WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. 2653

(By Delegate Michael)

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Passed April 10, 1997

In Effect From Passage
ENROLLED

H. B. 2653

(BY DELEGATE MICHAEL)

[Passed April 10, 1997; in effect from passage.]

AN ACT to amend and reenact sections five-a and six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the distribution of dedicated oil, gas and coal severance taxes to counties and municipalities; removing the requirement that the proceeds from the taxes be appropriated; continuing and redesignating certain funds; and requirements for budgeting additional tax on severance, extraction and production of coal.

Be it enacted by the Legislature of West Virginia:

That sections five-a 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, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§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; 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.

(a) Effective the first day of July, one thousand nine hundred ninety-six, five percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective the first day of July, one thousand nine hundred ninety-seven, and thereafter, ten percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section.

(b) Seventy-five percent of this dedicated tax shall be distributed by the state treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the “oil and gas producing counties”. The remaining twenty-five percent of the net proceeds of this additional tax on oil and gas shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by oil and gas 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 as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the dedicated tax on oil and gas to the oil and gas producing counties, the special fund
known as the oil and gas county revenue fund established in the state treasurer's office by chapter two hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred ninety-five, as amended and reenacted in the subsequent act of the Legislature, is hereby continued. In order to provide a procedure for the distribution of the remaining twenty-five percent of the dedicated tax on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, the special fund known as the all counties and municipalities revenue fund established in state treasurer's office by chapter two hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred ninety-five, as amended and reenacted in the subsequent act of the Legislature, is hereby redesignated as the “all counties and municipalities oil and gas revenue fund” and is hereby continued.

Seventy-five percent of the dedicated tax on oil and gas shall be deposited in the “oil and gas county revenue fund” and twenty-five percent of the dedicated tax on oil and gas shall be deposited in the “all counties and municipalities oil and gas revenue fund”, from time to time, as the proceeds are received by the tax commissioner. The moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

(e) The moneys in the “oil and gas county revenue fund” and the moneys in the “all counties and municipalities oil and gas revenue fund” shall be allocated among and distributed annually to the counties and municipalities entitled to the moneys by the state treasurer in the manner specified in this section. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which an oil and gas producing county is entitled from the “oil and gas county revenue fund” shall be determined in accordance with subsection (f) of this section, and the amount to which every county and munic-
ipality shall be entitled from the “all counties and municipalities oil and gas revenue fund” shall be determined in accordance with subsection (g) of this section. After determining, as set forth in subsections (f) and (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 the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the county or municipality.

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

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

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

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

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

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

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

(g) The amount to which each county and municipality is entitled from the “all counties and municipalities oil and gas revenue fund” shall be determined in accordance with the provisions of this subsection. For purposes of this subsection “population” means 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 oil and gas revenue fund” by multiplying the total amount in the 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 is the county’s “base share”.

(2) Each county’s “base share” shall then be subdivided into two portions. One portion is 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 is 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 the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the 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) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: Provided, That in counties with population in excess of two hundred thousand, at least seventy-five percent of the funds received from the oil and gas county revenue fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the state tax commissioner: Provided, however, That the moneys dis-
tributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

(i) On or before the twenty-eighth day of March, one thousand nine hundred ninety-seven, and each twenty-eighth day of March thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expediting the moneys unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the general fund and may be expended by the county or municipality without restriction.

(j) On or before the fifteenth day of December, one thousand nine hundred ninety-six, and each fifteenth day of December 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 budgets, created by subsection (i) of this section, for all county commissions and municipalities as of the fifteenth day of July of the current year.

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

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of state treasurer; method and formulas for distribution of such additional tax; expendi-
ture of funds by counties and municipalities for public purposes; 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 continuing within this state in the business of severing coal, 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 this article is measured as shown by the gross proceeds derived from the sale of the coal by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection is in addition to the tax imposed by section three of this article, and this additional tax is referred to in this section 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 be distributed by the state treasurer in the manner specified in this section 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 referred to in this section as the “coal-producing counties”. The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by section three of this article, and all of the enforcement and other provisions of this article shall apply to the 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-seven, article
two, chapter twenty-two-a of this code, the tax commis-

tioner is hereby granted plenary power and authority to

promulgate reasonable rules requiring the furnishing by

producers of such additional information as may be nec-

essary to compute the allocation required under the provi-

sions of subsection (f) of this section. The tax commis-

sioner is also hereby granted plenary power and authority

to promulgate such other reasonable rules as may be nec-

essary to implement the provisions of this section: Provi-

ded, That notwithstanding any language contained in this

code to the contrary, the gross amount of additional tax

on coal collected under this article shall be paid over and

distributed without the application of any credits against

the tax imposed by this section.

(d) In order to provide a procedure for the distribu-

tion of seventy-five percent of the net proceeds of the

additional tax on coal to the coal-producing counties, the

special fund known as the “county coal revenue fund”
established in the state treasurer’s office by chapter one

hundred sixty-two, acts of the Legislature, regular session,
one thousand nine hundred eighty-five, as amended and
reenacted in subsequent acts of the Legislature, is hereby
continued. In order to provide a procedure for the distri-

bution of the remaining twenty-five percent of the net

proceeds of the additional tax on coal to all counties and

municipalities of the state, without regard to coal having
been produced therein, the special fund known as the “all

counties and municipalities revenue fund” established in
the state treasurer’s office by chapter one hundred sixty-
two, acts of the Legislature, regular session, one thousand
nine hundred eighty-five, as amended and reenacted in
subsequent acts of the Legislature, is hereby redesignated
as the “all counties and municipalities coal revenue fund”
and is hereby continued.

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 the net
proceeds shall be deposited in the “all counties and mu-

nicipalities coal revenue fund”, from time to time, as the
proceeds are received by the tax commissioner. The mon-
eys in the funds shall be distributed to the respective coun-
ties and municipalities entitled to the moneys 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 coal revenue fund" shall be allocated among and distributed quarterly to the counties and municipalities entitled to the moneys by the state treasurer in the manner specified in this section. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys 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 is entitled from the "all counties and municipalities coal 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 to which 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 each county or municipality shall issue and a check drawn thereon making payment of such amount shall thereafter be distributed to each 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 the 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 the county during the preceding quarter.

(g) The amount to which each county and municipality is entitled from the "all counties and municipalities coal revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as deter-
mined 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 coal revenue fund” by multiplying the total amount in the 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 is the county’s “base share”.

(2) Each county’s “base share” shall then be subdivided into two portions. One portion is 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 is 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 is the “municipalities’ portion” of the county’s “base share”. The percentage of the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the 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 the coal severance tax revenue fund, in compliance with subsection (i) of this section, may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: Provided, That in counties with population in excess of two hundred thousand, at least seventy-five percent of the funds received from the county coal revenue fund shall be apportioned to, and expended within the coal-producing area or areas
of the county, said coal-producing areas of each county to be determined generally by the state tax commissioner:

Provided, however, That the 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 the twenty-eighth day of March, one thousand nine hundred eighty-six, and each twenty-eighth day of March 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 the revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in coal severance tax revenue fund at the close of a fiscal year shall be reappropriated to the budget of the county commission or governing body for the subsequent fiscal year. The reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before the fifteenth day of July of the current budget year.

(j) On or before the fifteenth day of December, one thousand nine hundred eighty-six, and each fifteenth day of December 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 the fifteenth day of July 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.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Niek Van Koven
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 5th day of May, 1997.

Governor