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SB 588

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 588

(By SENATORS FANNING, BAILEY, MCKENZIE AND KESSLER)

[Passed March 8, 2007; in effect from passage.]

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[Passed March 8, 2007; in effect from passage.]

AN ACT to amend and reenact §11-13-2f of the Code of West Virginia, 1931, as amended, relating to the taxation of synthetic fuel; removing the expiration date of the tax on manufacturing or production of synthetic fuel from coal which is scheduled to expire on the thirtieth day of June, two thousand seven; and amending the definition of synthetic fuel-producing county.

Be it enacted by the Legislature of West Virginia:

That §11-13-2f of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia Development Office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.

1 (a) *Rate and measure of tax.* — There is hereby
2 imposed an annual tax, in accordance with section two
3 of this article, upon every person engaging or
4 continuing within this state in the business of
5 manufacturing or producing synthetic fuel from coal for
6 sale, profit or commercial use, either directly or through
7 the activity of others, in whole or in part, and the
8 amount of the tax shall be equal to fifty cents per ton of
9 synthetic fuel manufactured or produced for sale, profit
10 or commercial use during the taxable year. When a
11 fraction of a ton is included in the measure of tax, the
12 rate of tax as to that fraction of a ton shall be
13 proportional. The measure of tax is the total number of
14 tons of synthetic fuel product manufactured or
15 produced in this state during the taxable year for sale,
16 profit or commercial use regardless of the place of sale
17 or the fact that deliveries may be made to points outside
18 this state. Liability for payment of this tax shall accrue
19 when the synthetic fuel product is sold by the
20 manufacturer or producer, determined by when the
21 producer or manufacturer recognizes gross receipts for
22 federal income tax purposes. When there is no sale of
23 the synthetic fuel product, liability for tax shall accrue

24 when the synthetic fuel product is shipped from the
25 manufacturing facility for commercial use, whether by
26 the taxpayer or by a related party, except as otherwise
27 provided in legislative rules promulgated by the Tax
28 Commissioner as provided in article three, chapter
29 twenty-nine-a of this code.

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

31 (1) “Fiscal year” means the fiscal year of this state.

32 (2) “Fuel” means material that produces usable heat
33 or power upon combustion.

34 (3) “Fuel manufactured or produced from coal” means
35 liquid, gaseous or solid fuels produced from coal,
36 including, but not limited to, such fuels when used as
37 feedstocks.

38 (4) “Office of chief inspector” means the state Auditor
39 as ex officio chief inspector and supervisor of local
40 government offices in accordance with section eleven,
41 article nine, chapter six of this code.

42 (5) “Provisional share” means the portion of the
43 Synthetic Fuel-Producing Counties Grant Fund that is
44 available for possible distribution to each synthetic
45 fuel-producing county. The amount of each county’s
46 provisional share is derived by dividing the share
47 computation base by the number of synthetic fuel-
48 producing counties in this state during the fiscal year.
49 The share computation base is the sum of: (A) Net
50 revenues deposited in the synthetic fuel-producing
51 counties grant fund for the fiscal year; and (B) any
52 amounts repooled for the fiscal year into the synthetic

53 fuel-producing counties grant fund under this section;
54 less (C) the amount dedicated and allotted to the
55 director of the Development Office under this section
56 for administration of the synthetic fuel-producing
57 counties grant program. A county shall be counted as a
58 synthetic fuel-producing county only if a synthetic
59 fuel-manufacturing plant actively produced synthetic
60 fuel in the county during the fiscal year.

61 (6) "Synthetic fuel manufactured or produced from
62 coal" or "synthetic fuel" means and includes, but is not
63 limited to, any fuel that is made or formed into a
64 briquette, fragment, sheet, flake or other solid form by
65 combining a binder or binding substance with coal dust,
66 coal fines, crushed coal, pulverized coal, stoker fines,
67 waste coal, coal or material derived from slurry ponds,
68 coal or material derived from gob piles or any
69 combination of the aforementioned materials without
70 regard to whether any federal tax credit is, or would
71 have been, available for or with relation to the
72 production of such fuel. The term "synthetic fuel
73 manufactured or produced from coal" or "synthetic
74 fuel" also means, but is not limited to, fuel
75 manufactured or produced from coal for which credit is
76 allowable for federal income tax purposes under section
77 twenty-nine of the United States Internal Revenue
78 Code, as in effect on the first day of January, two
79 thousand one, or for which credit would have been
80 allowable if the synthetic fuel was produced from a
81 facility, or expansion of a facility, that meets the
82 requirement of section twenty-nine of the Internal
83 Revenue Code or would have met the requirements on
84 the first day of January, two thousand one,
85 notwithstanding that such facility or expansion of a
86 facility may have been placed in service either prior to

87 or subsequent to the first day of January, two thousand
88 one. "Synthetic fuel" does not include coke or coke gas.

