WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

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ENROLLED

HOUSE BILL No. 1088

Originating in the
House Committee on Finance

- - -

PASSED May 15, 1976

In Effect from Passage

1088

FILED IN THE OFFICE
JAMES R. McCARTNEY
SECRETARY OF STATE

THIS DATE 5/25/76
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-I, 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-I, 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.

§11-13-21. 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.

(a) 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 any coal, the amount of such tax to be equal to the value of the coal produced as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent, and the tax imposed by section two of this article in conjunction with this subsection (a) shall be in addition to the tax imposed by said section two in conjunction with section two-a of this article, and the tax imposed by section two of this article in conjunction with this subsection (a) is hereinafter in this section referred to as "such additional tax." The measure of such additional tax is the value of the entire production in this state, regardless of the place of sale or the fact that the delivery may be made to points outside the state.

(b) Such additional tax 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 such additional tax shall, after appropriation thereof by the Legislature, be distributed by the state treasurer to the various counties in this state in which the coal upon which such additional tax is imposed was located at the time it was
severed from the ground, such counties being hereinafter in
this section referred to as the "coal-producing counties,"
and the remaining twenty-five percent of the net proceeds
of such additional tax shall be distributed, after appropriation,
among all the counties and municipalities of this state without
regard to coal having been produced therein.

(c) Such additional tax shall be due and payable, re-
ported and remitted as elsewhere provided in this article for
the tax imposed by said section two in conjunction with
said section two-a of this article and all of the enforcement
and other provisions of this article shall apply to such
additional tax. In addition to the reports and other informa-
tion required under the provisions of this article and the
tonnage reports required to be filed under the provisions of
section seventy-two, article two, chapter twenty-two of this
code, the state tax commissioner is hereby granted plenary
power and authority to promulgate reasonable rules and
regulations 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 state tax commissioner is also hereby
granted plenary power and authority to promulgate such
other reasonable rules and regulations 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 net proceeds of such additional
tax to such coal-producing counties, there is hereby created
in the state treasurer's office a special fund to be known as
the "county coal revenue fund", and in order to provide
a procedure for the distribution of the remaining twenty-five
percent of the net proceeds of such additional tax to all
counties and municipalities of the state, without regard to
coal having been produced therein, there is also hereby
created in the state treasurer's office a special fund to be
known as the "all counties and municipalities revenue
fund."

Seventy-five percent of the net proceeds of such additional
tax shall be deposited in the "county coal revenue fund" and twenty-five percent of such net proceeds shall be deposited
in the “all counties and municipalities revenue fund,” from
time to time as such proceeds are received by the state tax
commissioner. The moneys in such funds shall, after ap-
propriation thereof by the Legislature, be distributed to the
respective counties and municipalities entitled thereto in the
manner set forth in subsection (e) of this section: Provided,
That those moneys heretofore received and maintained in a
separate account in the state treasurer's office, constituting
twenty-five percent of the net proceeds of such additional
tax received prior to the creation of the “all counties and
municipalities revenue fund” shall be transferred to such fund
and promptly distributed from such fund to all counties and
municipalities of this state according to their respective entitle-
ment.

(e) The moneys in the “county coal revenue fund” and the
moneys in the “all counties and municipalities revenue fund”
shall be allocated among and distributed quarterly to the
counties and municipalities entitled thereto by the state trea-
surer in the manner hereinafter specified. 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 thereto 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 shall be entitled from the “all
counties and municipalities revenue fund” shall be deter-
mained in accordance with subsection (g) of this section.
After determining as set forth in subsection (f) and sub-
section (g) of this section the amount each county and munic-

(f) The amount to which a coal-producing county is en-
titled from the “county coal revenue fund” shall be deter-
mained by (i) dividing the total amount of moneys in such
fund then available for distribution by the total number
of tons of coal mined in this state during the preceding quarter, and (ii) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter.

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

The treasurer shall first apportion the total amount of moneys available in the “all counties and municipalities revenue fund” by multiplying the total amount in such 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 shall be the county’s “base share.”

Each county’s “base share” shall then be subdivided into two portions. One portion shall be 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 shall be 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 such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such 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 such “coal severance tax revenue funds,” in compliance with subsection (i), 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: Provided, That a line item budgeted amount from the current levy estimate for a county shall be funded at one hundred percent of the preceding year's expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: Provided, however, That said coal severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

(i) On or before July fifteenth, one thousand nine hundred seventy-six, each county commission or governing body of a municipality receiving such revenue funds for fiscal year one thousand nine hundred seventy-six—one thousand nine hundred seventy-seven, shall budget the intended use of such funds on forms provided by the state tax commissioner. Such budget shall be followed unless the state tax commissioner approves a subsequent amendment. On or before June fifteenth, one thousand nine hundred seventy-seven, and each June fifteenth thereafter, each county commission or governing body receiving such revenue shall submit to the state tax commissioner on forms provided by the state tax commissioner a special budget, detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending such revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in said special fund at the close of a fiscal year shall be reappropriated to the budget for the subsequent fiscal year. Such reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before July fifteenth of the current budget year.

(j) On or before December fifteenth, one thousand nine hundred seventy-six, and each December fifteenth thereafter, the state tax commissioner shall deliver to the clerk of the Senate and the clerk of the House of Delegates a consolidated report of the special budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July fifteenth of the current year.
(k) The state tax commissioner shall retain for the benefit of the state from the additional tax collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the state tax commissioner and the distribution of the net proceeds thereof by the state treasurer.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within applied this the _____ day of ________________, 1976.

Governor
PRESENTED TO THE GOVERNOR

Date 5/20/76

Time 1:55 p.m.