WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Engrossed

Senate Bill 705

BY SENATORS HALL, BLAIR, BOSO, MULLINS, SYPOLT

AND TAKUBO

[Originating in the Committee on Finance; Reported

on February 29, 2016]

A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating to reducing the severance tax on coal to three percent over two years; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3. Imposition of tax or 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.* — ~~The~~ Beginning July 1, 2017, the tax imposed in subsection (a) of this section shall be ~~five~~ four percent of the gross value of the natural resource produced and beginning July 1, 2018, the tax imposed in subsection (a) of this section shall be three 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. For health care services, the tax imposed in subsection (a) of this section shall be five percent of the gross value of the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the provider of the health care service. In the case of coal, ~~this five percent~~ the 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 the year 1993, shall apply to gross proceeds derived after May 31 of such year. The language of this section, as in effect on January 1, of such year, shall apply to gross proceeds derived prior to June 1 of such year 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:

(i) 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.

(ii) 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.

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

§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 January 1, 2000, 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.* — 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: *Provided*, That if the coal severance tax imposed in section three of this article is changed to some amount other than five percent, then the severance tax imposed by this subsection shall adjust on the same dates and to the same percentages such that the two severance taxes continue to be equivalent percentages of the gross value of the natural resource produced.

(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 July 1, 2003, 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.

(3) Effective July 1, 2006, this subsection shall have no force or effect.