WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 746

(By Senator Hebrair, et al.)

PASSED April 9, 2005

In Effect 90 days from Passage
ENROLLED

Senate Bill No. 746

(By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Gills and Sprouse)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-13A-3a, §11-13A-3b and §11-13A-3d of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-13A-5b, all relating to the reduction from five percent to four percent in the severance tax imposed on natural gas produced from wells placed in service on or after the first day of December, two thousand five; the reduction from three and twenty-two hundredths percent to one and twenty-two hundredths percent in the severance tax imposed on timber produced on or after the first day of December, two thousand five; reducing the period of availability of a certain five-year severance tax exemption for coalbed methane production; reducing from five percent to four percent the severance tax on gas produced from coalbed methane wells on or after the first day of December, two thousand five; and dedicating and distributing ten percent of coalbed methane severance tax for benefit of counties and municipalities.
Be it enacted by the Legislature of West Virginia:

That §11-13A-3a, §11-13A-3b and §11-13A-3d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-13A-5b, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.

(a) Imposition of tax. – For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: Provided, That effective for all taxable periods beginning on or after the first day of January, two thousand, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) Rate and measure of tax. –

(1) The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the
sale thereof by the producer, except as otherwise provided in this article.

(2) With respect to natural gas produced from wells placed in service on or before the thirtieth day of November, two thousand five, the tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(3) With respect to natural gas produced from wells placed in service on or after the first day of December, two thousand five, the tax imposed in subsection (a) of this section shall be four percent of the gross value of the natural gas produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. – The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d) (1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the state Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before the first day of July, two thousand three, the Tax Commissioner shall design a common form that
may be used for each of the reports regarding production
that are required to be filed by oil and gas producers,
which form shall readily permit a filing without financial
information when such information is unnecessary. The
Commissioner shall also design such forms so as to permit
filings in different formats, including, but not limited to,
electronic formats.

§11-13A-3b. Imposition of tax on privilege of severing timber.

(a) Imposition of tax. – For the privilege of engaging or
continuing within this state in the business of severing
timber for sale, profit or commercial use, there is hereby
levied and shall be collected from every person exercising
such privilege an annual privilege tax.

(b) Rate and measure of tax. – The tax imposed in
subsection (a) of this section shall be three and twenty-two
hundredths percent of the gross value of the timber
produced, as shown by the gross proceeds derived from the
sale thereof by the producer, except as otherwise provided
in this article: Provided, That the tax imposed in subsec-
tion (a) of this section on timber produced on or after the
first day of December, two thousand five, shall be one and
twenty-two hundredths percent of the gross value of the
timber produced, as shown by the gross proceeds derived
from the sale thereof by the producer, except as otherwise
provided in this article.

(c) Tax in addition to other taxes. – The tax imposed by
this section shall apply to all persons severing timber in
this state, and shall be in addition to all other taxes
imposed by law.

(d) Effective date. – This section, as amended in the year
one thousand nine hundred ninety-three, shall apply to
gross proceeds derived after the thirty-first day of May of
such year. The language of section three of this article, as
in effect on the first day of January of such year, shall
apply to gross proceeds derived prior to the first day of
June of such year and, with respect to such gross income, shall be fully and completely preserved.

§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

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

(1) That coalbed methane is underdeveloped and an under-utilized resource within this state which, where practicable, should be captured and not be vented or wasted;

(2) The health and safety of persons engaged in coal mining is a paramount concern to the state. The Legislature intends to preserve coal seams for future safe mining, to facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state and to ensure the safety of miners by encouraging the advance removal of coalbed methane;

(3) The United States Environmental Protection Agency’s Coalbed Methane Outreach Program encourages coal mines in the United States to remove and use methane that is otherwise wasted during mining. These projects have important economic benefits for the mines and their local economies while they also reduce emissions of methane; and

(4) The initial costs of development of coalbed methane wells can be large in comparison to conventional wells and deoxygenation and water removal increase development expenditures.

The Legislature, therefore, concludes that an incentive to coalbed methane development should be implemented to encourage capture of methane gas that would otherwise be vented to the atmosphere.

