

500007

RECEIVED

1995 MAR 24 PM 4: 25

OFFICE OF WEST VIRGINIA
SERIALS ACQUISITION

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Committee Substitute For

SENATE BILL NO. 207

(By Senator CRAIG, ET AL)



PASSED MARCH 11, 1995

In Effect 90 DAYS FROM Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 207

(SENATORS CRAIGO, BLATNIK, WHITE, SHARPE, DITTMAR,
JACKSON, MANCHIN, CHAFIN, WOOTON, BOLEY, ROSS, DEEM,
KIMBLE, SCOTT, BOWMAN, BUCKALEW, SCHOONOVER,
WIEDEBUSCH, WALKER, TOMBLIN, MR. PRESIDENT, WAGNER,
PLYMALE AND MINEAR, *original sponsors*)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five-a, all relating to dedicating ten percent of the oil and gas severance tax revenues for the benefit of counties and municipalities; providing definitions; creating funds and setting certain budgeting requirements for cities and counties; and phasing in the dedication of the ten percent of said oil and gas tax revenues.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen-a, chapter eleven of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section five-a, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-2. Definitions.

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

7 (b) *General terms defined.* — Definitions in this
8 subsection apply to all persons subject to the taxes
9 imposed by this article.

10 (1) "Business" includes all activities engaged in, or
11 caused to be engaged in, with the object of gain or
12 economic benefit, direct or indirect, and whether en-
13 gaged in for profit, or not for profit, or by a governmen-
14 tal entity: *Provided*, That "business" does not include
15 services rendered by an employee within the scope of his
16 or her contract of employment. Employee services,
17 services by a partner on behalf of his or her partnership
18 and services by a member of any other business entity on
19 behalf of that entity are the business of the employer, or
20 partnership, or other business entity as the case may be,
21 and reportable as such for purposes of the taxes imposed
22 by this article.

23 (2) "Corporation" includes associations, joint-stock
24 companies and insurance companies. It also includes
25 governmental entities when and to the extent such
26 governmental entities engage in activities taxable under
27 this article.

28 (3) "Delegate" in the phrase "or his delegate", when
29 used in reference to the tax commissioner, means any
30 officer or employee of the state tax division of the

31 department of tax and revenue duly authorized by the
32 tax commissioner directly, or indirectly by one or more
33 redelegations of authority, to perform the function
34 mentioned or described in this article or regulations
35 promulgated thereunder.

36 (4) "Fiduciary" means and includes a guardian, trustee,
37 executor, administrator, receiver, conservator or any
38 person acting in any fiduciary capacity for any person.

39 (5) "Gross proceeds" means the value, whether in
40 money or other property, actually proceeding from the
41 sale or lease of tangible personal property, or from the
42 rendering of services, without any deduction for the cost
43 of property sold or leased or expenses of any kind.

44 (6) "Includes" and "including" when used in a defini-
45 tion contained in this article shall not be deemed to
46 exclude other things otherwise within the meaning of the
47 term being defined.

48 (7) "Partner" includes a member of a syndicate, group,
49 pool, joint venture or other organization which is a
50 "partnership" as defined in this section.

51 (8) "Partnership" includes a syndicate, group, pool,
52 joint venture or other unincorporated organization
53 through or by means of which any privilege taxable
54 under this article is exercised, and which is not within
55 the meaning of this article a trust or estate or corpora-
56 tion. "Partnership" includes a limited liability company
57 which is treated as a partnership for federal income tax
58 purposes.

59 (9) "Person" or "company" are herein used inter-
60 changeably and include any individual, firm, partner-
61 ship, mining partnership, joint venture, association,
62 corporation, trust or other entity, or any other group or
63 combination acting as a unit, and the plural as well as
64 the singular number, unless the intention to give a more
65 limited meaning is declared by the context.

66 (10) "Sale" includes any transfer of the ownership or

67 title to property, whether for money or in exchange for
68 other property or services, or any combination thereof.
69 "Sale" includes a lease of property, whether the transac-
70 tion be characterized as a rental, lease, hire, bailment or
71 license to use. "Sale" also includes rendering services
72 for a consideration, whether direct or indirect.

73 (11) "Service" includes all activities engaged in by a
74 person for a consideration, which involve the rendering
75 of a service as distinguished from the sale of tangible
76 personal property: *Provided*, That "service" does not
77 include: (A) Services rendered by an employee to his or
78 her employer under a contract of employment; (B)
79 contracting; or (C) severing or processing natural re-
80 sources.

81 (12) "Tax" means any tax imposed by this article and,
82 for purposes of administration and collection of such tax,
83 it includes any interest, additions to tax or penalties
84 imposed with respect thereto under article ten of this
85 chapter.

