WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

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HOUSE BILL No. 4465

(By Mr. Speaker, Mr. Chambers, Q)
Delegate Swanger
(By request of the Executive)

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Passed March 12, 1988

In Effect Upon Passage
ENROLLED
COMMITEE 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 addi­
tional 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.


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

(b) **Terms defined.**

(1) “Coal” means and includes any material composed
predominantly of hydrocarbons in a solid state.

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

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

(4) “Extraction of ores or minerals from the ground”
includes extraction by mine owners or operators of ores
or minerals from the waste or residue of prior mining.

(5) “Fiduciary” means and includes, a guardian,
trustee, executor, administrator, receiver, conservator
or any person acting in any fiduciary capacity for any
person.

(6) “Gross value” in the case of natural resources
means the market value of the natural resource product,
in the immediate vicinity, where severed, determined
after application of post production processing generally
applied by the industry to obtain commercially market-
able or usable natural resource products: *Provided,* That
the determination and interpretation of gross value shall
not include the tax imposed on coal by section 4121 of
the Internal Revenue Code of 1986, as amended,
commonly known as the black lung excise tax. For all
natural resources, "gross value" is to be reported as
follows:

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

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

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

(D) If severed natural resources are purchased for the
purpose of processing and resale, the gross value is the
amount received or receivable during the reporting
period reduced by the amount paid or payable to the
taxpayer actually severing the natural resource. If
natural resources are severed outside the state of West
Virginia and brought into the state of West Virginia by
the taxpayer for the purpose of processing and resale,
the gross value is the amount received or receivable
during the reporting period reduced by the fair market
value of the natural resources of similar grade and
quality and in the same condition immediately preceding
the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the
purpose of processing and consumption, the gross value
is the fair market value of processed natural resources
of similar grade and quality reduced by the amount paid
or payable to the taxpayer actually severing the natural
resource. If severed natural resources are severed
outside the state of West Virginia and brought into the
state of West Virginia by the taxpayer for the purpose
of processing and consumption, the gross value is the
fair market value of processing natural resources of
similar grade and quality reduced by the fair market
value of the natural resources of similar grade and
quality and in the same condition immediately preceding
the processing of the natural resources.
(F) Except as otherwise provided, the gross value shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

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

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

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

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

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

(10) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

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

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation
after the limestone or sandstone is severed from the earth.

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

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

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

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

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

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

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

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

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

(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.

(a) Additional coal severance tax. — Upon every
person exercising the privilege of engaging or continu-
ing within this state in the business of severing, or
preparing coal (or both severing and preparing coal), for
sale, profit or commercial use, there is hereby imposed
an additional severance tax, the amount of which shall
be equal to the value of the coal severed or prepared (or
both severed and prepared), against which the tax
imposed by section three of the article is measured as
shown by the gross proceeds derived from the sale
thereof by the producer, multiplied by thirty-five one
hundredths of one percent. The tax imposed by this
subsection (a) shall be in addition to the tax imposed by
section three of this article, and this additional tax is
hereinafter in this section referred to as the “additional
tax on coal.”

(b) This additional tax on coal 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 this additional tax on coal shall, after
appropriation thereof by the Legislature, be distributed
by the state treasurer in the manner hereinafter
specified, to the various counties of this state in which
the coal upon which this additional tax is imposed was
located at the time it was severed from the ground.
Those counties are hereinafter in this section referred
to as the “coal-producing counties.” The remaining
twenty-five percent of the net proceeds of this additional
tax on coal shall be distributed, after appropriation,
among all the counties and municipalities of this state
in the manner hereinafter specified.

(c) Such additional tax on coal shall be due and
payable, reported and remitted as elsewhere provided in
this article for the tax imposed by said section three 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 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 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 distribu-
tion of seventy-five percent of the net proceeds of such
additional tax on coal 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 on coal 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 on coal 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 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.

(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. To assist the state treasurer in meeting the
quarterly distribution requirement, the tax commis-
sioner shall transfer such funds collected by him to the
state treasurer within seventy-five days from the end of
the quarter. 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 municipali-
ties 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 (1) 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 (2) 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:

(1) 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.”

(2) 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 are determined to be in the best interest of the people of its respective county or municipality: Provided, That the first priority for any expenditure be for the purposes of acquiring, constructing, repairing or improving health, recreational, sanitary, water supply and treatment, sewage treatment and transportation facilities or for the operation of relief and supply programs in the coal producing areas of the county: Provided, however, That in counties with population in excess of two hundred thousand at least seventy-five 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 and at least seventy-five percent of such funds received from the all counties and municipalities revenue fund shall be apportioned to municipalities 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 further, That a line item budgeted
amount from the current levy estimated 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: And 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 March twenty-eighth, one thousand
nine hundred eighty-six and each March twenty-eighth
thereafter, each county commission or governing body
of a municipality receiving such revenue shall submit
to the tax commissioner on forms provided by the 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 eighty-six, and each December fifteenth
thereafter, the 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 taxes on coal
collected the amount of thirty-five thousand dollars
annually as a fee for the administration of such
additional tax by the tax commissioner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

Takes effect from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within

disappeared

day of

March

this the 31st

day of


Governor

[Signature]