

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 478

**FISCAL
NOTE**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 28, 2017; Referred
to the Committee on Energy, Industry and Mining; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating
 2 generally to severance taxes imposed on the privilege of producing coal for sale, profit or
 3 commercial use; specifying effective date; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

**§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.**

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

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

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

16 (d) *Tax in addition to other taxes.* — The tax imposed by this section ~~shall apply~~ applies

17 to all persons severing or processing, or both severing and processing, in this state natural
18 resources enumerated in subsection (a) of this section and to all persons providing certain health
19 care services in this state as enumerated in subsection (c) of this section and ~~shall be~~ is in addition
20 to all other taxes imposed by law.

21 (e) *Effective date.* — This section, as amended in 1993, ~~shall apply~~ applies to gross
22 proceeds derived after May 31, 1993. The language of this section, as in effect on January 1,
23 1993, ~~shall apply~~ applies to gross proceeds derived prior to June 1, 1993 and, with respect to
24 ~~such~~ those gross proceeds, shall be fully and completely preserved.

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

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

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

42 (3) The seam thickness shall be based on the weighted average isopach mapping of

43 actual coal thickness by mine as certified by a professional engineer.

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

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

56 (h) *Tiered severance tax rates on coal.* – The rate of tax on the privilege of engaging or
 57 continuing within this state in the business of severing, extracting, reducing to possession, and
 58 producing coal for sale, profit or commercial use, except for thin seam coal which shall continue
 59 to be taxed at the rates specified in subsection (f) of this section, is:

60 (1) For all tons of metallurgical coal produced on and after July 1, 2017:

61 If gross income from sale of coal

62 during the reporting period is: Rate of tax:

63 Less than \$50 per ton 3.5%

64 \$50 or more but less than \$55 per ton 4%

65 \$55 per ton but less than \$60 per ton 4.5%

66 \$60 per ton but less than \$75 per ton 5%

67 \$75 per ton but less than \$85 per ton 5.5%

68 \$85 per ton but less than \$100 per ton 6%

| | | |
|----|--|-------------|
| 69 | <u>\$100 per ton but less than \$125 per ton</u> | <u>7%</u> |
| 70 | <u>\$125 per ton but less than \$150 per ton</u> | <u>8%</u> |
| 71 | <u>\$150 per ton but less than \$175 per ton</u> | <u>8.5%</u> |
| 72 | <u>\$175 per ton but less than \$200 per ton</u> | <u>9%</u> |
| 73 | <u>\$200 per ton or more</u> | <u>10%</u> |

74 These rates of tax include the thirty-five one hundredths of one percent additional
 75 severance tax imposed by the state for the benefit of counties and municipalities as provided in
 76 section six of this article. The rate of tax for each reporting period shall be determined by dividing
 77 the gross income of the taxpayer from sales of all coal during the reporting period, exclusive of
 78 sales of thin seam coal, by the tons of all coal sold by the taxpayer during the reporting period but
 79 not including tons of thin seam coal; and.

80 (2) For all tons of steam coal produced on and after July 1, 2017:

81 If gross income from sale of coal

82 during the reporting period is: Rate of tax:

| | | |
|----|---|-------------|
| 83 | <u>Less than \$30 per ton</u> | <u>3.5%</u> |
| 84 | <u>\$30 or more but less than \$35 per ton</u> | <u>4%</u> |
| 85 | <u>\$35 per ton but less than \$40 per ton</u> | <u>4.5%</u> |
| 86 | <u>\$40 per ton but less than \$50 per ton</u> | <u>5%</u> |
| 87 | <u>\$50 per ton but less than \$55 per ton</u> | <u>5.5%</u> |
| 88 | <u>\$55 per ton but less than \$60 per ton</u> | <u>6%</u> |
| 89 | <u>\$60 per ton but less than \$65 per ton</u> | <u>6.5%</u> |
| 90 | <u>\$65 per ton but less than \$70 per ton</u> | <u>7%</u> |
| 91 | <u>\$70 per ton but less than \$80 per ton</u> | <u>7.5%</u> |
| 92 | <u>\$80 per ton but less than \$90 per ton</u> | <u>8%</u> |
| 93 | <u>\$90 per ton but less than \$100 per ton</u> | <u>9%</u> |
| 94 | <u>\$100 per ton or more</u> | <u>10%</u> |

95 These rates of tax include the thirty-five one hundredths of one percent additional
96 severance tax imposed by the state for the benefit of counties and municipalities as provided in
97 section six of this article. The rate of tax for each reporting period shall be determined by dividing
98 the gross income of the taxpayer from sales of all coal during the reporting period, exclusive of
99 sales of thin seam coal, by the tons of all coal sold by the taxpayer during the reporting period but
100 not including tons of thin seam coal.

NOTE: The purpose of this bill is to impose that severance tax on the privilege of producing coal at graduated rates depending upon the gross income of the taxpayer derived from sales of coal during the reporting period divided by tons of coal produced and sold by the taxpayer during the reporting period. Thin seam coal is excluded from both computations.

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