

HB 2653

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2653

(By Delegate Michael)



Passed April 10, 1997

In Effect From Passage

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OFFICE OF THE CLERK
SECRETARY OF STATE

ENROLLED

H. B. 2653

(BY DELEGATE MICHAEL)

[Passed April 10, 1997; in effect from passage.]

AN ACT to amend and reenact sections five-a and six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the distribution of dedicated oil, gas and coal severance taxes to counties and municipalities; removing the requirement that the proceeds from the taxes be appropriated; continuing and redesignating certain funds; and requirements for budgeting additional tax on severance, extraction and production of coal.

Be it enacted by the Legislature of West Virginia:

That sections five-a and six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas 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.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-six, five percent of the tax attributable to
3 the severance of oil and gas imposed by section three-a of
4 this article is hereby dedicated for the use and benefit of
5 counties and municipalities within this state and shall be
6 distributed to the counties and municipalities as provided
7 in this section. Effective the first day of July, one thou-
8 sand nine hundred ninety-seven, and thereafter, ten per-
9 cent of the tax attributable to the severance of oil and gas
10 imposed by section three-a of this article is hereby dedi-
11 cated for the use and benefit of counties and municipali-
12 ties within this state and shall be distributed to the counties
13 and municipalities as provided in this section.

14 (b) Seventy-five percent of this dedicated tax shall be
15 distributed by the state treasurer in the manner specified in
16 this section to the various counties of this state in which
17 the oil and gas upon which this additional tax is imposed
18 was located at the time it was removed from the ground.
19 Those counties are referred to in this section as the "oil
20 and gas producing counties". The remaining twenty-five
21 percent of the net proceeds of this additional tax on oil
22 and gas shall be distributed among all the counties and
23 municipalities of this state in the manner specified in this
24 section.

25 (c) The tax commissioner is hereby granted plenary
26 power and authority to promulgate reasonable rules re-
27 quiring the furnishing by oil and gas producers of such
28 additional information as may be necessary to compute
29 the allocation required under the provisions of subsection
30 (f) of this section. The tax commissioner is also hereby
31 granted plenary power and authority to promulgate such
32 other reasonable rules as may be necessary to implement
33 the provisions of this section.

34 (d) In order to provide a procedure for the distribu-
35 tion of seventy-five percent of the dedicated tax on oil and
36 gas to the oil and gas producing counties, the special fund

37 known as the oil and gas county revenue fund established
38 in the state treasurer's office by chapter two hundred
39 forty-two, acts of the Legislature, regular session, one
40 thousand nine hundred ninety-five, as amended and reen-
41 acted in the subsequent act of the Legislature, is hereby
42 continued. In order to provide a procedure for the distri-
43 bution of the remaining twenty-five percent of the dedi-
44 cated tax on oil and gas to all counties and municipalities
45 of the state, without regard to oil and gas having been
46 produced in those counties or municipalities, the special
47 fund known as the all counties and municipalities revenue
48 fund established in state treasurer's office by chapter two
49 hundred forty-two, acts of the Legislature, regular session,
50 one thousand nine hundred ninety-five, as amended and
51 reenacted in the subsequent act of the Legislature, is here-
52 by redesignated as the "all counties and municipalities oil
53 and gas revenue fund" and is hereby continued.

54 Seventy-five percent of the dedicated tax on oil and
55 gas shall be deposited in the "oil and gas county reve-
56 nue fund" and twenty-five percent of the dedicated tax on
57 oil and gas shall be deposited in the "all counties and
58 municipalities oil and gas revenue fund", from time to
59 time, as the proceeds are received by the tax commis-
60 sioner. The moneys in the funds shall be distributed to the
61 respective counties and municipalities entitled to the mon-
62 eys in the manner set forth in subsection (e) of this sec-
63 tion.

64 (e) The moneys in the "oil and gas county revenue
65 fund" and the moneys in the "all counties and munici-
66 palities oil and gas revenue fund" shall be allocated
67 among and distributed annually to the counties and mu-
68 nicipalities entitled to the moneys by the state treasurer in
69 the manner specified in this section. On or before each
70 distribution date, the state treasurer shall determine the
71 total amount of moneys in each fund which will be avail-
72 able for distribution to the respective counties and munici-
73 palities entitled to the moneys on that distribution date.
74 The amount to which an oil and gas producing county is
75 entitled from the "oil and gas county revenue fund" shall
76 be determined in accordance with subsection (f) of this
77 section, and the amount to which every county and munic-

78 ipality shall be entitled from the "all counties and munici-
79 palities oil and gas revenue fund" shall be determined in
80 accordance with subsection (g) of this section. After de-
81 termining, as set forth in subsections (f) and (g) of this
82 section, the amount each county and municipality is enti-
83 tled to receive from the respective fund or funds, a warrant
84 of the state auditor for the sum due to the county or mu-
85 nicipality shall issue and a check drawn thereon making
86 payment of the sum shall thereafter be distributed to the
87 county or municipality.

