

4465-Veto

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

Com. Sub. for

HOUSE BILL No. 4465

(By Mr. *Speaker, Mr. Chambers*)
Delegate Swann
(By request of the Executive)

— ● —

Passed March 12, 1988

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4465

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)
[By request of the Executive]

[Passed March 12, 1988; in effect from passage.]

AN ACT to amend and reenact sections two and six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the severance tax and the additional tax on the severance, extraction and production of coal; providing definitions and redefining "gross value" to exclude the black lung excise tax; providing for the distribution to counties and municipalities; requiring remittance of tax collected by tax commissioner to state treasurer for distribution within certain time period; and specifying purposes for which counties and municipalities may expend funds from the tax.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article thirteen-a, 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 13A. SEVERANCE TAXES.

§11-13A-2. Definitions.

1 (a) *General.* — When used in this article, or in the

2 administration of this article, the terms defined in
3 subsection (b) shall have the meanings ascribed to them
4 by this section, unless a different meaning is clearly
5 required by either the context in which the term is used,
6 or by specific definition.

7 (b) *Terms defined.*

8 (1) "Coal" means and includes any material composed
9 predominantly of hydrocarbons in a solid state.

10 (2) "Delegate" in the phrase "or his delegate," when
11 used in reference to the tax commissioner, means any
12 officer or employee of the state tax department duly
13 authorized by the tax commissioner directly, or indi-
14 rectly by one or more redelegations of authority, to
15 perform the function mentioned or described in this
16 article or regulations promulgated thereunder.

17 (3) "Economic interest" for the purpose of this article
18 is synonymous with the economic interest ownership
19 required by section 611 of the Internal Revenue Code in
20 effect on the thirty-first day of December, one thousand
21 nine hundred eighty-five, entitling the taxpayer to a
22 depletion deduction for income tax purposes: *Provided,*
23 That a person who only receives an arm's length royalty
24 shall not be considered as having an economic interest.

25 (4) "Extraction of ores or minerals from the ground"
26 includes extraction by mine owners or operators of ores
27 or minerals from the waste or residue of prior mining.

28 (5) "Fiduciary" means and includes, a guardian,
29 trustee, executor, administrator, receiver, conservator
30 or any person acting in any fiduciary capacity for any
31 person.

32 (6) "Gross value" in the case of natural resources
33 means the market value of the natural resource product,
34 in the immediate vicinity, where severed, determined
35 after application of post production processing generally
36 applied by the industry to obtain commercially market-
37 able or usable natural resource products: *Provided,* That
38 the determination and interpretation of gross value shall
39 not include the tax imposed on coal by section 4121 of
40 the Internal Revenue Code of 1986, as amended,

41 commonly known as the black lung excise tax. For all
42 natural resources, "gross value" is to be reported as
43 follows:

44 (A) For natural resources severed or processed (or
45 both severed and processed) and sold during a reporting
46 period, gross value is the amount received or receivable
47 by the taxpayer.

48 (B) In a transaction involving related parties, gross
49 value shall not be less than the fair market value for
50 natural resources of similar grade and quality.

51 (C) In the absence of a sale, gross value shall be the
52 fair market value for natural resources of similar grade
53 and quality.

54 (D) If severed natural resources are purchased for the
55 purpose of processing and resale, the gross value is the
56 amount received or receivable during the reporting
57 period reduced by the amount paid or payable to the
58 taxpayer actually severing the natural resource. If
59 natural resources are severed outside the state of West
60 Virginia and brought into the state of West Virginia by
61 the taxpayer for the purpose of processing and resale,
62 the gross value is the amount received or receivable
63 during the reporting period reduced by the fair market
64 value of the natural resources of similar grade and
65 quality and in the same condition immediately preced-
66 ing the processing of the natural resources in this state.

67 (E) If severed natural resources are purchased for the
68 purpose of processing and consumption, the gross value
69 is the fair market value of processed natural resources
70 of similar grade and quality reduced by the amount paid
71 or payable to the taxpayer actually severing the natural
72 resource. If severed natural resources are severed
73 outside the state of West Virginia and brought into the
74 state of West Virginia by the taxpayer for the purpose
75 of processing and consumption, the gross value is the
76 fair market value of processing natural resources of
77 similar grade and quality reduced by the fair market
78 value of the natural resources of similar grade and
79 quality and in the same condition immediately preced-
80 ing the processing of the natural resources.

81 (F) Except as otherwise provided, the gross value
82 shall not be reduced by any state or federal taxes,
83 royalties, sales commissions or any other expense.

84 (G) For natural gas, gross value is the value of the
85 natural gas at the wellhead immediately preceding
86 transportation and transmission.