89 (7) "Synthetic fuel-producing county" means a county
90 of this state in which a synthetic fuel-manufacturing
91 plant is physically located that actively produces
92 synthetic fuel during the fiscal year. For purposes of
93 determining whether a county is a synthetic fuel-
94 producing county, the location of the synthetic fuel-
95 manufacturing company headquarters, the state of
96 incorporation or organization of the company or the
97 location of any managerial office or facility or other
98 office or facility of the company, other than the
99 synthetic fuel-manufacturing plant, and the physical
100 location where the coal or other material used in
101 synthetic fuel manufacturing is extracted from the earth
102 shall not be determinative of the designation of a county
103 as a synthetic fuel-producing county.

104 (8) "Synthetic fuel-nonproducing county" means any
105 county of this state other than a synthetic fuel-
106 producing county.

107 (9) "Ton" means two thousand pounds.

108 (10) "Director of the Development Office" or
109 "director" means the director of the West Virginia
110 Development Office created and continued under article
111 two, chapter five-b of this code.

112 (c) *Credits not allowed against tax.* — When
113 determining the amount of tax due under this section,
114 no credit shall be allowed under section three-c or
115 three-d of this article or under any other article of this
116 chapter or any other chapter of this code unless it is

117 expressly provided that the credit applies to the
118 business and occupation tax on the privilege of
119 manufacturing or producing synthetic fuel.

120 (d) *Emergency rule authorized.* — The Tax
121 Commissioner may, in the commissioner's discretion,
122 promulgate an emergency rule as provided in article
123 three, chapter twenty-nine-a of this code that clarifies,
124 explains or implements the provisions of this section.

125 (e) *Dedication and distribution of proceeds, creation*
126 *of funds.* —

127 (1) The first four million dollars of the net amount of
128 tax collected during each fiscal year for exercise of the
129 privilege taxed under this section shall be deposited
130 into the Mining and Reclamation Operations Fund
131 created in the State Treasury by section thirty-two,
132 article three, chapter twenty-two of this code.

133 (2) There is hereby created a fund in the State
134 Treasury entitled the Synthetic Fuel-Producing
135 Counties Grant Fund which shall be a revolving fund
136 that shall carry over each fiscal year. The net amount of
137 tax collected for exercise of the privilege taxed under
138 this section in excess of the first four million dollars
139 during each fiscal year, not to exceed two million sixty
140 thousand dollars, shall be deposited in the Synthetic
141 Fuel-Producing Counties Grant Fund. Moneys in the
142 Synthetic Fuel-Producing Counties Grant Fund in
143 excess of moneys allocated to the director of the
144 Development Office shall be dedicated to and
145 distributed among the synthetic fuel-producing counties
146 under the Synthetic Fuel-Producing Counties Grant
147 Program as provided in this section. The county

148 commission of a synthetic fuel-producing county shall
149 use ninety percent of the funds distributed to the county
150 out of the Synthetic Fuel-Producing Counties Grant
151 Fund for infrastructure improvement and ten percent of
152 the funds distributed to the county out of the Synthetic
153 Fuel-Producing Counties Grant Fund for economic
154 development.

155 (3) There is hereby created in the State Treasury a
156 fund entitled the synthetic fuel-nonproducing counties
157 fund which shall be a revolving fund that shall carry
158 over each fiscal year. The net amount of tax collected
159 for exercise of the privilege taxed under this section in
160 excess of the first six million sixty thousand dollars
161 during each fiscal year, not to exceed two million
162 dollars, shall be deposited in the synthetic fuel-
163 nonproducing counties fund and equally divided and
164 distributed among the synthetic fuel-nonproducing
165 counties. The county commission of a synthetic fuel-
166 nonproducing county shall first use such moneys for
167 Regional Jail and Correctional Facility Authority and
168 county jail expenses, and shall use any remainder for
169 such lawful public purposes as the county commission
170 may prescribe.

171 (4) The net amount of the tax collected in excess of
172 eight million sixty thousand dollars during each fiscal
173 year shall be dedicated to the General Revenue Fund.

174 (5) The office of chief inspector shall annually
175 determine that a county's expenditures of moneys
176 distributed under this section is in compliance with the
177 requirements of this section.

178 (6) For purposes of this subsection, "net amount of tax

179 collected” means the gross amount of tax collected
180 under this section less allowed refunds and credits.

