WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13V

WV Legislature

§11-13V-1. Short title.

This article may be cited as the "Workers' Compensation Debt Reduction Act of 2005". 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.

WV Legislature

§11-13V-2. Legislative intent and findings.

(a) Legislative intent. -- It is the intent of the Legislature in enacting this article to impose new, additional privilege taxes on severing or producing natural resources in this state and for the net proceeds from collection of the new taxes to be dedicated to paying down the unfunded liability in the Workers' Compensation Fund, or paying debt service on bonds sold to raise funds to pay down the unfunded liability in the Workers' Compensation Fund, or for any combination of these two purposes.

(b) Findings. -- The Legislature finds and declares that:

(1) The unfunded liability in the state Workers' Compensation Program exceeds $3 billion;

(2) Until a fiscally responsible plan for paying this unfunded liability is provided by the Legislature, the condition of the Workers' Compensation Fund will continue to negatively affect economic development in this state;

(3) Until a fiscally responsible plan for paying this unfunded liability is provided by the Legislature, the Legislature will not be able to privatize Workers' Compensation;

(4) Until a fiscally responsible plan for paying this unfunded liability is provided, the Legislature will need to annually appropriate dollars from the General Revenue Fund of the state to pay down this unfunded liability and to cover the annual shortfall between funds available to pay Workers' Compensation benefits to injured workers and premiums collected by the Workers' Compensation Fund from employers;

(5) In accordance with the Constitution of this state and decisions of the West Virginia Supreme Court of Appeals, the Legislature may enact a new tax and dedicate the net collections of the tax to pay down this unfunded liability or to pay debt service on bonds sold by the state to raise funds to pay down this unfunded liability.

WV Legislature

§11-13V-3. Definitions.

All definitions set forth in articles twelve-d and thirteen-a of this chapter apply to those defined terms that also appear in this article, if applicable.

WV Legislature

§11-13V-4. Imposition of tax.

(a) Imposition of additional tax on privilege of severing coal. — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an additional annual severance tax for exercising the privilege after November 30, 2005. The tax shall be 56 cents per ton and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance with rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment before July 1, 2005, the rule may be promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed with respect to the severance and production of coal in this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

(b) Imposition of additional tax on privilege of severing natural gas. — For the privilege of engaging or continuing within this state in the business of severing natural gas for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax. The rate of this additional tax shall be 4.7 cents per mcf of natural gas and the measure of the tax is natural gas produced after November 30, 2005, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to natural gas produced after November 30, 2005.

(c) Imposition of additional tax on privilege of severing timber. — 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 this privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to timber produced after November 30, 2005: Provided, That during the period of discontinuance of the tax as provided in subsection (d), section three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection shall be determined as provided in this subsection in the same manner as if the tax described under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to the provisions of subsection (g) of this section.

(d) No pyramiding of tax burden. — Each ton of coal and each mcf of natural gas severed in this state after the effective date of the taxes imposed by this section shall be included in the

WV Legislature

measure of a tax imposed by this section only one time.

(e) Effect on utility rates. — The Public Service Commission shall, upon the application of any public utility that, as of the effective date of the taxes imposed by this section, is not currently making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs because the mechanism historically used to make such periodic adjustments is suspended by an order of the commission, allow such utility to defer, for future recovery from its customers, any increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas severed in this state and utilized in the production of electricity generated or produced in this state and sold to customers in this state; coal and natural gas severed in this state and utilized in the production of electricity not generated or produced in this state that is sold to customers in this state; and natural gas severed in this state that is sold to customers in this state.

(f) Dedication of new taxes. —

(1) Subject to the provisions of subdivision (2) of this subsection, the net amount of all moneys received by the Tax Commissioner from collection of the taxes imposed by this section, including any interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this code, shall be deposited in the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code. As used in this section, "net amount of all taxes received by the Tax Commissioner" means the gross amount received by the Tax Commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this article, including the amount of any interest on the overpayment amount due the taxpayer under the provisions of section fourteen, article ten of this chapter.

(2) If the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than $100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from taxes imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

(g) Termination of taxes imposed by this article. – The taxes imposed under this article shall cease, terminate and be of no further force or effect on and after July 1, 2016: Provided, That the Governor may, by Executive Order, cause the tax to terminate before July 1, 2016. Termination of the taxes imposed under this article 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.

WV Legislature

§11-13V-4a. Coalbed methane.

