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2001 MAY -2 P 11:47 ✓

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001



ENROLLED

Committee Substitute for

SENATE BILL NO. *463*

(By Senators *Helmick and Fanning*)



PASSED *April 13, 2001*

In Effect *from* **Passage**

FILED

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 463

(SENATORS HELMICK AND FANNING, *original sponsors*)

[Passed April 13, 2001; in effect from passage.]

AN ACT to amend and reenact section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article thirteen-a of said chapter by adding thereto a new section, designated section three-e, all relating to taxes imposed on subsequent coal products; outlining the tax imposed on producing synthetic fuel from coal; dedicating a certain amount of this tax to the counties where produced; outlining the imposition of a privilege tax on extracting and processing material from a refuse, gob pile or other sources of waste coal to produce coal; exempting electrical co-generation plants; and dedicating this tax to certain county commissions for use in economic development and infrastructure improvements.

Be it enacted by the Legislature of West Virginia:

That section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; and that article thirteen-a of said chapter be amended by adding thereto a new section, designated section three-e, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

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

1 (a) *Rate and measure of tax.* — Upon every person
2 engaging or continuing within this state in the business of
3 manufacturing or producing synthetic fuel from coal for
4 sale, profit or commercial use, either directly or through
5 the activity of others, in whole or in part, the amount of
6 the tax shall be equal to fifty cents per ton of synthetic
7 fuel manufactured or produced for sale, profit or commercial use. When a fraction of a ton is included in the
8 measure of tax, the rate of tax as to that fraction of a ton
9 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
13 may be made to points outside this state. Liability for
14 payment of this tax shall accrue when the synthetic fuel
15 product is sold by the manufacturer or producer, determined by when the producer or manufacturer recognizes
16 gross receipts for federal income tax purposes. When there
17 is no sale of the synthetic fuel product, liability for tax
18 shall accrue when the synthetic fuel product is shipped
19 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
22 tax commissioner as provided in article three, chapter
23 twenty-nine-a of this code.
24
25

26 (b) *Definitions.* — For purposes of this section:

27 (1) "Fuel" means material that produces usable heat
28 upon combustion.

29 (2) "Fuel manufactured or produced from coal" means
30 liquid, gaseous or solid fuels produced from coal, includ-
31 ing, but not limited to, such fuels when used as feedstocks.

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

44 (4) "Ton" means two thousand pounds.

45 (c) *Credits not allowed against tax.* – When determining
46 the amount of tax due under this section, no credit shall be
47 allowed under section three-c or three-d of this article or
48 under any other article of this chapter or chapter of this
49 code unless it is expressly provided that the credit applies
50 to the business and occupation tax on the privilege of
51 manufacturing or producing synthetic fuel.

52 (d) *Emergency rule authorized.* – The tax commissioner
53 may, in the commissioner's discretion, promulgate an
54 emergency rule, as provided in article three, chapter
55 twenty-nine-a of this code, that clarifies, explains or
56 implements the provisions of this section.

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

62 this code: *Provided*, That the net amount of tax collected
63 in excess of four million dollars, not to exceed two million
64 dollars, shall be dedicated to the counties in which the
65 synthetic fuel plants are domiciled and are producing as of
66 the first day of April, two thousand one: *Provided, how-*
67 *ever*, That the county shall use ninety percent of the funds
68 for use in infrastructure improvement and ten percent of
69 the funds for economic development: *Provided further*,
70 That the net amount of tax collected in excess of six
71 million dollars, not to exceed two million dollars, shall be
72 equally divided among the remaining counties having no
73 synthetic fuel plants domiciled and producing within their
74 borders as of the first day of April, two thousand one: *And*
75 *provided further*, That the county shall first use such
76 moneys for regional jail and correctional authority and
77 county jail expenses with any remainder being subject to
78 county discretion: *And provided further*, That the net
79 amount of tax collected in excess of eight million dollars
80 shall be dedicated to the general revenue fund: *And*
81 *provided further*, That funding provided by taxes pursuant
82 to this section and section three-e, article thirteen-a of this
83 chapter shall be administered by the office of community
84 development.

