WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

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ENROLLED

HOUSE BILL No. 847

(By Mr. Mathis)

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Passed March 8, 1980

In Effect April 1, 1980
AN ACT to amend and reenact sections two-a and two-l, 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; specifying the classified status of persons exercising the privilege of severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource products within the state; specifying and clarifying the measure of tax and values attributable to the exercise of such privilege by producers of coal under the coal classification, and requiring that counties with a population in excess of two hundred thousand expend at least fifty percent of county coal revenues within the coal producing areas of the county.

Be it enacted by the Legislature of West Virginia:

That sections two-a and two-l, 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.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

1 Upon every person exercising the privilege of engaging 2 or continuing within this state in the business of severing, 3 extracting, reducing to possession and producing for sale, 4 profit or commercial use any natural resource products, the
amount of such tax to be equal to the value of the articles 
produced as shown by the gross proceeds derived from the 
sale thereof by the producer, except as otherwise provided, 
multiplied by the respective rates and in the classifications as 
follows:

(1) Coal, three and five-tenths percent. The value of 
col mined and produced in this state in the exercise of the 
production privilege, taxable at the rates herein and in 
section two-I in conjunction with section two of this article, 
shall include in addition to the value of the mined product 
those values arising from the ordinary processing and pre-
paring of such coal for sale or commercial use, where such 
processing and preparing are done by the producer of the 
coal. Ordinary processing and preparing of coal activities 
by the producer thereof are considered an integral part of 
the production privilege and include crushing, washing, clean-
ing, drying, sorting, sizing, blending, loading for shipment 
and the like applied in the ordinary mining of such products 
to make the same salable and commercially usable. The 
values taxable herein and attributable to such ordinary 
processing and preparing of coal activities will not be again 
taxable under the provisions of section two-b of this article 
to the producer of such coal. The processing associated with 
the production of all other natural resources referred to in this 
section and more sophisticated processing and preparing of 
coal activities shall be subject to the other applicable provisions 
of this article.

(2) Limestone or standstone, quarried or mined, two and 
two-tenths percent.

(3) Oil, four and thirty-four one-hundredths percent.

(4) Natural gas, in excess of the value of five thousand 
dollars, eight and sixty-three one-hundredths percent.

(5) Blast furnace slag, four and thirty-four one-hundredths 
percent.

(6) Sand, gravel or other mineral product not quarried 
or mined, four and thirty-four one-hundredths percent.

(7) Timber, two and two-tenths percent.
(8) Other natural resource products, two and eighty-six one-hundredths percent.

The measure of this 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.

For the purposes of the production of oil classification, and the production of natural gas classification, as set forth in this section, 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 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 one of this article, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor 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.

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, sub-lesseors or other denominated lessors of a part of such natural resources as rents or royalties. Recipients of royalties or rents, in kind, in cash or otherwise are taxable on their gross income pursuant to the provisions of section two-i of this article.

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 formu-
las for distribution of such additional tax; expendi-
ture 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 pro-
ducer, multiplied by thirty-five one hundredths of one percent,
and the tax imposed by section two of this article in conjunc-
tion 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 pro-
visions 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 Legis-
lature, be distributed by the state treasurer to the various
counties in this state in which the coal upon which such addi-
tional 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 coun-
ties and municipalities of this state without regard to coal
having been produced therein.

(c) Such additional tax shall be due and payable, reported
and remitted as elsewhere provided in this article for the
tax imposed by 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 information 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 appropriation 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 entitlement.

(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 treasurer 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 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 such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to 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 (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 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 in counties with population in excess of two hundred thousand at least fifty percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal producing area or areas of the county, said coal producing areas of each county to be determined generally by the state tax commissioner: Provided, however, 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 further, 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 fifteen-
th, 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 fol-
lowed 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 amend-
ment 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.

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 adminis-
tration 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.

James L. Davis  
Chairman Senate Committee

Clarence C. Chisholm  
Chairman House Committee

Originated in the House.

Takes effect April 1, 1980.

Todd C. Willis  
Clerk of the Senate

O. B. Blankenship  
Clerk of the House of Delegates

W. P. Middleton  
President of the Senate

Charles H. Duvall  
Speaker House of Delegates

The within __________ approved ______ this the __________ day of __________, 1980.

John D. Pagon  
Governor