(a) Subject to the exceptions set forth in this section, 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. All coalbed methane produced from any coalbed methane well placed in service, including the commencement of actual drilling of the well, before January 1, 2009, shall be exempt from the taxes imposed by this article for the remainder of the five-year original exemption period set forth in section three-d, article thirteen-a of this chapter and applicable to the coalbed methane produced from that well.

(b) 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.

WV Legislature

§11-13V-5. 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 is similarly changed. The taxpayer shall provide a copy of the authorization for the 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.

(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 is similarly changed. The taxpayer shall provide a copy of the authorization for the 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 rules promulgated by the Tax Commissioner in accordance with article three, chapter twenty-nine-a of this code, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

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§11-13V-6. 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 all information the Tax Commissioner requires 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

§11-13V-7. Periodic installment payments of taxes imposed by this article; exceptions.

(a) General rule. C Except as provided in subsection (b) of this section, taxes levied by this article are due and payable in periodic installments as follows:

(1) Tax of $50 or less per month. C If a person's aggregate annual tax liability under this article and article thirteen-a of this chapter 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. C For taxpayers whose aggregate estimated tax liability under this article and article thirteen-a of this chapter 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: Provided, That the installment payment otherwise due under this subdivision on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15 each year. When this subdivision applies, the taxpayer shall, on or before the due date specified in this subdivision, 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: Provided, however, 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.

(3) Tax of $1,000 per month or less. C 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. When this subdivision applies, the taxpayer shall, on or before the last day of the fourth, seventh and tenth 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) Exception. C 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.

(c) Remittance by electronic funds transfer. C When the taxpayer's annual aggregate liability for tax under this article and article thirteen-a of this chapter exceeds $50,000 for the prior tax year, payments of estimated tax required by this article and article thirteen-a during the then current tax year shall be by electronic funds transfer, in accordance with rules of the Tax Commissioner and rules of the State Treasurer, except as otherwise permitted by the Tax Commissioner: Provided, That for tax years beginning on or after January 1, 2016, when the taxpayer's annual aggregate liability for tax under this article and article thirteen-a of

WV Legislature

this chapter exceeds $25,000 for the prior tax year, payments of estimated tax required by this article and article thirteen-a during the then current tax year shall be by electronic funds transfer, in accordance with rules of the Tax Commissioner and rules of the State Treasurer, except as otherwise permitted by the Tax Commissioner.

WV Legislature

§11-13V-8. 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 or she may by rule prescribe, or by contract require, if good cause satisfactory to the Tax Commissioner is provided by the taxpayer.

WV Legislature

§11-13V-9. 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 rules prescribed by the Tax Commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code, the Commissioner 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 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 may 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

§11-13V-10. Place for filing returns or other documents.

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

WV Legislature

§11-13V-11. 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 the 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 the 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 rule prescribe, or by contract require.

WV Legislature

§11-13V-12. 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, the 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) Signing of limited liability company returns. -- The return of a limited liability company shall be signed by any one of its authorized members. The fact that a member's name is signed on the return shall be prima facie evidence that the member is authorized to sign the return on behalf of the limited liability company.

(e) 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 or her.

(f) 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

§11-13V-13. 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. This 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

§11-13V-14. 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 by 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 the form prescribed by or acceptable to the Tax Commissioner.

(1) The agreement must be signed:

(A) By the owner, if the taxpayer is a natural person;

(B) In the case of a partnership, limited liability company or association, by a partner or member;

(C) In the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the agreement.

(2) 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 natural gas after it has been severed and processed, shall be liable for the collection of the taxes imposed by this article. That person shall collect the taxes imposed from the person severing (or severing and processing) the natural gas, and that person shall remit the taxes to the Tax Commissioner;

(C) 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;

(D) In those cases where the Tax Commissioner determines that the collection of the taxes

WV Legislature

due under this article from the person severing the natural gas, or severing and processing the 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 or her determination in writing, stating his or her 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 the Commissioner's determination is effective.

(2) On or before the last day of the month following each taxable calendar month, the person first purchasing natural gas, as described in subdivision (1) of this subsection, shall report purchases of natural gas during the taxable month, showing the quantities of gas purchased, the price paid, the date of purchase, and any other information considered 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

§11-13V-15. Records.

(a) General. -- Every person 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 a tax year for a period of 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 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

§11-13V-16. 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 applies to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

WV Legislature

§11-13V-17. Crimes and penalties.

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

WV Legislature