88 (f) The amount to which an oil and gas producing
89 county is entitled from the "oil and gas county revenue
90 fund" shall be determined by:

91 (1) In the case of moneys derived from tax on the
92 severance of gas:

93 (A) Dividing the total amount of moneys in the fund
94 derived from tax on the severance of gas then available for
95 distribution by the total volume of cubic feet of gas ex-
96 tracted in this state during the preceding year; and

97 (B) Multiplying the quotient thus obtained by the
98 number of cubic feet of gas taken from the ground in the
99 county during the preceding year; and

100 (2) In the case of moneys derived from tax on the
101 severance of oil:

102 (A) Dividing the total amount of moneys in the fund
103 derived from tax on the severance of oil then available for
104 distribution by the total number of barrels of oil extracted
105 in this state during the preceding year; and

106 (B) Multiplying the quotient thus obtained by the
107 number of barrels of oil taken from the ground in the
108 county during the preceding year.

109 (g) The amount to which each county and munici-
110 pality is entitled from the "all counties and municipalities
111 oil and gas revenue fund" shall be determined in accor-
112 dance with the provisions of this subsection. For purposes
113 of this subsection "population" means the population as

114 determined by the most recent decennial census taken
115 under the authority of the United States:

116 (1) The treasurer shall first apportion the total
117 amount of moneys available in the "all counties and mu-
118 nicipalities oil and gas revenue fund" by multiplying the
119 total amount in the fund by the percentage which the
120 population of each county bears to the total population of
121 the state. The amount thus apportioned for each county is
122 the county's "base share".

123 (2) Each county's "base share" shall then be subdi-
124 vided into two portions. One portion is determined by
125 multiplying the "base share" by that percentage which
126 the total population of all unincorporated areas within the
127 county bears to the total population of the county, and the
128 other portion is determined by multiplying the "base
129 share" by that percentage which the total population of all
130 municipalities within the county bears to the total popula-
131 tion of the county. The former portion shall be paid to
132 the county and the latter portion shall be the "municipali-
133 ties' portion" of the county's "base share". The per-
134 centage of the latter portion to which each municipality in
135 the county is entitled shall be determined by multiplying
136 the total of the latter portion by the percentage which the
137 population of each municipality within the county bears to
138 the total population of all municipalities within the county.

139 (h) Moneys distributed to any county or municipali-
140 ty under the provisions of this section, from either or both
141 special funds, shall be deposited in the county or municip-
142 al general fund and may be expended by the county
143 commission or governing body of the municipality for
144 such purposes as the county commission or governing
145 body shall determine to be in the best interest of its re-
146 spective county or municipality: *Provided*, That in coun-
147 ties with population in excess of two hundred thousand, at
148 least seventy-five percent of the funds received from the
149 oil and gas county revenue fund shall be apportioned to
150 and expended within the oil and gas producing area or
151 areas of the county, the oil and gas producing areas of
152 each county to be determined generally by the state tax
153 commissioner: *Provided, however*, That the moneys dis-

154 tributed to any county or municipality under the provi-
155 sions of this section shall not be budgeted for personal
156 services in an amount to exceed one fourth of the total
157 amount of the moneys.

158 (i) On or before the twenty-eighth day of March, one
159 thousand nine hundred ninety-seven, and each
160 twenty-eighth day of March thereafter, each county com-
161 mission or governing body of a municipality receiving
162 any such moneys shall submit to the tax commissioner on
163 forms provided by the tax commissioner a special budget,
164 detailing how the moneys are to be spent during the sub-
165 sequent fiscal year. The budget shall be followed in ex-
166 pending the moneys unless a subsequent budget is ap-
167 proved by the state tax commissioner. All unexpended
168 balances remaining in the county or municipality general
169 fund at the close of a fiscal year shall remain in the gener-
170 al fund and may be expended by the county or municipi-
171 pality without restriction.

172 (j) On or before the fifteenth day of December, one
173 thousand nine hundred ninety-six, and each fifteenth day
174 of December thereafter, the tax commissioner shall deliver
175 to the clerk of the Senate and the clerk of the House of
176 Delegates a consolidated report of the budgets, created by
177 subsection (i) of this section, for all county commissions
178 and municipalities as of the fifteenth day of July of the
179 current year.

180 (k) The state tax commissioner shall retain for the
181 benefit of the state from the dedicated tax attributable to
182 the severance of oil and gas the amount of thirty-five
183 thousand dollars annually as a fee for the administration
184 of the additional tax by the tax commissioner.