87 (H) For limestone or sandstone quarried or mined,
88 gross value is the value of such stone immediately upon
89 severance from the earth.

90 (7) "Mining" includes not merely the extraction of
91 ores or minerals from the ground but also those
92 treatment processes considered as mining under this
93 article, and those treatment processes necessary or
94 incidental thereto.

95 (8) "Natural resource" means all forms of minerals
96 including, but not limited to, rock, stone, limestone, coal,
97 shale, gravel, sand, clay, natural gas, oil and natural gas
98 liquids which are contained in or on the soils or waters
99 of this state, and includes standing timber.

100 (9) "Partnership" includes a syndicate, group, pool,
101 joint venture, or other unincorporated organization,
102 through or by means of which natural resources are
103 severed, extracted, reduced to possession and produced
104 or prepared in this state for sale, profit or commercial
105 use. "Partner" includes a member of such a syndicate,
106 group, pool, joint venture or organization.

107 (10) "Person" or "company" are herein used inter-
108 changeably and include any individual, firm, partner-
109 ship, mining partnership, joint venture, association,
110 corporation, trust or any other group or combination
111 acting as a unit, and the plural as well as the singular
112 number, unless the intention to give a more limited
113 meaning is declared by the context.

114 (11) "Processed" or "processing" as applied to:

115 (A) Oil and natural gas shall not include any conver-
116 sion or refining process; and

117 (B) Limestone or sandstone quarried or mined shall
118 not include any treatment process or transportation

119 after the limestone or sandstone is severed from the
120 earth.

121 (12) "Related parties" means two or more persons,
122 organizations or businesses owned or controlled directly
123 or indirectly by the same interests. Control exists if a
124 contract or lease, either written or oral, is entered into
125 whereby one party mines or processes natural resources
126 owned or held by another party and the owner or lessor
127 participates in the severing, processing or marketing of
128 the natural resources or receives any value other than
129 an arm's length passive royalty interest. In the case of
130 related parties, the tax commissioner may apportion or
131 allocate the receipts between or among such persons,
132 organizations or businesses if he determines that such
133 apportionment or allocation is necessary to more clearly
134 reflect gross value.

135 (13) "Sale" includes any transfer of the ownership or
136 title to property, whether for money or in exchange for
137 other property or services, or any combination thereof.

138 (14) "Severing" or "severed" means the physical
139 removal of the natural resources from the earth or
140 waters of this state by any means: *Provided*, That
141 "severing" or "severed" shall not include the removal of
142 natural gas from underground storage facilities into
143 which the natural gas has been mechanically injected
144 following its initial removal from the earth: *Provided*,
145 *however*, That "severing" or "severed" oil and natural
146 gas shall not include any separation process of oil or
147 natural gas commonly employed to obtain marketable
148 natural resource products.

149 (15) "Stock" includes shares in an association, joint-
150 stock company or corporation.

151 (16) "Tax commissioner" means the tax commissioner
152 of the state of West Virginia, or his delegate.

153 (17) "Taxable year" means the calendar year, or the
154 fiscal year ending during such calendar year, upon the
155 basis of which tax liability is computed under this
156 article. "Taxable year" means, in case of a return made
157 for a fractional part of a year under the provisions of

158 this article, or under regulations promulgated by the tax
159 commissioner, the period for which such return is made.

160 (18) "Taxpayer" means and includes any individual,
161 partnership, joint venture, association, corporation,
162 receiver, trustee, guardian, executor, administrator,
163 fiduciary or representative of any kind engaged in the
164 business of severing or processing (or both severing and
165 processing) natural resources in this state for sale or use.
166 In instances where contracts (either oral or written) are
167 entered into whereby persons, organizations or busi-
168 nesses are engaged in the business of severing or
169 processing (or both severing and processing) a natural
170 resource but do not obtain title to or do not have an
171 economic interest therein, the party who owns the
172 natural resource or has an economic interest therein is
173 the taxpayer.

174 (19) "This code" means the code of West Virginia, one
175 thousand nine hundred thirty-one, as amended.

176 (20) "This state" means the state of West Virginia.