86 (13) "Tax commissioner" or "commissioner" means the
87 tax commissioner of the state of West Virginia or his or
88 her delegate.

89 (14) "Taxable year" means the calendar year, or the
90 fiscal year ending during such calendar year, upon the
91 basis of which a tax liability is computed under this
92 article. In the case of a return made under this article, or
93 regulations of the tax commissioner, for a fractional part
94 of a year, the term "taxable year" means the period for
95 which such return is made.

96 (15) "Taxpayer" means any person subject to any tax
97 imposed by this article.

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

100 (17) "This state" means the state of West Virginia.

101 (18) "Withholding agent" means any person required
102 by law to deduct and withhold any tax imposed by this

103 article or under regulations promulgated by the tax
104 commissioner.

105 (c) *Specific definitions for producers of natural re-*
106 *sources.* —

107 (1) “Barrel of oil” means forty-two U.S. gallons of two
108 hundred thirty-one cubic inches of liquid at a standard
109 temperature of sixty degrees Fahrenheit.

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

112 (3) “Cubic foot of gas” means the volume of gas con-
113 tained in one cubic foot at a standard pressure base of
114 fourteen point seventy-three pounds per square inch
115 (absolute) and a standard temperature of sixty degrees
116 Fahrenheit.

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

125 (5) “Extraction of ores or minerals from the ground”
126 includes extraction by mine owners or operators of ores
127 or minerals from the waste or residue of prior mining
128 only when such extraction is sold.

129 (6) “Gross value” in the case of natural resources
130 means the market value of the natural resource product,
131 in the immediate vicinity, where severed, determined
132 after application of post production processing generally
133 applied by the industry to obtain commercially market-
134 able or usable natural resource products. For all natural
135 resources, “gross value” is to be reported as follows:

136 (A) For natural resources severed or processed (or both
137 severed and processed) and sold during a reporting
138 period, gross value is the gross proceeds received or

139 receivable by the taxpayer.

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

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

146 (D) If severed natural resources are purchased for the
147 purpose of processing and resale, the gross value is the
148 amount received or receivable during the reporting
149 period reduced by the amount paid or payable to the
150 taxpayer actually severing the natural resource. If
151 natural resources are severed outside the state of West
152 Virginia and brought into the state of West Virginia by
153 the taxpayer for the purpose of processing and sale, the
154 gross value is the amount received or receivable during
155 the reporting period reduced by the fair market value of
156 natural resources of similar grade and quality and in the
157 same condition immediately preceding the processing of
158 the natural resources in this state.

159 (E) If severed natural resources are purchased for the
160 purpose of processing and consumption, the gross value
161 is the fair market value of processed natural resources of
162 similar grade and quality reduced by the amount paid or
163 payable to the taxpayer actually severing the natural
164 resource. If severed natural resources are severed
165 outside the state of West Virginia and brought into the
166 state of West Virginia by the taxpayer for the purpose of
167 processing and consumption, the gross value is the fair
168 market value of processed natural resources of similar
169 grade and quality reduced by the fair market value of
170 natural resources of similar grade and quality and in the
171 same condition immediately preceding the processing of
172 the natural resources.

173 (F) In all instances, the gross value shall be reduced by
174 the amount of any federal energy tax imposed upon the
175 taxpayer after the first day of June, one thousand nine

176 hundred ninety-three, but shall not be reduced by any
177 state or federal taxes, royalties, sales commissions or any
178 other expense.

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

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

185 (7) "Mining" includes not merely the extraction of ores
186 or minerals from the ground but also those treatment
187 processes necessary or incidental thereto.

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

193 (9) "Processed" or "processing" as applied to:

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

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

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

212 reflect gross value.

213 (11) "Severing" or "severed" means the physical
214 removal of the natural resources from the earth or
215 waters of this state by any means: *Provided*, That
216 "severing" or "severed" shall not include the removal of
217 natural gas from underground storage facilities into
218 which the natural gas has been mechanically injected
219 following its initial removal from earth: *Provided*,
220 *however*, That "severing" or "severed" oil and natural
221 gas shall not include any separation process of oil or
222 natural gas commonly employed to obtain marketable
223 natural resource products.

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

226 (13) "Taxpayer" means and includes any individual,
227 partnership, joint venture, association, corporation,
228 receiver, trustee, guardian, executor, administrator,
229 fiduciary or representative of any kind engaged in the
230 business of severing or processing (or both severing and
231 processing) natural resources in this state for sale or use.
232 In instances where contracts (either oral or written) are
233 entered into whereby persons, organizations or busi-
234 nesses are engaged in the business of severing or pro-
235 cessing (or both severing and processing) a natural
236 resource but do not obtain title to or do not have an
237 economic interest therein, the party who owns the
238 natural resource immediately after its severance or has
239 an economic interest therein is the taxpayer.

