

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

### **Originating**

## **House Bill 3144**

BY DELEGATES HARTMAN, STORCH, SKAFF, GRAVES,  
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[Originating in the Committee on Finance; Reported  
on February 22, 2019.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-  
3 6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12,  
4 §11-13EE-13, §11-13EE-14, §11-13EE-15, §11-13EE-16 and §11-13EE-17, all relating  
5 generally to North Central Appalachian Coal Severance Tax Rebate; providing short title,  
6 findings and purpose; defining terms; providing for rebate of severance tax when capital  
7 investment made in new machinery and equipment directly used in severance of coal, or  
8 in coal preparation and processing plants; providing rules and procedures for claiming  
9 rebate and transfer to successors; imposing recapture tax in certain circumstance;  
10 providing rules for interpretation and construction; requiring periodic rebate reports;  
11 authorizing rulemaking; and providing for severability and effective date.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 13EE. NORTH CENTRAL APPALACHIAN COAL SEVERANCE TAX REBATE.**

**§11-13EE-1. Short title.**

1 This article may be cited as the “North Central Appalachian Coal Severance Tax Rebate  
2 Act.”

**§11-13EE-2. Findings and purpose.**

1 The Legislature finds that the encouragement of economic growth and development in this  
2 state is in the public interest and promotes the general welfare of the people of this state. In order  
3 to encourage capital investment in the coal industry in this state and thereby increase economic  
4 development, there is hereby provided a coal severance tax rebate.

**§11-13EE-3. Definitions.**

1 (a) General. — When used in this article, or in the administration of this article, terms  
2 defined in subsection (b) shall have the meanings ascribed to them by this section, unless a  
3 different meaning is clearly required by either the context in which the term is used, or by specific  
4 definition, in this article.

5 (b) Terms defined. —

6 (1) “Affiliated group” means one or more chains of corporations, limited liability entities, or  
7 partnerships, or any combination thereof, connected through the ownership of stock or ownership  
8 interests with a common parent which is a corporation, limited liability entity, or partnership, but  
9 only if the common parent owns directly, or indirectly, a controlling interest in each of the members  
10 of the group.

11 (2) “Business” means and is limited to the activity of producing coal for sale, profit or  
12 commercial use including coal preparation and processing.

13 (3) “Capital investment in new machinery and equipment” means:

14 (A) Tangible personal property in the form of machinery and equipment that is purchased  
15 on or after the effective date of this article and placed in service for direct use in the production of  
16 coal, when the original or first use of the machinery or equipment commences in this State on or  
17 after the effective date of this article; and

18 (B) Tangible personal property in the form of machinery and equipment that is leased by  
19 the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or  
20 after the effective date of this article, if the original or first use of the machinery or equipment  
21 commences in this State, with the taxpayer, on or after the effective date of this article and the  
22 machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has  
23 a useful life of 5 or more years for federal income tax purposes.

24 (4) “Coal mine” or “mine” includes:

25 (A) A “surface mine,” or “surface mining operation” which means:

26 (i) Activities conducted on the surface of lands for the removal of coal, or, subject to the  
27 requirements of section fourteen of this article, surface operations and surface impacts incident  
28 to an underground coal mine, including the drainage and discharge from the mine. The activities  
29 include: Excavation for the purpose of obtaining coal, including, but not limited to, common  
30 methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the

31 uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other  
32 chemical or physical processing; the cleaning, concentrating or other processing or preparation  
33 and loading of coal for commercial purposes at or near the mine site; and

34 (ii) The areas upon which the above activities occur or where the activities disturb the  
35 natural land surface. The areas also include any adjacent land, the use of which is incidental to  
36 the activities; all lands affected by the construction of new roads or the improvement or use of  
37 existing roads to gain access to the site of the activities and for haulage; and excavations,  
38 workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles,  
39 overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage  
40 areas, processing areas, shipping areas and other areas upon which are sited structures,  
41 facilities, or other property or materials on the surface, resulting from or incident to the activities:  
42 Provided, That the activities do not include the extraction of coal incidental to the extraction of  
43 other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of  
44 minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining  
45 does not include any of the following:

46 (I) Coal extraction authorized pursuant to a government-financed reclamation contract;

47 (II) Coal extraction authorized as an incidental part of development of land for commercial,  
48 residential, industrial or civic use; or

49 (III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract;

50 and

51 (B) An “underground mine” which includes the shafts, slopes, drifts or inclines connected  
52 with, or intended in the future to be connected with, excavations penetrating coal seams or strata,  
53 which excavations are ventilated by one general air current or divisions thereof, and connected  
54 by one general system of mine haulage over which coal may be delivered to one or more points  
55 outside the mine, and the surface structures or equipment connected or associated therewith  
56 which contribute directly or indirectly to the mining, preparation or handling of coal.