**§11-13A-6. Additional tax on the severance, extraction and
production of coal; dedication of additional tax
for benefit of counties and municipalities; distri-
bution of major portion of such additional tax
to coal-producing counties; distribution of mi-
nor portion of such additional tax to all counties
and municipalities; reports; rules; special funds
in office of state treasurer; method and formulas
for distribution of such additional tax; expendi-**

ture of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

1 (a) Additional coal severance tax. — Upon every
2 person exercising the privilege of engaging or continuing
3 within this state in the business of severing coal, or prepar-
4 ing coal (or both severing and preparing coal), for sale,
5 profit or commercial use, there is hereby imposed an addi-
6 tional severance tax, the amount of which shall be equal to
7 the value of the coal severed or prepared (or both severed
8 and prepared), against which the tax imposed by section
9 three of this article is measured as shown by the gross
10 proceeds derived from the sale of the coal by the produc-
11 er, multiplied by thirty-five one hundredths of one per-
12 cent. The tax imposed by this subsection is in addition to
13 the tax imposed by section three of this article, and this
14 additional tax is referred to in this section as the “addi-
15 tional tax on coal”.

16 (b) This additional tax on coal is imposed pursuant
17 to the provisions of section six-a, article ten of the West
18 Virginia constitution. Seventy-five percent of the net
19 proceeds of this additional tax on coal shall be distributed
20 by the state treasurer in the manner specified in this sec-
21 tion to the various counties of this state in which the coal
22 upon which this additional tax is imposed was located at
23 the time it was severed from the ground. Those counties
24 are referred to in this section as the “coal-producing
25 counties”. The remaining twenty-five percent of the net
26 proceeds of this additional tax on coal shall be distributed
27 among all the counties and municipalities of this state in
28 the manner specified in this section.

29 (c) The additional tax on coal shall be due and pay-
30 able, reported and remitted as elsewhere provided in this
31 article for the tax imposed by section three of this article,
32 and all of the enforcement and other provisions of this
33 article shall apply to the additional tax. In addition to the
34 reports and other information required under the provi-
35 sions of this article and the tonnage reports required to be
36 filed under the provisions of section seventy-seven, article

37 two, chapter twenty-two-a of this code, the tax commis-
38 sioner is hereby granted plenary power and authority to
39 promulgate reasonable rules requiring the furnishing by
40 producers of such additional information as may be nec-
41 essary to compute the allocation required under the provi-
42 sions of subsection (f) of this section. The tax commis-
43 sioner is also hereby granted plenary power and authority
44 to promulgate such other reasonable rules as may be nec-
45 essary to implement the provisions of this section: *Provid-*
46 *ed*, That notwithstanding any language contained in this
47 code to the contrary, the gross amount of additional tax
48 on coal collected under this article shall be paid over and
49 distributed without the application of any credits against
50 the tax imposed by this section.

51 (d) In order to provide a procedure for the distribu-
52 tion of seventy-five percent of the net proceeds of the
53 additional tax on coal to the coal-producing counties, the
54 special fund known as the "county coal revenue fund"
55 established in the state treasurer's office by chapter one
56 hundred sixty-two, acts of the Legislature, regular session,
57 one thousand nine hundred eighty-five, as amended and
58 reenacted in subsequent acts of the Legislature, is hereby
59 continued. In order to provide a procedure for the distri-
60 bution of the remaining twenty-five percent of the net
61 proceeds of the additional tax on coal to all counties and
62 municipalities of the state, without regard to coal having
63 been produced therein, the special fund known as the "all
64 counties and municipalities revenue fund" established in
65 the state treasurer's office by chapter one hundred sixty-
66 two, acts of the Legislature, regular session, one thousand
67 nine hundred eighty-five, as amended and reenacted in
68 subsequent acts of the Legislature, is hereby redesignated
69 as the "all counties and municipalities coal revenue fund"
70 and is hereby continued.

71 Seventy-five percent of the net proceeds of such
72 additional tax on coal shall be deposited in the "county
73 coal revenue fund" and twenty-five percent of the net
74 proceeds shall be deposited in the "all counties and mu-
75 nicipalities coal revenue fund", from time to time, as the
76 proceeds are received by the tax commissioner. The mon-
77 eys in the funds shall be distributed to the respective coun-

78 ties and municipalities entitled to the moneys in the man-
79 ner set forth in subsection (e) of this section.

80 (e) The moneys in the "county coal revenue fund"
81 and the moneys in the "all counties and municipalities
82 coal revenue fund" shall be allocated among and distrib-
83 uted quarterly to the counties and municipalities entitled
84 to the moneys by the state treasurer in the manner speci-
85 fied in this section. On or before each distribution date,
86 the state treasurer shall determine the total amount of
87 moneys in each fund which will be available for distribu-
88 tion to the respective counties and municipalities entitled
89 to the moneys on that distribution date. The amount to
90 which a coal-producing county is entitled from the
91 "county coal revenue fund" shall be determined in ac-
92 cordance with subsection (f) of this section, and the
93 amount to which every county and municipality is entitled
94 from the "all counties and municipalities coal revenue
95 fund" shall be determined in accordance with subsection
96 (g) of this section. After determining as set forth in sub-
97 section (f) and subsection (g) of this section the amount
98 each county and municipality is entitled to receive from
99 the respective fund or funds, a warrant of the state auditor
100 for the sum due to each county or municipality shall issue
101 and a check drawn thereon making payment of such
102 amount shall thereafter be distributed to each such county
103 or municipality.