240 (d) *Specific definitions for persons providing health*
241 *care items or services.* —

242 (1) "Behavioral health services" means health care
243 related services provided by a behavioral health center
244 as defined in section one, article two-a, chapter twenty-
245 seven of this code or section one, article nine of said
246 chapter.

247 (2) "Community care services" means home and

248 community care services furnished by a provider pursu-
249 ant to an individual plan of care, which also includes
250 senior citizens groups that provide such services, but
251 does not include services of home health agencies.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; creation of special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-six, five percent of the tax attributable
3 to the severance of oil and gas imposed by section three-
4 a of this article is hereby dedicated for the use and
5 benefit of counties and municipalities within this state
6 and shall be distributed to such counties and municipali-
7 ties as hereinafter provided. Effective the first day of
8 July, one thousand nine hundred ninety-seven, and
9 thereafter, ten percent of the tax attributable to the
10 severance of oil and gas imposed by section three-a of
11 this article is hereby dedicated for the use and benefit of
12 counties and municipalities within this state and shall be
13 distributed to such counties and municipalities as
14 hereinafter provided.

15 (b) Seventy-five percent of this dedicated tax shall,
16 after appropriation thereof by the Legislature, be
17 distributed by the state treasurer in the manner herein-
18 after specified, to the various counties of this state in
19 which the oil and gas upon which this additional tax is
20 imposed was located at the time it was removed from the
21 ground. Those counties are hereinafter in this section

22 referred to as the "oil and gas producing counties". The
23 remaining twenty-five percent of the net proceeds of this
24 additional tax on coal shall be distributed, after appro-
25 priation, among all the counties and municipalities of
26 this state in the manner hereinafter specified.

27 (c) The tax commissioner is hereby granted plenary
28 power and authority to promulgate reasonable rules
29 requiring the furnishing by oil and gas producers of such
30 additional information as may be necessary to compute
31 the allocation required under the provisions of subsec-
32 tion (f) of this section. The tax commissioner is also
33 hereby granted plenary power and authority to promul-
34 gate such other reasonable rules as may be necessary to
35 implement the provisions of this section.

36 (d) In order to provide a procedure for the distribution
37 of seventy-five percent of such dedicated tax on oil and
38 gas to such oil and gas producing counties, there is
39 hereby created in the state treasurer's office the special
40 fund known as the "oil and gas county revenue fund";
41 and in order to provide a procedure for the distribution
42 of the remaining twenty-five percent of such dedicated
43 tax on oil and gas to all counties and municipalities of
44 the state, without regard to oil and gas having been
45 produced therein, there is also hereby created in the
46 state treasurer's office the special fund known as the "all
47 counties and municipalities revenue fund".

48 Seventy-five percent of such dedicated tax on oil and
49 gas shall be deposited in the "oil and gas county revenue
50 fund" and twenty-five percent of such dedicated tax on
51 oil and gas shall be deposited in the "all counties and
52 municipalities revenue fund", from time to time, as such
53 proceeds are received by the tax commissioner. The
54 moneys in such funds shall, after appropriation thereof
55 by the Legislature, be distributed to the respective
56 counties and municipalities entitled thereto in the
57 manner set forth in subsection (e) of this section.

58 (e) The moneys in the "oil and gas county revenue
59 fund" and the moneys in the "all counties and munic-

60 palities revenue fund” shall be allocated among and
61 distributed annually to the counties and municipalities
62 entitled thereto by the state treasurer in the manner
63 hereinafter specified. On or before each distribution
64 date, the state treasurer shall determine the total amount
65 of moneys in each fund which will be available for
66 distribution to the respective counties and municipalities
67 entitled thereto on that distribution date. The amount to
68 which an oil and gas producing county is entitled from
69 the “oil and gas county revenue fund” shall be deter-
70 mined in accordance with subsection (f) of this section,
71 and the amount to which every county and municipality
72 shall be entitled from the “all counties and municipali-
73 ties revenue fund” shall be determined in accordance
74 with subsection (g) of this section. After determining as
75 set forth in subsections (f) and (g) of this section the
76 amount each county and municipality is entitled to
77 receive from the respective fund or funds, a warrant of
78 the state auditor for the sum due to such county or
79 municipality shall issue and a check drawn thereon
80 making payment of such sum shall thereafter be distrib-
81 uted to such county or municipality.

