

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-80

Time 10:45 A.M.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



# ENROLLED

HOUSE BILL No. 847

(By Mr. Mathis)



Passed March 8, 1980

In Effect April 1, 1980 ~~Passage~~



NO. 847

**ENROLLED**

**H. B. 847**

(By MR. MATHIS)

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[Passed March 8, 1980; in effect April 1, 1980.]

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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

5 amount of such tax to be equal to the value of the articles  
6 produced as shown by the gross proceeds derived from the  
7 sale thereof by the producer, except as otherwise provided,  
8 multiplied by the respective rates and in the classifications as  
9 follows:

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

32 (2) Limestone or sandstone, quarried or mined, two and  
33 two-tenths percent.

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

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

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

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

41 (7) Timber, two and two-tenths percent.

42 (8) Other natural resource products, two and eighty-six  
43 one-hundredths percent.

44 The measure of this tax is the value of the entire pro-  
45 duction in this state, regardless of the place of sale or the fact  
46 that the delivery may be made to points outside the state.

47 For the purposes of the production of oil classification,  
48 and the production of natural gas classification, as set forth  
49 in this section, multiple coowners of oil or natural gas, in place,  
50 lessees thereof, or others being vested with title and ownership  
51 to part or all of the oil and gas, as personal property, im-  
52 mediately after severance, extraction, reduction to possession  
53 and production, except royalty recipients, in kind, shall be  
54 deemed to be a "group or combination acting as a unit" and  
55 one "person," as defined in section one of this article, if  
56 not otherwise defined therein, whenever engaged in the busi-  
57 ness of producing oil or natural gas through common use,  
58 by joint or separately executed contracts, of the same inde-  
59 pendent contractor driller or operator's services; and not-  
60 withstanding provisions of private contracts for separate de-  
61 posit of gross receipts in separate members' accounts or for  
62 members of such group or combination to take in kind any  
63 proportionate part of such natural resources.

64 Lessees, sublessees or other denominated lessees are con-  
65 sidered to be producers of all of the oil or natural gas pro-  
66 duced, regardless of any payment, in kind, to lessors, sub-  
67 lessors or other denominated lessors of a part of such natural  
68 resources as rents or royalties. Recipients of royalties or rents,  
69 in kind, in cash or otherwise are taxable on their gross income  
79 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 pro-  
duction 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; 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,  
3 extracting, reducing to possession and producing for sale,  
4 profit or commercial use any coal, the amount of such tax  
5 to be equal to the value of the coal produced as shown by  
6 the gross proceeds derived from the sale thereof by the pro-  
7 ducer, multiplied by thirty-five one hundredths of one percent,  
8 and the tax imposed by section two of this article in conjunc-  
9 tion with this subsection (a) shall be in addition to the tax  
10 imposed by said section two in conjunction with section two-a  
11 of this article, and the tax imposed by section two of this  
12 article in conjunction with this subsection (a) is hereinafter  
13 in this section referred to as "such additional tax." The  
14 measure of such additional tax is the value of the entire  
15 production in this state, regardless of the place of sale or the  
16 fact that the 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  
19 constitution. Seventy-five percent of the net proceeds of such  
20 additional tax shall, after appropriation thereof by the Legis-  
21 lature, be distributed by the state treasurer to the various  
22 counties in this state in which the coal upon which such addi-  
23 tional tax is imposed was located at the time it was severed  
24 from the ground, such counties being hereinafter in this section  
25 referred to as the "coal-producing counties," and the remaining  
26 twenty-five percent of the net proceeds of such additional tax  
27 shall be distributed, after appropriation, among all the coun-  
28 ties and municipalities of this state without regard to coal  
29 having been produced therein.

30 (c) Such additional tax shall be due and payable, reported  
31 and remitted as elsewhere provided in this article for the  
32 ~~tax imposed by~~ section two in conjunction with said section  
33 two-a of this article and all of the enforcement and other  
34 provisions of this article shall apply to such additional tax.

