Committee Substitute
for

Senate Bill 421

By Senator Kessler
(By Request of the Executive)
[Passed March 3, 2016; in effect 90 days from passage]
Enr. CS for SB 421

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled
Committee Substitute
for

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(By Request of the Executive)

[Passed March 3, 2016; in effect 90 days from passage]
AN ACT to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; and
to amend and reenact §11-15-9i of said code, all relating to termination of behavioral
health severance and business privilege tax; specifying effective date of termination;
establishing method of payment of outstanding refund claims; generating replacement
revenue stream by suspending exemption of certain purchases of durable medical
equipment from consumer sales and service tax for certain period; continuing exemption
for specified purchases of durable medical equipment; specifying effective dates;
providing method to claim exemption; and providing definitions and conditions for
exemption.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3 of the Code of West Virginia, 1931, as amended, be amended and
reenacted; and that §11-15-9i of said code be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.

§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or
furnishing certain health care services, effective dates therefor; reduction of
severance rate for coal mined by underground methods based on seam
thickness.

(a) Imposition of tax. — Upon every person exercising the privilege of engaging or
continuing within this state in the business of severing, extracting, reducing to possession and
producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of
furnishing certain health care services, there is hereby levied and shall be collected from every
person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — Subject to the provisions of subsection (g) of this section,
the tax imposed in subsection (a) of this section shall be five percent of the gross value of the
natural resource produced or the health care service provided, as shown by the gross income
derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article. In the case of coal, this five percent rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(c) "Certain health care services" defined. — For purposes of this section, the term "certain health care services" means, and is limited to, behavioral health services.

(d) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section and shall be in addition to all other taxes imposed by law.

(e) Effective date. — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

(f) Reduction of severance tax rate. — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

(1) For coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than thirty-seven inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross
value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than forty-five inches in average thickness or any existing mine that has not produced coal from seams forty-five inches or less in thickness in the one hundred eighty days immediately preceding the effective date of this subsection.

(3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

(g)(1) **Termination and expiration of the behavioral health severance and business privilege tax.** — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) **Refunds made.** — The Tax Commissioner will issue a requisition on the treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

**ARTICLE 15. CONSUMERS SALE AND SERVICE TAX.**

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices, all as defined in section two, article fifteen-b of this
chapter, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article: Provided, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended for the period beginning on and after July 1, 2016, and continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

(b) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase of durable medical equipment, as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription by a health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax imposed by this article: Provided, That the durable medical equipment is purchased by an individual for exclusive use by the purchaser or another individual and used predominantly by the recipient individual in his or her home environment.

(1) Effective Dates. — The provisions of this subsection shall apply to purchases made on and after July 1, 2016.

(2) Per se exemption. — The exemption set forth by this subsection shall be given without the necessity of an exemption certificate, direct pay permit or refund or credit request.

(c) Definitions. — The following definitions shall apply:

(1) For purposes of this section, “used predominantly by the recipient individual in his or her home environment”, with reference to durable medical equipment, means that the equipment is sold to an individual for use by the individual purchaser or by another individual at home, regardless of where the individual resides. For purposes of this definition, the term “home” means and includes facilities such as nursing homes, assisted care centers and school dormitories, of which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified from the exemption because the equipment is incidentally used on the streets, in commercial establishments, in public places and in locations other than the home, so long as use in the home is the predominant use. For purposes of this definition, the term “individual” means and is limited
Enr. CS for SB 421

to a single, separate human being and specifically excludes any health care provider, or provider
of nursing services, personal care services, behavioral care services, residential care or assisted
living care, or any entity or organization other than a human being.

(2) When the equipment is sold to a facility such as a hospital, nursing home, medical
clinic, dental office, chiropractor or optician office, then this shall not constitute a use of the
equipment by the recipient individual in his or her home environment. The fact that a nursing
home may use the equipment only for its residents does not make the equipment exempt for
home use: Provided, That nothing in this section shall be interpreted to void or abrogate lawful
assertion and application of the purchases for resale exemption as it may apply to any purchaser
of durable medical equipment.

(3) For purposes of this section, “health care provider” means any person licensed to
prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic
devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or
disease. For purposes of this section, the term “health care provider” includes any hospital,
medical clinic, nursing home or provider of inpatient hospital services and any provider of
outpatient hospital services, physician services, nursing services, ambulance services, surgical
services or veterinary services: Provided, That the amendment to this subsection enacted during
the 2009 regular legislative session shall be effective on or after July 1, 2009.

(4) The term “durable medical goods”, as used in this article, means “durable medical
equipment” as defined in section two, article fifteen-b of this chapter.

(5) For purposes of this section, the term “nursing home or facility” means any institution,
residence or place, or any part or unit thereof, however named, in this state which is advertised,
offered, maintained or operated by the ownership or management, whether for a consideration or
not, for the express or implied purpose of providing accommodations and care, for a period of
more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and
in need of extensive, ongoing nursing care due to physical or mental impairment or which provides
services for the rehabilitation of persons who are convalescing from illness or incapacitation: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article.

(6) For purposes of this section, the term “assisted care center” means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

(7) For purposes of this section, the term “school dormitory” means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education, and shall be synonymous with the term “residence hall”.

Enr. CS for SB 421
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 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within .......... this the Day of ........................., 2016.

Governor