57 (5) "Coal mining operation" includes the mine and the coal preparation and processing  
58 plant.

59 (6) "Coal preparation and processing plant" means any facility (excluding underground  
60 mining operations) which prepares coal by one or more of the following processes: breaking,  
61 crushing, screening, wet or dry cleaning, and thermal drying.

62 (7) "Coal production" means the privilege of severing, extracting, reducing to possession  
63 and producing coal for sale, profit or commercial use and includes the processing of coal at a coal  
64 preparation and processing plant.

65 (8) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean  
66 the Tax Commissioner of the State of West Virginia, or his or her delegate.

67 (9) "Controlled group" means one or more chains of corporations connected through stock  
68 ownership with a common parent corporation if stock possessing at least 50 percent of the voting  
69 power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or  
70 more of the corporations; and the common parent owns directly stock possessing at least 50  
71 percent of the voting power of all classes of stock of at least one of the other corporations.

72 (10) "Controlling interest" means:

73 (A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the  
74 total combined voting power of all classes of stock of the corporation, or more than 50 percent  
75 ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all  
76 classes of stock of the corporation;

77 (B) For a partnership, association, trust or other entity other than a limited liability  
78 company, more than 50 percent, ownership, directly or indirectly, of the capital, profits, or  
79 beneficial interest in the partnership, association, trust, or other entity;

80 (C) For a limited liability company, either more than 50 percent ownership, directly or  
81 indirectly, of the total membership interest of the limited liability company, or more than 50 percent

82 ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of  
83 the limited liability company.

84 (11) "Corporation" means any corporation, joint-stock company or association, and any  
85 business conducted by a trustee or trustees wherein interest or ownership is evidenced by a  
86 certificate of interest or ownership or similar written instrument.

87 (12) "Delegate" used in the phrase "or his delegate," when used in reference to the Tax  
88 Commissioner, means any officer or employee of the State Tax Department duly authorized by  
89 the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform  
90 the functions mentioned or described in this article.

91 (13) "Directly used or consumed in the production of coal" means used or consumed in  
92 those activities or operations which constitute an integral and essential part of the production of  
93 coal, as contrasted with and distinguished from those activities or operations which are simply  
94 incidental, convenient or remote to the production of coal.

95 (A) Uses of tangible personal property which constitute direct use or consumption in the  
96 production of coal include only:

97 (i) New machinery and equipment that is depreciable, or amortizable, for federal income  
98 tax purposes, that has a useful life of 5 or more years for federal income tax, and that is directly  
99 used in the production of coal in this state;

100 (ii) Transportation of coal within the coal mine from the coal face or coal deposit to the  
101 exterior of the mine or to a point where the extracted coal is transported away from the mine;

102 (iii) Directly and physically recording the flow of coal during the production of coal including  
103 those coal treatment processes specified in §11-13A-4 of this code;

104 (iv) Safety equipment and apparatus directly used the production of coal, or to secure the  
105 safety of mine personnel is direct use in the production of coal;

106 (v) Controlling or otherwise regulating atmospheric conditions required for the production  
107 of coal;

108 (vi) Transformers, pumps, rock dusting equipment and other property used to supply  
109 electricity or water, or to supply or apply rock dust directly used in the production of coal;

110 (vii) Storing, removal or transportation of economic waste, including coal gob, resulting  
111 from the production of coal;

112 (viii) Engaging in pollution control or environmental quality or protection activity directly  
113 relating to the production of coal; or

114 (ix) Otherwise using as an integral and essential part of the production of coal.

115 (B) Uses of tangible personal property which do not constitute direct use or consumption  
116 in the production of coal include, but are not limited to:

117 (i) Heating and illumination of office buildings;

118 (ii) Janitorial or general cleaning activities;

119 (iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly  
120 used in the production of coal or to secure the safety of mine personnel is direct use in the  
121 production of coal when the tangible personal property is depreciable, or amortizable, for federal  
122 income tax purposes and has a useful life of 5 or more years for federal income tax purposes  
123 when it is placed in service or use;

124 (iv) Production planning, scheduling of work or inventory control;

125 (v) Marketing, general management, supervision, finance, training, accounting and  
126 administration;

127 (vi) Measuring or determining weight, and ash content, water content and other physical  
128 and, chemical characteristics of the coal after production;

129 (vii) An activity or function incidental or convenient to the production of coal, rather than  
130 an integral and essential part of these activities.