(b) Imposition of tax. – In lieu of the annual privilege tax imposed on the severance of natural gas or oil pursu-
ant to section three-a of this article, for the privilege of
engaging or continuing within this state in the business of
severing coalbed methane for sale, profit or commercial
use, there is hereby levied and shall be collected from
every person exercising such privilege an annual privilege
tax: Provided, That effective for taxable years beginning
on or after the first day of January, two thousand one,
there is an exemption from the imposition of the tax
provided in this article for a maximum period of five years
for all coalbed methane produced from any coalbed
methane well placed in service after the first day of
January, two thousand. For purposes of this section, the
terms “coalbed methane” and “coalbed methane well”
have the meaning ascribed to them in section two, article
twenty-one, chapter twenty-two of this code. The exemp-
tion from tax provided by this section is applicable to any
coalbed methane well placed in service before the first day
of December, two thousand five.

(c) Rate and measure of tax. – The tax imposed on
subsection (b) of this section is five percent of the gross
value of the coalbed methane produced, as shown by the
gross proceeds derived from the sale thereof by the pro-
ducer, except as otherwise provided in this article:
Provided, That for tax years beginning on or after the first
day of January, two thousand five, the tax imposed in
subsection (b) of this section is four percent of the gross
value of the coalbed methane gas produced on or after the
first day of December, two thousand five, as shown by the
gross proceeds derived from the sale thereof by the pro-
ducer, except as otherwise provided in this article.

(d) Tax in addition to other taxes. – The tax imposed by
this section applies to all persons severing coalbed meth-
ane in this state, and is in addition to all other taxes
imposed by law.

(e) Except as specifically provided in this section,
application of the provisions of this article apply to
coalbed methane in the same manner and with like effect as the provisions apply to natural gas.

§11-13A-5b. Dedication of ten percent of coalbed methane severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to coalbed methane 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 December, two thousand five, ten percent of the tax attributable to the severance of coalbed methane imposed by section three-d 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 coalbed methane 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 “coalbed methane producing counties”. The remaining twenty-five percent of the net proceeds of this additional tax on coalbed methane 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 coalbed methane 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 coalbed methane to the coalbed methane producing counties, a special fund known as the Coalbed Methane County Revenue Fund is hereby established in the State Treasurer's Office. In order to provide a procedure for the distribution of the remaining twenty-five percent of the dedicated tax on coalbed methane to all counties and municipalities of the state, without regard to coalbed methane having been produced in those counties or municipalities, a special fund known as the All Counties and Municipalities Coalbed Methane Revenue Fund is hereby established in the State Treasurer's Office. Seventy-five percent of the dedicated tax on coalbed methane shall be deposited in the Coalbed Methane County Revenue Fund and twenty-five percent of the dedicated tax on coalbed methane shall be deposited in the All Counties and Municipalities Coalbed Methane 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 Coalbed Methane County Revenue Fund and the moneys in the All Counties and Municipalities Coalbed Methane 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 a coalbed methane producing county is entitled from the Coalbed Methane County 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 Coalbed Methane 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 a coalbed methane producing county is entitled from the Coalbed Methane County Revenue Fund shall be determined by dividing the total amount of moneys in the fund derived from tax on the severance of coalbed methane then available for distribution by the total volume of cubic feet of coalbed methane extracted in this state during the preceding year and multiplying the quotient thus obtained by the number of cubic feet of coalbed methane 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 Coalbed Methane 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 Coalbed Methane Revenue Fund by multiplying the total amount in the fund by the percentage which the popula-
tion 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 multiply-
ing 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 munici-
palities 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' por-
tion" 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 munici-
pal 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
Coalbed Methane County Revenue Fund shall be appor-
tioned to and expended within the coalbed methane
producing area or areas of the county, the coalbed meth-
ane producing areas of each county to be determined
generally by the state Tax Commissioner: Provided,
however, That the moneys distributed 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 first day of November, two thousand five, and each first day of November 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 expending 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, two thousand five, 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 coalbed methane the amount of thirty-five thousand dollars annually as a fee for the administration of the additional tax by the Tax Commissioner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .................. this the .................. Day of .................. 2005.

Governor