82 (f) The amount to which an oil and gas producing
83 county is entitled from the “oil and gas county revenue
84 fund” shall be determined by:

85 (1) In the case of moneys derived from tax on the
86 severance of gas:

87 (A) Dividing the total amount of moneys in such fund
88 derived from tax on the severance of gas then available
89 for distribution by the total volume of cubic feet of gas
90 extracted in this state during the preceding year; and

91 (B) Multiplying the quotient thus obtained by the
92 number of cubic feet of gas taken from the ground in
93 such county during the preceding year; and

94 (2) In the case of moneys derived from tax on the
95 severance of oil:

96 (A) Dividing the total amount of moneys in such fund

97 derived from tax on the severance of oil then available
98 for distribution by the total number of barrels of oil
99 extracted in this state during the preceding year; and

100 (B) Multiplying the quotient thus obtained by the
101 number of barrels of oil taken from the ground in such
102 county during the preceding year.

103 (g) The amount to which each county and municipality
104 is entitled from the "all counties and municipalities
105 revenue fund" shall be determined in accordance with
106 the provisions of this subsection. For purposes of this
107 subsection "population" means the population as deter-
108 mined by the most recent decennial census taken under
109 the authority of the United States:

110 (1) The treasurer shall first apportion the total amount
111 of moneys available in the "all counties and municipali-
112 ties revenue fund" by multiplying the total amount in
113 such fund by the percentage which the population of
114 each county bears to the total population of the state.
115 The amount thus apportioned for each county is the
116 county's "base share".

117 (2) Each county's "base share" shall then be subdivided
118 into two portions. One portion is determined by multi-
119 plying the "base share" by that percentage which the
120 total population of all unincorporated areas within the
121 county bears to the total population of the county, and
122 the other portion is determined by multiplying the "base
123 share" by that percentage which the total population of
124 all municipalities within the county bears to the total
125 population of the county. The former portion shall be
126 paid to the county and the latter portion shall be the
127 "municipalities' portion" of the county's "base share".
128 The percentage of such latter portion to which each
129 municipality in the county is entitled shall be deter-
130 mined by multiplying the total of such latter portion by
131 the percentage which the population of each municipal-
132 ity within the county bears to the total population of all
133 municipalities within the county.

134 (h) Moneys distributed to any county or municipality
135 under the provisions of this section, from either or both
136 special funds, shall be deposited in the county or municipi-
137 pal general fund and may be expended by the county
138 commission or governing body of the municipality for
139 such purposes as the county commission or governing
140 body shall determine to be in the best interest of its
141 respective county or municipality: *Provided*, That in
142 counties with population in excess of two hundred
143 thousand at least seventy-five percent of such funds
144 received from the oil and gas county revenue fund shall
145 be apportioned to, and expended within the oil and gas
146 producing area or areas of the county, said coal-produc-
147 ing areas of each county to be determined generally by
148 the state tax commissioner: *Provided, however*, That the
149 moneys distributed to any county or municipality under
150 the provisions of this section shall not be budgeted for
151 personal services in an amount to exceed one fourth of
152 the total amount of such moneys.

153 (i) On or before the twenty-eighth day of March, one
154 thousand nine hundred ninety-seven, and each
155 twenty-eighth day of March thereafter, each county
156 commission or governing body of a municipality receiv-
157 ing any such moneys shall submit to the tax commis-
158 sioner on forms provided by the tax commissioner a
159 special budget, detailing how such moneys are to be
160 spent during the subsequent fiscal year. Such budget
161 shall be followed in expending such moneys unless a
162 subsequent budget is approved by the state tax commis-
163 sioner. All unexpended balances remaining in the
164 county or municipality general fund at the close of a
165 fiscal year shall remain in the general fund and may be
166 expended by the county or municipality without restric-
167 tion.

168 (j) On or before the fifteenth day of December, one
169 thousand nine hundred ninety-six, and each fifteenth
170 day of December thereafter, the tax commissioner shall
171 deliver to the clerk of the Senate and the clerk of the
172 House of Delegates a consolidated report of such bud-

173 gets, created by subsection (i) of this section, for all
174 county commissions and municipalities as of the fif-
175 teenth day of July of the current year.

176 (k) The state tax commissioner shall retain for the
177 benefit of the state from the dedicated tax attributable
178 to the severance of oil and gas the amount of thirty-five
179 thousand dollars annually as a fee for the administration
180 of such additional tax by the tax commissioner.

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

Randy Schoonover
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell R. Helms
.....
Clerk of the Senate

Daniel J. Hepp
.....
Clerk of the House of Delegates

Earl By Tomlin
.....
President of the Senate

Paul R. ...
.....
Speaker House of Delegates

The within *is approved* this the *24th*
March
day of, 1995

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/95

Time 3:43 p