**§11-13A-6. Additional tax on the severance, extraction
and production of coal; dedication of addi-
tional 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 addi-
tional tax; expenditure of funds by coun-
ties and municipalities for public purposes;
creating special funds in counties and
municipalities; and requiring special
county and municipal budgets and reports
thereon.**

1 (a) *Additional coal severance tax.* — Upon every
2 person exercising the privilege of engaging or continu-
3 ing within this state in the business of severing coal, or
4 preparing coal (or both severing and preparing coal), for

5 sale, profit or commercial use, there is hereby imposed
6 an additional severance tax, the amount of which shall
7 be equal to the value of the coal severed or prepared (or
8 both severed and prepared), against which the tax
9 imposed by section three of the article is measured as
10 shown by the gross proceeds derived from the sale
11 thereof by the producer, multiplied by thirty-five one
12 hundredths of one percent. The tax imposed by this
13 subsection (a) shall be in addition to the tax imposed by
14 section three of this article, and this additional tax is
15 hereinafter in this section referred to as the "additional
16 tax on coal."

17 (b) This additional tax on coal is imposed pursuant to
18 the provisions of section six-a, article ten of the West
19 Virginia constitution. Seventy-five percent of the net
20 proceeds of this additional tax on coal shall, after
21 appropriation thereof by the Legislature, be distributed
22 by the state treasurer in the manner hereinafter
23 specified, to the various counties of this state in which
24 the coal upon which this additional tax is imposed was
25 located at the time it was severed from the ground.
26 Those counties are hereinafter in this section referred
27 to as the "coal-producing counties." The remaining
28 twenty-five percent of the net proceeds of this additional
29 tax on coal shall be distributed, after appropriation,
30 among all the counties and municipalities of this state
31 in the manner hereinafter specified.

32 (c) Such additional tax on coal shall be due and
33 payable, reported and remitted as elsewhere provided in
34 this article for the tax imposed by said section three of
35 this article, and all of the enforcement and other
36 provisions of this article shall apply to such additional
37 tax. In addition to the reports and other information
38 required under the provisions of this article and the
39 tonnage reports required to be filed under the provisions
40 of section seventy-two, article two, chapter twenty-two
41 of this code, the tax commissioner is hereby granted
42 plenary power and authority to promulgate reasonable
43 rules and regulations requiring the furnishing by
44 producers of such additional information as may be
45 necessary to compute the allocation required under the

46 provisions of subsection (f) of this section. The tax
47 commissioner is also hereby granted plenary power and
48 authority to promulgate such other reasonable rules and
49 regulations as may be necessary to implement the
50 provisions of this section.

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

64 Seventy-five percent of the net proceeds of such
65 additional tax on coal shall be deposited in the "county
66 coal revenue fund" and twenty-five percent of such net
67 proceeds shall be deposited in the "all counties and
68 municipalities revenue fund," from time to time, as such
69 proceeds are received by the tax commissioner. The
70 moneys in such funds shall, after appropriation thereof
71 by the Legislature, be distributed to the respective
72 counties and municipalities entitled thereto in the
73 manner set forth in subsection (e) of this section.

74 (e) The moneys in the "county coal revenue fund" and
75 the moneys in the "all counties and municipalities
76 revenue fund" shall be allocated among and distributed
77 quarterly to the counties and municipalities entitled
78 thereto by the state treasurer in the manner hereinafter
79 specified. To assist the state treasurer in meeting the
80 quarterly distribution requirement, the tax commis-
81 sioner shall transfer such funds collected by him to the
82 state treasurer within seventy-five days from the end of
83 the quarter. On or before each distribution date, the
84 state treasurer shall determine the total amount of
85 moneys in each fund which will be available for
86 distribution to the respective counties and municipali-

87 ties entitled thereto on that distribution date. The
88 amount to which a coal-producing county is entitled
89 from the "county coal revenue fund" shall be determined
90 in accordance with subsection (f) of this section, and the
91 amount to which every county and municipality shall be
92 entitled from the "all counties and municipalities
93 revenue fund" shall be determined in accordance with
94 subsection (g) of this section. After determining as set
95 forth in subsection (f) and subsection (g) of this section
96 the amount each county and municipality is entitled to
97 receive from the respective fund or funds, a warrant of
98 the state auditor for the sum due to such county or
99 municipality shall issue and a check drawn thereon
100 making payment of such sum shall thereafter be
101 distributed to such county or municipality.

102 (f) The amount to which a coal-producing county is
103 entitled from the "county coal revenue fund" shall be
104 determined by (1) dividing the total amount of moneys
105 in such fund then available for distribution by the total
106 number of tons of coal mined in this state during the
107 preceding quarter, and (2) multiplying the quotient thus
108 obtained by the number of tons of coal removed from
109 the ground in such county during the preceding quarter.