181 (f) *Administration of the Synthetic Fuel-Producing*
182 *Counties Grant Program.* —

183 (1) The Director of the Development Office is hereby
184 authorized and empowered to administer the
185 distribution of moneys in the Synthetic Fuel-Producing
186 Counties Grant Fund.

187 (A) On or before the plan submission due date
188 prescribed by the Director of the Development Office,
189 the county commission of each synthetic fuel-producing
190 county may annually, or with such frequency as may be
191 prescribed by the Director of the Development Office,
192 submit a plan to the Director of the Development Office
193 for use of the county’s provisional share of the synthetic
194 fuel-producing counties grant fund.

195 (B) A grant of moneys out of the Synthetic Fuel-
196 Producing Counties Grant Fund shall only be
197 distributed to a synthetic fuel-producing county or
198 encumbered for the use of a synthetic fuel-producing
199 county after approval by the Director of the
200 Development Office of the plan for use of the county’s
201 provisional share of the fund, submitted to the Director
202 of the Development Office by the county commission.
203 The Director of the Development Office shall approve
204 the synthetic fuel-producing county’s plan for use if the
205 plan for use reasonably conforms to the requirements of
206 this section and the rules promulgated with relation
207 thereto.

208 (C) If the county’s plan is approved, the Director of

209 the Development Office may authorize a grant of money
210 out of the Synthetic Fuel-Producing Counties Grant
211 Fund to the county to be used by the county as specified
212 in the approved plan for use.

213 (D) The Director of the Development Office may
214 authorize distribution of any amount encumbered for
215 the use of the county and carried over from a prior
216 period in accordance with applicable plans for use
217 previously approved.

218 (E) The Director of the Development Office may
219 authorize encumbrances for any synthetic fuel-
220 producing county of moneys in the Synthetic Fuel-
221 Producing Counties Grant Fund, up to the amount of
222 the county's provisional share for the fiscal year, for one
223 or more qualified uses specified in the county's plan for
224 use if the county's approved plan for use of the moneys
225 sets forth a qualified use for the county's provisional
226 share over a period of several fiscal years or a qualified
227 use of the moneys calling for accumulation and
228 distribution to the county in one or more subsequent
229 fiscal years. Encumbered funds may carry over to
230 succeeding fiscal years and may be used to accumulate
231 reserves over a period of time for use by the county.

232 (F) In no case may an amount distributed to a
233 synthetic fuel-producing county exceed the amount of
234 a county's provisional share for the fiscal year plus the
235 amount of moneys encumbered in the fund for the use
236 of the particular county and carried over from a prior
237 period.

238 (2) The Director of the Development Office may
239 approve distributions of a county's provisional share of

240 the Synthetic Fuel-Producing Counties Grant Fund for
241 use as the county's share for state or federal matching
242 funds programs so long as, in the aggregate, ninety
243 percent of the funds distributed to the county out of the
244 Synthetic Fuel-Producing Counties Grant Fund are
245 used for infrastructure improvement and ten percent of
246 the funds distributed to the county out of the Synthetic
247 Fuel-Producing Counties Grant Fund are used for
248 economic development: *Provided*, That no county may
249 use any amount distributed out of the Synthetic Fuel-
250 Producing Counties Grant Fund as money to be
251 matched under the funds matching program authorized
252 by subsection (b), section three, article two, chapter
253 five-b of this code.

254 (3) *Repooling*. —

255 (A) Any synthetic fuel-producing county that has
256 failed to have its plan, or amended and resubmitted
257 plan or plans, approved by the Director of the
258 Development Office for a period of eighteen months
259 immediately subsequent to the initial plan submission
260 date shall lose its entitlement to the provisional share of
261 revenues deposited in the fund and attributable to the
262 fiscal year to which that plan relates and the
263 provisional share that would have been attributable to
264 that county for that fiscal year shall be pooled with all
265 other receipts in the Synthetic Fuel-Producing Counties
266 Grant Fund attributable to revenues for the fiscal year
267 during which the eighteen-month period ends and shall
268 then be reallocated equally to all synthetic fuel-
269 producing counties as part of the provisional share of
270 each, as if the repooled moneys were tax revenues
271 deposited into the fund during the fiscal year in which
272 the eighteen-month period ended. For purposes of this

273 subsection, the “initial plan submission date” means the
274 earlier of: (i) The required submission date, as
275 prescribed by the Director of the Development Office,
276 for the initial plan for use of the county’s provisional
277 share of the Synthetic Fuel-Producing Counties Grant
278 Fund for the fiscal year, with such extensions of time to
279 file as may be authorized under rules promulgated by
280 the Director of the Development Office; or (ii) the actual
281 date of submission of the initial plan for the fiscal year.
282 For purposes of this subsection, the term “initial plan”
283 means the first plan for use that was submitted, or that
284 should have been submitted, by a county for the fiscal
285 year, before the submission of any amended, revised or
286 resubmitted plan by the county for that fiscal year.