*David*  
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*GAB*  
*E.H.*

35 In addition to the reports and other information required under  
36 the provisions of this article and the tonnage reports required  
37 to be filed under the provisions of section seventy-two,  
38 article two, chapter twenty-two of this code, the state tax  
39 commissioner is hereby granted plenary power and authority  
40 to promulgate reasonable rules and regulations requiring the  
41 furnishing by producers of such additional information as may  
42 be necessary to compute the allocation required under the  
43 provisions of subsection (f) of this section. The state tax  
44 commissioner is also hereby granted plenary power and autho-  
45 rity to promulgate such other reasonable rules and regulations  
46 as may be necessary to implement the provisions of this  
47 section.

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

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

74 and municipalities of this state according to their respective  
75 entitlement.

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

98 (f) The amount to which a coal-producing county is en-  
99 titled from the "county coal revenue fund" shall be determined  
100 by (i) dividing the total amount of moneys in such fund then  
101 available for distribution by the total number of tons of coal  
102 mined in this state during the preceding quarter, and (ii)  
103 multiplying the quotient thus obtained by the number of tons  
104 of coal removed from the ground in such county during the  
105 preceding quarter.

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

113 The treasurer shall first apportion the total amount of  
114 moneys available in the "all counties and municipalities reve-  
115 nue fund" by multiplying the total amount in such fund by  
116 the percentage which the population of each county bears  
117 to the total population of the state. The amount thus appor-  
118 tioned 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 multiply-  
121 ing the "base share" by that percentage which the total  
122 population of all unincorporated areas within the county bears  
123 to the total population of the county, and the other portion  
124 shall 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 deter-  
131 mined by multiplying the total of such latter portion by the  
132 percentage which the population of each municipality within  
133 the county bears to the total population of all municipalities  
134 within the county.

135 (h) All counties and municipalities shall create a "coal  
136 severance tax revenue fund" which shall be the depository  
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 in counties  
145 with population in excess of two hundred thousand at least  
146 fifty percent of such funds received from the county coal  
147 revenue fund shall be apportioned to, and expended within  
148 the coal producing area or areas of the county, said coal  
149 producing areas of each county to be determined generally  
150 by the state tax commissioner: *Provided, however*, That a  
151 line item budgeted amount from the current levy estimate for

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152 a county shall be funded at one hundred percent of the  
153 preceding year's expenditure from the county general fund  
154 prior to the use of coal severance tax revenue fund moneys  
155 for the same general purpose: *Provided further*, That said  
156 coal severance tax revenue fund moneys shall not be budgeted  
157 for personal services in an amount to exceed one fourth of  
158 the total funds available in such fund.

159 (i) On or before July fifteenth, one thousand nine hundred  
160 seventy-six, each county commission or governing body of  
161 a municipality receiving such revenue funds for fiscal year  
162 one thousand nine hundred seventy-six—one thousand nine  
163 hundred seventy-seven, shall budget the intended use of such  
164 funds on forms provided by the state tax commissioner. Such  
165 budget shall be followed unless the state tax commissioner  
166 approves a subsequent amendment. On or before June fifteen-  
167 th, one thousand nine hundred seventy-seven and each June  
168 fifteenth thereafter, each county commission or governing  
169 body receiving such revenue shall submit to the state tax  
170 commissioner on forms provided by the state tax commissioner  
171 a special budget, detailing how such revenue is to be spent  
172 during the subsequent fiscal year. Such budget shall be fol-  
173 lowed in expending such revenue unless a subsequent budget  
174 is approved by the state tax commissioner. All unexpended  
175 balances remaining in said special fund at the close of a fiscal  
176 year shall be reappropriated to the budget for the subsequent  
177 fiscal year. Such reappropriation shall be entered as an amend-  
178 ment to the new budget and submitted to the tax commissioner  
179 on or before July fifteenth of the current budget year.

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

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187 (K) The state tax commissioner shall retain for the benefit  
188 of the state from the additional tax collected the amount of  
189 thirty-five thousand dollars annually as a fee for the adminis-

190 tration of such additional tax by the state tax commissioner  
191 and the distribution of the net proceeds thereof by the state  
192 treasurer.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Chestnut Jr.*  
Chairman House Committee

Originated in the House.

Takes effect April 1, 1980.

*Todd C. Mills*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*W. P. Whitton Jr.*  
President of the Senate

*Clide N. Lee Jr.*  
Speaker House of Delegates

The within in approved this the 26  
day of March, 1980.

*John D. Ruff*  
Governor

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