110 (g) The amount to which each county and municipal-
111 ity shall be entitled from the "all counties and munic-
112 ipalities revenue fund" shall be determined in accor-
113 dance with the provisions of this subsection. For
114 purposes of this subsection "population" shall mean the
115 population as determined by the most recent decennial
116 census taken under the authority of the United States:

117 (1) The treasurer shall first apportion the total
118 amount of moneys available in the "all counties and
119 municipalities revenue fund" by multiplying the total
120 amount in such fund by the percentage which the
121 population of each county bears to the total population
122 of the state. The amount thus apportioned for each
123 county shall be the county's "base share."

124 (2) Each county's "base share" shall then be subdi-
125 vided into two portions. One portion shall be determined
126 by multiplying the "base share" by that percentage

127 which the total population of all unincorporated areas
128 within the county bears to the total population of the
129 county, and the other portion shall be determined by
130 multiplying the "base share" by that percentage which
131 the total population of all municipalities within the
132 county bears to the total population of the county. The
133 former portion shall be paid to the county and the latter
134 portion shall be the "municipalities' portion" of the
135 county's "base share." The percentage of such latter
136 portion to which each municipality in the county is
137 entitled shall be determined by multiplying the total of
138 such latter portion by the percentage which the
139 population of each municipality within the county bears
140 to the total population of all municipalities within the
141 county.

142 (h) All counties and municipalities shall create a "coal
143 severance tax revenue fund" which shall be the depos-
144 itory for moneys distributed to any county or municipal-
145 ity under the provisions of this section, from either or
146 both special funds. Moneys in such "coal severance tax
147 revenue funds," in compliance with subsection (i), may
148 be expended by the county commission or governing
149 body of the municipality for such public purposes as are
150 determined to be in the best interest of the people of its
151 respective county or municipality: *Provided*, That the
152 first priority for any expenditure be for the purposes of
153 acquiring, constructing, repairing or improving health,
154 recreational, sanitary, water supply and treatment,
155 sewage treatment and transportation facilities or for the
156 operation of relief and supply programs in the coal
157 producing areas of the county: *Provided, however*, That
158 in counties with population in excess of two hundred
159 thousand at least seventy-five percent of such funds
160 received from the county coal revenue fund shall be
161 apportioned to, and expended within the coal producing
162 area or areas of the county and at least seventy-five
163 percent of such funds received from the all counties and
164 municipalities revenue fund shall be apportioned to
165 municipalities within the coal producing area or areas
166 of the county, said coal producing areas of each county
167 to be determined generally by the state tax commis-
168 sioner: *Provided further*, That a line item budgeted

169 amount from the current levy estimated for a county
 170 shall be funded at one hundred percent of the preceding
 171 year's expenditure from the county general fund prior
 172 to the use of coal severance tax revenue fund moneys for
 173 the same general purpose: *And provided further*, That
 174 said coal severance tax revenue fund moneys shall not
 175 be budgeted for personal services in an amount to
 176 exceed one fourth of the total funds available in such
 177 fund.

178 (i) On or before March twenty-eighth, one thousand
 179 nine hundred eighty-six and each March twenty-eighth
 180 thereafter, each county commission or governing body
 181 of a municipality receiving such revenue shall submit
 182 to the tax commissioner on forms provided by the tax
 183 commissioner a special budget, detailing how such
 184 revenue is to be spent during the subsequent fiscal year.
 185 Such budget shall be followed in expending such
 186 revenue unless a subsequent budget is approved by the
 187 state tax commissioner. All unexpended balances
 188 remaining in said special fund at the close of a fiscal
 189 year shall be reappropriated to the budget for the
 190 subsequent fiscal year. Such reappropriation shall be
 191 entered as an amendment to the new budget and
 192 submitted to the tax commissioner on or before July
 193 fifteenth of the current budget year.

194 (j) On or before December fifteenth, one thousand
 195 nine hundred eighty-six, and each December fifteenth
 196 thereafter, the tax commissioner shall deliver to the
 197 clerk of the Senate and the clerk of the House of
 198 Delegates a consolidated report of the special budgets,
 199 created by subsection (i) of this section, for all county
 200 commissions and municipalities as of July fifteenth of
 201 the current year.

202 (k) The state tax commissioner shall retain for the
 203 benefit of the state from the additional taxes on coal
 204 collected the amount of thirty-five thousand dollars
 205 annually as a fee for the administration of such
 206 additional tax by the tax commissioner.

Enr. Com. Sub. for H. B. 4465 12

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

George O. Tillman
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Isaac C. Miller
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Don Tonkinson
President of the Senate

Robert R. ...
Speaker of the House of Delegates

The within *disappeared* this the *31st*
day of *March*, 1988.

Arch A. Shaefer
Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/80

Time 3:50 p.m.

RECEIVED

1903 MAR 31 PM 5:17

OFFICE OF THE
SECRETARY OF STATE