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WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 2000



ENROLLED

House Bill No. 201

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed November 14, 2000

In Effect from Passage

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OFFICE OF THE CLERK
SENATE

ENROLLED

H. B. 201

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed November 14, 2000; in effect from passage.]

AN ACT to amend section two, article thirteen, 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 two-f, all relating generally to the business and occupation tax; deleting certain expired provisions and obsolete language; imposing a business and occupation tax on the privilege of manufacturing or producing synthetic fuel products from coal; providing for rate and measure of tax; defining terms; providing for credits to not reduce tax; authorizing promulgation of emergency rule; dedicating net proceeds of tax collected; setting forth date expiration date for tax and specifying effective date of tax.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen, 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 two-f, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.**§11-13-2. Imposition of privilege tax.**

1 (a) *Imposition of tax.* — There is hereby levied and shall be
2 collected annual privilege taxes against the persons, on account
3 of their business and other activities, and in the amount to be
4 determined by the application of rates against the measures of
5 tax as set forth in sections two-d, two-e, two-f, two-m, two-n
6 and two-o of this article.

7 (b) If any person liable for any tax under section two-m
8 shall ship or transport his products or any part thereof out of the
9 state without making sale of such products, the value of the
10 products in the condition or form in which they exist immedi-
11 ately before transportation out of the state shall be the basis for
12 the assessment of the tax imposed in the applicable section,
13 except in those instances in which another measure of the tax is
14 expressly provided. The tax commissioner shall prescribe
15 equitable and uniform rules for ascertaining the value.

16 (c) In determining value, however, as regards sales from
17 one to another of affiliated companies or persons, or under
18 other circumstances where the relation between the buyer and
19 seller is such that the gross proceeds from the sale are not
20 indicative of the true value of the subject matter of the sale, the
21 tax commissioner shall prescribe uniform and equitable rules
22 for determining the value upon which the applicable privilege
23 tax shall be levied, corresponding as nearly as possible to the
24 gross proceeds from the sale of similar products of like quality
25 or character where no common interest exists between the
26 buyer and seller but the circumstances and conditions are
27 otherwise similar.

§11-13-2f. Manufacturing or producing synthetic fuel from coal.

1 (a) *Rate and measure of tax.* — Upon every person engaging
2 or continuing within this state in the business of manufacturing
3 or producing synthetic fuel from coal for sale, profit, or
4 commercial use, either directly or through the activity of others
5 in whole or in part, the amount of the tax shall be equal to fifty
6 cents per ton of synthetic fuel manufactured or produced for

7 sale, profit or commercial use. When a fraction of a ton is
8 included in the measure of tax, the rate of tax as to that fraction
9 of a ton shall be proportional. The measure of tax is the total
10 number of tons of synthetic fuel product manufactured or
11 produced in this state for sale, profit or commercial use,
12 regardless of the place of sale or the fact that deliveries may be
13 made to points outside this state. Liability for payment of this
14 tax shall accrue when the synthetic fuel product is sold by the
15 manufacturer or producer, determined by when the producer or
16 manufacturer recognizes gross receipts for federal income tax
17 purposes. When there is no sale of the synthetic fuel product,
18 liability for tax shall accrue when the synthetic fuel product is
19 shipped from the manufacturing facility for commercial use,
20 whether by the taxpayer or by a related party, except as
21 otherwise provided in legislative rules promulgated by the tax
22 commissioner as provided in article three, chapter twenty-nine-
23 a of this code.

24 (b) *Definitions.* – For purposes of this section:

25 (1) “Fuel” means material that produces usable heat upon
26 combustion.

27 (2) “Fuel manufactured or produced from coal” means
28 liquid, gaseous, or solid fuels produced from coal including, but
29 not limited to, such fuels when used as feedstocks.

30 (3) “Synthetic fuel manufactured or produced from coal” or
31 “synthetic fuel” means fuel manufactured or produced from
32 coal for which credit is allowable for federal income tax
33 purposes under section twenty-nine of the United States Internal
34 Revenue Code, as in effect on the effective date of this section,
35 or for which credit would have been allowable if the synthetic
36 fuel was produced from a facility, or expansion of a facility,
37 that meets the requirement of section twenty-nine of the
38 Internal Revenue Code or would have met the requirements on
39 the effective date of this section. “Synthetic fuel” does not
40 include coke or coke gas.

41 (4) “Ton” means two thousand pounds.

42 (c) *Credits not allowed against tax.* – When determining

43 the amount of tax due under this section, no credit shall be
44 allowed under section three-c or three-d of this article or under
45 any other article of this chapter or chapter of this code, unless
46 it is expressly provided that the credit applies to the business
47 and occupation tax on the privilege of manufacturing or
48 producing synthetic fuel.

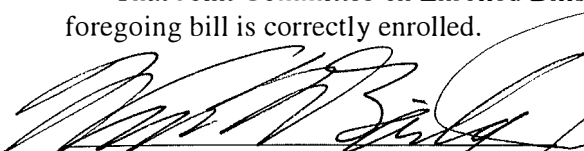
49 (d) *Emergency rule authorized*. – The tax commissioner
50 may, in the commissioner's discretion, promulgate an emer-
51 gency rule, as provided in article three, chapter twenty-nine-a
52 of this code, that clarifies, explains or implements the provi-
53 sions of this section.

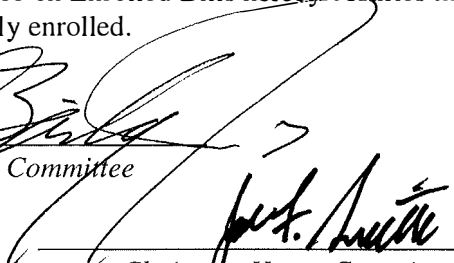
54 (e) *Dedication of proceeds*. – The net amount of tax
55 collected for exercise of the privilege taxed under this section
56 shall be deposited into the "Mining and Reclamation Operations
57 Fund" created in the state treasury by section thirty-two, article
58 three, chapter twenty-two of this code.

59 (f) *Effective date*. – This section shall take effect upon
60 enactment, and the measure of tax shall include all synthetic
61 fuel sold or shipped after the first day of January, two thousand
62 one, regardless of when the synthetic fuel was manufactured or
63 produced in this state.

64 (g) *Expiration date*. – The tax imposed in this section shall
65 expire and become void and of no effect for synthetic fuels
66 produced after the thirtieth day of June, two thousand two.

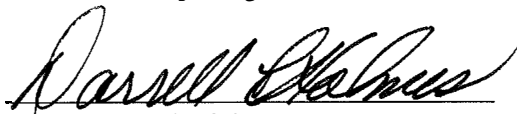
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

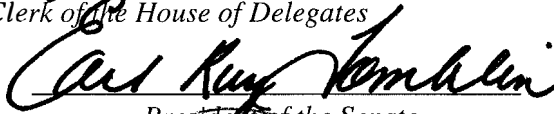

Chairman House Committee


Originating in the House.

In effect from passage.

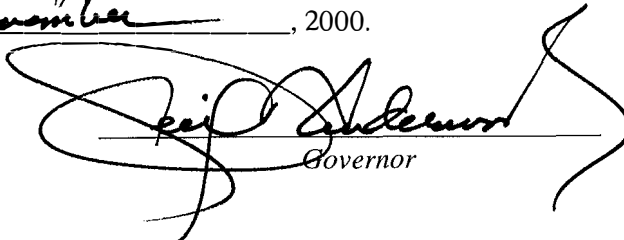

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 18th
day of November, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 11/17/00

Time 9:06 am