

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976



ENROLLED

HOUSE BILL No. 1088

Originating in the
(By Mr. House Committee on Finance)



PASSED May 15, 1976

In Effect — from — Passage



FILED IN THE OFFICE
JAMES R. McCARTNEY
SECRETARY OF STATE

THIS DATE 5/25/76

8801

ENROLLED

H. B. 1088

(Originating in the House Committee on Finance)

[Passed May 15, 1976; in effect from passage.]

AN ACT to amend and reenact section two-1, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax and imposing an additional tax upon the business of severing, extracting, reducing to possession and producing for sale any coal; providing the rate of tax and measure thereof; providing that such additional tax is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution; providing for distribution of such additional tax to entitled counties and municipalities; providing for reporting and remittance as elsewhere in said article thirteen; providing for promulgation of rules and regulations; creating funds in the office of state treasurer; providing for deposit into and distribution from such funds; providing for transfer from separate account into "all counties and municipalities revenue fund"; specifying formulas for determining amounts to which counties and municipalities are entitled; creating special funds and expenditure limitations for moneys distributed to counties and municipalities; providing for special budgets for such counties and municipalities and reports thereon by state tax commissioner, and authorizing the state tax commissioner to retain a certain amount of the tax as a fee for administration and distribution.

Be it enacted by the Legislature of West Virginia:

That section two-1, article thirteen, chapter eleven of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2l. 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 and regulations; creation of 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; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

1 (a) Upon every person exercising the privilege of engaging
2 or continuing within this state in the business of severing, ex-
3 tracting, reducing to possession and producing for sale, profit
4 or commercial use any coal, the amount of such tax to be
5 equal to the value of the coal produced as shown by the gross
6 proceeds derived from the sale thereof by the producer, mul-
7 tiplied by thirty-five one hundredths of one percent, and the
8 tax imposed by section two of this article in conjunction with
9 this subsection (a) shall be in addition to the tax imposed
10 by said section two in conjunction with section two-a of this
11 article, and the tax imposed by section two of this article in
12 conjunction with this subsection (a) is hereinafter in this
13 section referred to as "such additional tax." The measure of
14 such additional tax is the value of the entire production in
15 this state, regardless of the place of sale or the fact that the
16 delivery may be made to points outside the state.

17 (b) Such additional tax is imposed pursuant to the pro-
18 visions of section six-a, article ten of the West Virginia con-
19 stitution. Seventy-five percent of the net proceeds of such
20 additional tax shall, after appropriation thereof by the Legisla-
21 ture, be distributed by the state treasurer to the various
22 counties in this state in which the coal upon which such
23 additional tax is imposed was located at the time it was

24 severed from the ground, such counties being hereinafter in
25 this section referred to as the "coal-producing counties,"
26 and the remaining twenty-five percent of the net proceeds
27 of such additional tax shall be distributed, after appropriation,
28 among all the counties and municipalities of this state without
29 regard to coal having been produced therein.

30 (c) Such additional tax shall be due and payable, re-
31 ported and remitted as elsewhere provided in this article for
32 the tax imposed by said section two in conjunction with
33 said section two-a of this article and all of the enforcement
34 and other provisions of this article shall apply to such
35 additional tax. In addition to the reports and other informa-
36 tion required under the provisions of this article and the
37 tonnage reports required to be filed under the provisions of
38 section seventy-two, article two, chapter twenty-two of this
39 code, the state tax commissioner is hereby granted plenary
40 power and authority to promulgate reasonable rules and
41 regulations requiring the furnishing by producers of such
42 additional information as may be necessary to compute the
43 allocation required under the provisions of subsection (f)
44 of this section. The state tax commissioner is also hereby
45 granted plenary power and authority to promulgate such
46 other reasonable rules and regulations as may be necessary
47 to implement the provisions of this section.

48 (d) In order to provide a procedure for the distribution
49 of seventy-five percent of the net proceeds of such additional
50 tax to such coal-producing counties, there is hereby created
51 in the state treasurer's office a special fund to be known as
52 the "county coal revenue fund", and in order to provide
53 a procedure for the distribution of the remaining twenty-five
54 percent of the net proceeds of such additional tax to all
55 counties and municipalities of the state, without regard to
56 coal having been produced therein, there is also hereby
57 created in the state treasurer's office a special fund to be
58 known as the "all counties and municipalities revenue
59 fund."

60 Seventy-five percent of the net proceeds of such additional
61 tax shall be deposited in the "county coal revenue fund"
62 and twenty-five percent of such net proceeds shall be deposited

63 in the "all counties and municipalities revenue fund," from
64 time to time as such proceeds are received by the state tax
65 commissioner. The moneys in such funds shall, after ap-
66 propriation thereof by the Legislature, be distributed to the
67 respective counties and municipalities entitled thereto in the
68 manner set forth in subsection (e) of this section: *Provided*,
69 That those moneys heretofore received and maintained in a
70 separate account in the state treasurer's office, constituting
71 twenty-five percent of the net proceeds of such additional
72 tax received prior to the creation of the "all counties and
73 municipalities revenue fund" shall be transferred to such fund
74 and promptly distributed from such fund to all counties and
75 municipalities of this state according to their respective entitle-
76 ment.

