

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2394

FISCAL
NOTE

2015 Carryover

(BY DELEGATES R. SMITH, R. PHILLIPS, J. NELSON,
WAGNER, SUMMERS, MARCUM, ARVON, KESSINGER AND
STORCH)

[Introduced January 13, 2016; referred to the
Committee on Energy then Finance.]

1 A BILL to amend and reenact §11-13V-4 of the Code of West Virginia, 1931, as amended, relating
2 to repealing the additional tax on the privilege of severing coal, effective July 1, 2015.

Be it enacted by the Legislature of West Virginia:

1 That §11-13V-4 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

§11-13V-4. Imposition of tax.

1 (a) *Imposition of additional tax on privilege of severing coal.* -- Upon every person
2 exercising the privilege of engaging within this state in severing, extracting, reducing to
3 possession or producing coal for sale, profit or commercial use, there is hereby imposed an
4 additional annual severance tax for exercising the privilege after November 30, 2005. The tax
5 shall be \$.56 per ton and the measure of the tax is tons of clean coal severed or produced in this
6 state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the
7 taxable year. When the person mining the coal sells raw coal, the measure of tax shall be a ton
8 of clean coal determined in accordance with rules promulgated by the Tax Commissioner as
9 provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment
10 before July 1, 2005, the rule may be promulgated as an emergency legislative rule. This tax
11 shall be in addition to all taxes imposed with respect to the severance and production of coal in
12 this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this
13 chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two
14 of this code, if applicable.

15 (b) *Imposition of additional tax on privilege of severing natural gas.* -- For the privilege of
16 engaging or continuing within this state in the business of severing natural gas for sale, profit or
17 commercial use, there is hereby levied and shall be collected from every person exercising this

18 privilege an additional annual privilege tax. The rate of this additional tax shall be \$.047 per mcf
19 of natural gas and the measure of the tax is natural gas produced after November 30, 2005,
20 determined at the point where the production privilege ends for purposes of the tax imposed by
21 section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by
22 section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection
23 shall be collected with respect to natural gas produced after November 30, 2005.

24 (c) *Imposition of additional tax on privilege of severing timber.* -- For the privilege of
25 engaging or continuing within this state in the business of severing timber for sale, profit or
26 commercial use, there is hereby levied and shall be collected from every person exercising this
27 privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of
28 the gross value of the timber produced, determined at the point where the production privilege
29 ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon
30 which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax
31 imposed by this subsection shall be collected with respect to timber produced after November 30,
32 2005: *Provided,* That during the period of discontinuance of the tax as provided in subsection
33 (d), section three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection
34 shall be determined as provided in this subsection in the same manner as if the tax described
35 under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to
36 the provisions of subsection (g) of this section.

37 (d) *No pyramiding of tax burden.* -- Each ton of coal and each mcf of natural gas severed
38 in this state after the effective date of the taxes imposed by this section shall be included in the
39 measure of a tax imposed by this section only one time.

40 (e) *Effect on utility rates.* -- The Public Service Commission shall, upon the application of
41 any public utility that, as of the effective date of the taxes imposed by this section, is not currently

42 making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs
43 because the mechanism historically used to make such periodic adjustments is suspended by an
44 order of the commission, allow such utility to defer, for future recovery from its customers, any
45 increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas
46 severed in this state and utilized in the production of electricity generated or produced in this state
47 and sold to customers in this state; coal and natural gas severed in this state and utilized in the
48 production of electricity not generated or produced in this state that is sold to customers in this
49 state; and natural gas severed in this state that is sold to customers in this state.

50 (f) *Dedication of new taxes.* -- The net amount of all moneys received by the Tax
51 Commissioner from collection of the taxes imposed by this section, including any interest,
52 additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter
53 eleven of this code, shall be deposited in the Workers' Compensation Debt Reduction Fund
54 created in article two-d, chapter twenty-three of this code. As used in this section, "net amount
55 of all taxes received by the Tax Commissioner" means the gross amount received by the Tax
56 Commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this
57 article, including the amount of any interest on the overpayment amount due the taxpayer under
58 the provisions of section fourteen, article ten of this chapter.

59 (g) *Sunset expiration date of taxes.* -- The new tax imposed by subsection (a) of this
60 section shall expire and not be imposed with respect to the privilege exercised on and after July
61 1, 2015. The new taxes imposed by subsections (b) and (c) of this section shall expire and not
62 be imposed with respect to privileges exercised on and after the first day of the month following
63 the month in which the Governor certifies to the Legislature that: (1) The revenue bonds issued
64 pursuant to article two-d, chapter twenty-three of this code, have been retired, or payment of the
65 debt service provided for; and (2) that an independent certified actuary has determined that the

66 unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid
67 or provided for in its entirety. Expiration of the taxes imposed in this section as provided in this
68 subsection shall not relieve any person from payment of any tax imposed with respect to privileges
69 exercised before the expiration date.

NOTE: The purpose of this bill is to repeal the additional tax on coal effective July 1, 2015.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.