104 (f) The amount to which a coal-producing county is
105 entitled from the "county coal revenue fund" shall be
106 determined by: (1) Dividing the total amount of moneys
107 in the fund then available for distribution by the total
108 number of tons of coal mined in this state during the pre-
109 ceding quarter; and (2) multiplying the quotient thus
110 obtained by the number of tons of coal removed from the
111 ground in the county during the preceding quarter.

112 (g) The amount to which each county and municipi-
113 pality is entitled from the "all counties and municipalities
114 coal revenue fund" shall be determined in accordance
115 with the provisions of this subsection. For purposes of this
116 subsection "population" means the population as deter-

117 mined by the most recent decennial census taken under
118 the authority of the United States:

119 (1) The treasurer shall first apportion the total
120 amount of moneys available in the "all counties and mu-
121 nicipalities coal revenue fund" by multiplying the total
122 amount in the fund by the percentage which the popula-
123 tion of each county bears to the total population of the
124 state. The amount thus apportioned for each county is the
125 county's "base share".

126 (2) Each county's "base share" shall then be subdi-
127 vided into two portions. One portion is determined by
128 multiplying the "base share" by that percentage which
129 the total population of all unincorporated areas within the
130 county bears to the total population of the county, and the
131 other portion is determined by multiplying the "base
132 share" by that percentage which the total population of all
133 municipalities within the county bears to the total popula-
134 tion of the county. The former portion shall be paid to
135 the county and the latter portion is the "municipalities'
136 portion" of the county's "base share". The percentage
137 of the latter portion to which each municipality in the
138 county is entitled shall be determined by multiplying the
139 total of the latter portion by the percentage which the
140 population of each municipality within the county bears to
141 the total population of all municipalities within the county.

142 (h) All counties and municipalities shall create a
143 "coal severance tax revenue fund" which shall be the
144 depository for moneys distributed to any county or mu-
145 nicipality under the provisions of this section, from either
146 or both special funds. Moneys in the coal severance tax
147 revenue fund, in compliance with subsection (i) of this
148 section, may be expended by the county commission or
149 governing body of the municipality for such public pur-
150 poses as the county commission or governing body shall
151 determine to be in the best interest of the people of its
152 respective county or municipality: *Provided*, That in
153 counties with population in excess of two hundred thou-
154 sand, at least seventy-five percent of the funds received
155 from the county coal revenue fund shall be apportioned
156 to, and expended within the coal-producing area or areas

157 of the county, said coal-producing areas of each county to
158 be determined generally by the state tax commissioner:
159 *Provided, however,* That the coal severance tax revenue
160 fund moneys shall not be budgeted for personal services
161 in an amount to exceed one fourth of the total funds avail-
162 able in such fund.

163 (i) On or before the twenty-eighth day of March, one
164 thousand nine hundred eighty-six, and each twenty-eighth
165 day of March thereafter, each county commission or gov-
166 erning body of a municipality receiving such revenue
167 shall submit to the tax commissioner on forms provided
168 by the tax commissioner a special budget, detailing how
169 such revenue is to be spent during the subsequent fiscal
170 year. Such budget shall be followed in expending the
171 revenue unless a subsequent budget is approved by the
172 state tax commissioner. All unexpended balances remain-
173 ing in coal severance tax revenue fund at the close of a
174 fiscal year shall be reappropriated to the budget of the
175 county commission or governing body for the subsequent
176 fiscal year. The reappropriation shall be entered as an
177 amendment to the new budget and submitted to the tax
178 commissioner on or before the fifteenth day of July of the
179 current budget year.

180 (j) On or before the fifteenth day of December, one
181 thousand nine hundred eighty-six, and each fifteenth day
182 of December thereafter, the tax commissioner shall deliver
183 to the clerk of the Senate and the clerk of the House of
184 Delegates a consolidated report of the special budgets,
185 created by subsection (i) of this section, for all county
186 commissions and municipalities as of the fifteenth day of
187 July of the current year.

188 (k) The state tax commissioner shall retain for the
189 benefit of the state from the additional taxes on coal col-
190 lected the amount of thirty-five thousand dollars annually
191 as a fee for the administration of such additional tax by
192 the tax commissioner.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is appended this the 5th
day of May, 1997.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

Date 4/21/97

Time 11:47am