85 (f) *Effective date.* – This section shall take effect upon
86 enactment and the measure of tax shall include all syn-
87 thetic fuel sold or shipped after the first day of January,
88 two thousand one, regardless of when the synthetic fuel
89 was manufactured or produced in this state.

90 (g) *Expiration date.* – The tax imposed in this section
91 shall expire and become void and of no effect for synthetic
92 fuels produced after the thirtieth day of June, two thou-
93 sand seven.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.

1 (a) The Legislature hereby finds and declares the
2 following:

3 (1) That some mining operations in this state process
4 coal to create a saleable clean coal product.

5 (2) That the by-product created from processing coal is
6 commonly deposited in what are known as refuse or gob
7 piles.

8 (3) That, as a result of technological developments and
9 other factors, the material contained in some refuse or gob
10 piles located in this state can be recovered and further
11 processed to produce saleable clean coal.

12 (4) That, under the existing laws of this state, coal
13 produced from processing material contained in refuse,
14 gob piles, slurry ponds, pond fines or other sources of
15 waste coal would be subject to the annual privilege tax
16 imposed on the severance of coal pursuant to section three,
17 article thirteen-a of this chapter and the minimum sever-
18 ance tax imposed by section three, article twelve-b of this
19 chapter.

20 Based on the foregoing findings, the Legislature con-
21 cludes that an incentive to extracting and recovering
22 material contained in refuse, gob piles and other sources
23 of waste coal located in this state, and subsequently,
24 processing, washing and preparing this material to pro-
25 duce coal should be implemented to encourage the produc-
26 tion of this coal from refuse or gob piles located in this
27 state.

28 (b) *Imposition of tax.* – In lieu of: (i) The annual privilege
29 tax imposed on the severance of coal pursuant to section
30 three, article thirteen-a of this chapter; and (ii) the mini-
31 mum severance tax imposed by section three, article
32 twelve-b of this chapter for the privilege of engaging or
33 continuing within this state in the business of extracting
34 and recovering material from a refuse, gob pile or other
35 sources of waste coal and, subsequently, processing,

36 washing and preparing this extracted or recovered mate-
37 rial to produce coal for sale, profit or commercial use,
38 there is hereby levied and shall be collected from every
39 person exercising that privilege an annual privilege tax.

40 (c) *Rate and measure of tax.* – The tax imposed in
41 subsection (b) of this section shall be two and one-half
42 percent of the gross value of the coal so produced, as
43 shown by the gross proceeds derived from the sale thereof
44 by the producer, except as otherwise provided in this
45 article.

46 (d) *Tax in addition to other taxes.* – The tax imposed by
47 this section applies to all persons extracting and recover-
48 ing material from refuse, gob piles or other sources of
49 waste coal located in this state and, subsequently, process-
50 ing, washing and preparing this extracted and recovered
51 material to produce coal for sale, profit or commercial use
52 and shall be in addition to all other taxes imposed by law:
53 *Provided*, That the tax imposed by this section is in lieu of
54 the tax imposed pursuant to section three, article thir-
55 teen-a of this chapter and the tax imposed by section
56 three, article twelve-b of this chapter: *Provided, however*,
57 That funding provided by taxes pursuant to this section
58 and section two-f, article thirteen of this chapter shall be
59 administered by the office of community development.

60 (e) *Exemption.* – That the tax imposed in subsection (b)
61 shall not apply to any electrical power co-generation plant
62 burning material from its wholly owned refuse or gob pile.

63 (f) *Dedication of taxes collected.* – The taxes collected
64 under the provisions of this section are hereby dedicated
65 to the county commissions of the counties in which the
66 refuse, gob piles or other sources of waste coal are located
67 for use in economic development and infrastructure
68 improvements: *Provided*, That the county shall use ninety
69 percent of the funds for use in infrastructure improvement
70 and ten percent of the funds for economic development.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *2nd*
Day of *May*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/01

Time 11:15am