287 (B) Any synthetic fuel-producing county which fails to
288 timely submit a plan for use of its provisional share of
289 the Synthetic Fuel-Producing Counties Grant Fund,
290 with such extensions of time to file as may be
291 authorized under rules promulgated by the Director of
292 the Development Office, shall lose its entitlement to its
293 provisional share of revenues deposited in the fund and
294 attributable to that fiscal year and the provisional share
295 that would have been attributable to that county for
296 that year shall be pooled with all other receipts in the
297 Synthetic Fuel-Producing Counties Grant Fund
298 attributable to revenues for the fiscal year and shall be
299 reallocated equally among the remaining synthetic fuel-
300 producing counties other than the county or counties
301 that have failed to timely file the plan for use and shall
302 be made available for distribution to those remaining
303 counties, as part of their provisional share for the fiscal
304 year.

305 (C) Funds encumbered pursuant to approval of the

306 Director of the Development Office under this
307 subsection shall not be subject to repooling: *Provided*,
308 That if the Director of the Development Office
309 determines that moneys previously distributed to a
310 county out of the Synthetic Fuel-Producing Counties
311 Grant Fund have not been used as required under the
312 approved plan for the county or determines that
313 previously distributed moneys derived from
314 encumbered funds have not been used for the qualified
315 purpose for which the encumbrance was originally
316 approved or if there appears to be a reasonable
317 probability that encumbered funds will not be used for
318 that qualified purpose, the Director of the Development
319 Office may revoke the encumbrance of any funds of that
320 synthetic fuel-producing county remaining in the fund
321 and repool the funds so encumbered for reallocation to
322 all synthetic fuel-producing counties. The Director of
323 the Development Office may, in the director's
324 discretion, give the county an opportunity to cure the
325 nonqualified use of moneys derived from the synthetic
326 fuel-producing counties grant fund or to submit an
327 alternative plan for use of the encumbered funds which
328 may be approved by the director if that plan complies
329 with the requirements of this section.

330 (g) *Promulgation of rules by the director of the*
331 *Development Office authorized.* — The Director of the
332 Development Office, in his or her discretion, may
333 promulgate an emergency rule as provided in article
334 three, chapter twenty-nine-a of this code that clarifies,
335 explains or implements the Synthetic Fuel-Producing
336 Counties Grant Program, distribution of moneys out of
337 or encumbrance of moneys in the Synthetic Fuel-
338 Producing Counties Grant Fund. The Director of the
339 Development Office is hereby granted continuing

340 authority to promulgate in accordance with article
341 three, chapter twenty-nine-a of this code such
342 interpretive, legislative or procedural rules, or any
343 combination thereof, for administration of the Synthetic
344 Fuel-Producing Counties Grant Program as the Director
345 of the Development Office may find necessary and
346 appropriate. The director of the Development Office
347 may prescribe criteria for qualification under the
348 infrastructure improvement use requirement and the
349 economic development requirement of this section.

350 (h) There is hereby dedicated and allocated to the
351 West Virginia Development Office sixty thousand
352 dollars annually for administration of the Synthetic
353 Fuel-Producing Counties Grant Program under this
354 section. Sixty thousand dollars shall be paid out of the
355 Synthetic Fuel-Producing Counties Grant Fund to the
356 director of the Development Office each fiscal year for
357 administration of the Synthetic Fuel-Producing
358 Counties Grant Program.

359 (i) *Effective date.* —

360 (1) This section as enacted in the year two thousand
361 took effect upon enactment. The measure of tax shall
362 include all synthetic fuel sold or shipped after the first
363 day of January, two thousand one, regardless of when
364 the synthetic fuel was manufactured or produced in this
365 state.

366 (2) Amendments to this section enacted during the
367 fifth extraordinary session of the Legislature in the year
368 two thousand one shall have retroactive effect to the
369 first day of January, two thousand one, and the measure
370 of tax shall include all synthetic fuel sold or shipped

371 after the first day of January, two thousand one,
372 regardless of when the synthetic fuel was manufactured
373 or produced in this state.

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

Ch White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Russell G. Thomas
.....
Clerk of the Senate

James M. Sear
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

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

The within *is approved* this
the *4th* Day of *April*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2007

Time 1:55 pm