section.

(h) Distribution of coalbed methane severance tax to county economic development entities or county commissions is subject to the following:

(1) If the amount determined pursuant to subsections (f) and (g) of this section for a county is more than $10,000, the State Treasurer shall distribute the amount determined for that county to the county economic development entity. The State Treasurer is hereby authorized to distribute accumulated but undistributed moneys from fiscal years 2009, 2010, 2011 and 2012 to each county economic development entity.

(2) Each county economic development entity shall use such funds 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 and covers post mining land use, water or wastewater facilities, stormwater systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and

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flood control facilities, industrial park development, road or buildings that promote job creation and retention.

(4) Prior to expending any coalbed methane severance tax moneys, each county economic development entity must obtain the approval of its respective county commission, or the county commission or commissions representing the county or counties where the economic development or infrastructure project will be situate if the county economic development entity is regional and encompasses more than one county, in writing for the purpose of such expenditure.

(5) A county commission or county economic development entity may not use funds distributed to it pursuant to subsections (e), (f), (g) and (h) of this section for the purposes of paying wages to any employee of the county or any employee of a county economic development entity.

(6) If the amount determined pursuant to subsections (f) and (g) of this section for a county is $10,000 or less, the State Treasurer shall distribute the amount determined for that county to the county commission. The county commission may then use the funds to offset its regional jail costs, costs of any community corrections programs in which it participates, expenses of a volunteer fire department that provides service within its county or expenses of any library that provides services within its county.

(i) On or before December 1, 2013, and December 1 of each year thereafter, the county economic development entity as defined in this section or county commission 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.

(j) 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 economic development entity or county commission audited.

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§11-13A-21. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

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§11-13A-22. Termination of exemption.

(a) On and after July 1, 2013, the exemption set forth in subdivision (4), subsection (a), section three-a of this article is void and of no force or effect with respect only to horizontally drilled wells. However, if a well for which the producer established entitlement to that exemption on or before June 30, 2013, the exemption from tax continues for natural gas or oil produced from that well for the remainder of the ten-year period for which the exemption was originally applicable.

(b) "Horizontally drilled well" means any well that is drilled using a "horizontal drilling" method as that term is defined in subdivision (5), subsection (b), section four, article six-a, chapter twenty-two of this code.

(c) Pursuant to section five-p, article ten of this chapter, termination of the exemption set forth in subdivision (4), subsection (a), section three-a of this article on and after July 1, 2013, is subject to the controlling internal effective date of this section and is not subject to the alternative effective date provisions of section five-p, article ten of this chapter.

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§11-13A-23.

Repealed.

Acts, 1993 1st Ex. Sess., Ch. 7.

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§11-13A-24.

Repealed.

Acts, 1993 1st Ex. Sess., Ch. 7.

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§11-13A-25. Effective date.

Amendments to this article made by this act of the Legislature shall take effect June 1, 1993.

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