77 (e) The moneys in the "county coal revenue fund" and the
78 moneys in the "all counties and municipalities revenue fund"
79 shall be allocated among and distributed quarterly to the
80 counties and municipalities entitled thereto by the state trea-
81 surer in the manner hereinafter specified. On or before
82 each distribution date, the state treasurer shall determine
83 the total amount of moneys in each fund which will be available
84 for distribution to the respective counties and municipalities
85 entitled thereto on that distribution date. The amount to
86 which a coal-producing county is entitled from the "county
87 coal revenue fund" shall be determined in accordance with
88 subsection (f) of this section, and the amount to which every
89 county and municipality shall be entitled from the "all
90 counties and municipalities revenue fund" shall be deter-
91 mined in accordance with subsection (g) of this section.
92 After determining as set forth in subsection (f) and sub-
93 section (g) of this section the amount each county and munic-
94 ipality is entitled to receive from the respective fund or funds,
95 a warrant of the state auditor for the sum due to such county
96 or municipality shall issue and a check drawn thereon making
97 payment of such sum shall thereafter be distributed to such
98 county or municipality.

99 (f) The amount to which a coal-producing county is en-
100 titled from the "county coal revenue fund" shall be deter-
101 mined by (i) dividing the total amount of moneys in such
102 fund then available for distribution by the total number

103 of tons of coal mined in this state during the preceding
104 quarter, and (ii) multiplying the quotient thus obtained by
105 the number of tons of coal removed from the ground in such
106 county during the preceding quarter.

107 (g) The amount to which each county and municipality shall
108 be entitled from the "all counties and municipalities revenue
109 fund" shall be determined in accordance with the provisions of
110 this subsection. For purposes of this subsection, "population"
111 shall mean the population as determined by the most recent
112 decennial census taken under the authority of the United States.

113 The treasurer shall first apportion the total amount of
114 moneys available in the "all counties and municipalities revenue
115 fund" by multiplying the total amount in such fund by the
116 percentage which the population of each county bears to the
117 total population of the state. The amount thus apportioned
118 for each county shall be the county's "base share."

119 Each county's "base share" shall then be subdivided into
120 two portions. One portion shall be determined by multiplying
121 the "base share" by that percentage which the total population
122 of all unincorporated areas within the county bears to the
123 total population of the county, and the other portion shall
124 be determined by multiplying the "base share" by that
125 percentage which the total population of all municipalities
126 within the county bears to the total population of the county.
127 The former portion shall be paid to the county and the latter
128 portion shall be the "municipalities' portion" of the county's
129 "base share." The percentage of such latter portion to which
130 each municipality in the county is entitled shall be determined
131 by multiplying the total of such latter portion by the percentage
132 which the population of each municipality within the county
133 bears to the total population of all municipalities within
134 the county.

135 (h) All counties and municipalities shall create a "coal
136 severance tax revenue fund" which shall be the depository for
137 moneys distributed to any county or municipality under the
138 provisions of this section, from either or both special funds.
139 Moneys in such "coal severance tax revenue funds," in com-
140 pliance with subsection (i), may be expended by the county

141 commission or governing body of the municipality for such
142 public purposes as the county commission or governing body
143 shall determine to be in the best interest of the people of its
144 respective county or municipality: *Provided*, That a line item
145 budgeted amount from the current levy estimate for a county
146 shall be funded at one hundred percent of the preceding year's
147 expenditure from the county general fund prior to the use of
148 coal severance tax revenue fund moneys for the same general
149 purpose: *Provided, however*, That said coal severance tax
150 revenue fund moneys shall not be budgeted for personal
151 services in an amount to exceed one fourth of the total funds
152 available in such fund.

153 (i) On or before July fifteenth, one thousand nine hundred
154 seventy-six, each county commission or governing body of a
155 municipality receiving such revenue funds for fiscal year one
156 thousand nine hundred seventy-six—one thousand nine hun-
157 dred seventy-seven, shall budget the intended use of such funds
158 on forms provided by the state tax commissioner. Such budget
159 shall be followed unless the state tax commissioner approves
160 a subsequent amendment. On or before June fifteenth, one
161 thousand nine hundred seventy-seven, and each June fifteenth
162 thereafter, each county commission or governing body re-
163 ceiving such revenue shall submit to the state tax commissioner
164 on forms provided by the state tax commissioner a special
165 budget, detailing how such revenue is to be spent during the
166 subsequent fiscal year. Such budget shall be followed in
167 expending such revenue unless a subsequent budget is approved
168 by the state tax commissioner. All unexpended balances re-
169 maining in said special fund at the close of a fiscal year shall
170 be reappropriated to the budget for the subsequent fiscal year.
171 Such reappropriation shall be entered as an amendment to the
172 new budget and submitted to the tax commissioner on or be-
173 fore July fifteenth of the current budget year.

174 (j) On or before December fifteenth, one thousand nine
175 hundred seventy-six, and each December fifteenth thereafter,
176 the state tax commissioner shall deliver to the clerk of the
177 Senate and the clerk of the House of Delegates a consolidated
178 report of the special budgets, created by subsection (i) of this
179 section, for all county commissions and municipalities as of July
180 fifteenth of the current year.

181 (k) The state tax commisioner shall retain for the benefit
182 of the state from the additional tax collected the amount of
183 thirty-five thousand dollars annually as a fee for the ad-
184 ministration of such additional tax by the state tax commis-
185 sioner and the distribution of the net proceeds thereof by the
186 state treasurer.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis

Chairman Senate Committee

Clarence C. Chester Jr

Chairman House Committee

Originated in the House.

Takes effect from passage.

J. S. Dillon, Jr.
Clerk of the Senate

W. B. Blankenship

Clerk of the House of Delegates

W. T. Brantley Jr

President of the Senate

Lewis H. McManis

Speaker House of Delegates

The within *approved* this the *24th*
May day of _____, 1976.

Arva P. Hays
Governor



PRESENTED TO THE
GOVERNOR

Date 5/20/76

Time 1:55 p.m.