131 (14) "Eligible taxpayer" means:



132 (A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of  
133 producing coal for sale, profit or commercial use for at least 2 years before the capital investment  
134 in machinery and equipment is placed in service or use in this state; or

135 (B) A taxpayer that has experienced a change in business composition through merger,  
136 acquisition, split-up, spin-off or other ownership changes or changes in the form of the business  
137 organization from limited liability company to C corporation, or partnership, or from one form of  
138 business organization to a different form of business organization, may constitute an eligible  
139 taxpayer if the entity currently operating in this state was operating in a different form of business  
140 organization in this state at least 2 years before the capital investment in new machinery and  
141 equipment is placed in service or use in this state. In the case of business composition change  
142 through merger, acquisition, split-up, spin-off or other ownership changes the current business  
143 may constitute an eligible taxpayer if at least 50 percent of the business assets of such component  
144 were actively and directly used in coal production activity in this state for such two-year period. If  
145 less than 50 percent of the assets of the current entity were not actively and directly used in coal  
146 production activity in this state for such two-year period, then the current entity resulting from a  
147 business composition change through merger, acquisition, split-up, spin-off or other ownership,  
148 shall not constitute an eligible taxpayer.

149 (15) “Includes” and “including” when used in a definition contained in this article, shall not  
150 be deemed to exclude other things otherwise within the generally understood meaning of the term  
151 defined.

152 (16) “Original use” means the first use to which the property is put by anyone.

153 (17) “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated  
154 organization through or by means of which any business, operation or venture is carried on, which  
155 is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code,  
156 and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner”

157 includes a member in such a syndicate, group, pool, joint venture or other unincorporated  
158 organization taxed under Subchapter K of the Internal Revenue Code.

159 (18) "Person" includes any natural person, corporation, partnership, limited liability  
160 company or other business entity.

161 (19) "Production of coal" means privilege of severing, extracting, reducing to possession  
162 and producing coal for sale, profit or commercial use and includes the processing of coal at the  
163 coal preparation and processing plant.

164 (20) "Property" means tangible personal property and is limited to new machinery and  
165 equipment that is depreciable or amortizable for federal income tax purposes and that has a useful  
166 life of 5 or more years for federal income tax purposes.

167 (21) "Property purchased or leased for business expansion" means:

168 (A) *Included property.* — Except as provided in subparagraph (B), the term "property  
169 purchased or leased for business expansion" means tangible personal property, but only if the  
170 tangible personal property was purchased, or leased and placed in service or use by the taxpayer,  
171 for use in West Virginia. This term includes only:

172 (i) Tangible personal property placed in service or use by the taxpayer on or after the  
173 effective date of this article, with respect to which depreciation, or amortization in lieu of  
174 depreciation, is allowable in determining the personal or corporation net income tax liability of the  
175 business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which  
176 has a useful economic life at the time the property is placed in service or use in this state, of 5 or  
177 more years.

178 (ii) Tangible personal property acquired by written lease having a primary term of 5 years  
179 or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax  
180 purposes and that has a useful life of 5 or more years for federal income purposes when it is  
181 placed in service or use, and when the lease commences and was executed by the parties thereto

182 on or after the effective date of this article, if used as a component part of a new or expanded coal  
183 mining operation in this state shall be included within this definition.

184 (B) Excluded property. — The term “property purchased or leased for business expansion”  
185 shall not include:

186 (i) Machinery and equipment owned or leased by the taxpayer and for which credit was  
187 taken or is claimed under any other article of this chapter for capital investment in the new  
188 machinery and equipment;

189 (ii) Repair costs, including materials used in the repair, unless for federal income tax  
190 purposes, the cost of the repair must be capitalized and not expensed;

191 (iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

192 (iv) Airplanes;

193 (v) Off-premise transportation equipment;

194 (vi) Machinery and equipment that is primarily used outside this state;

195 (vii) Machinery and equipment that is acquired incident to the purchase of the stock or  
196 assets of the seller; and

197 (viii) Used machinery and equipment.

198 (C) Purchase date. — New machinery and equipment shall be deemed to have been  
199 purchased prior to a specified date only if:

200 (i) The machinery or equipment was owned by the taxpayer prior to the effective date of  
201 this article or was acquired by the taxpayer pursuant to a binding purchase contract which was in  
202 effect prior to the effective date of this article; or

203 (ii) In the case of leased machinery and equipment, there was a binding written lease or  
204 contract to lease identifiable machinery or equipment in effect prior to the effective date of this  
205 article.

206 (22) “Purchase” means any acquisition of new machinery or equipment, but only if:

207 (A) The machinery or equipment is not acquired from a person whose relationship to the  
208 person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of  
209 the United States Internal Revenue Code, as defined in §11-24-3 of this code;

210 (B) The machinery or equipment is not acquired by one component member of a controlled  
211 group from another component member of the same controlled group; and

212 (C) The basis of the machinery or equipment for federal income tax purposes, in the hands  
213 of the person acquiring it, is not determined:

214 (i) In whole or in part by reference to the federal adjusted basis of the machinery or  
215 equipment in the hands of the person from whom it was acquired; or

216 (ii) Under Section 1014 (e) of the United States Internal Revenue Code.

217 (23) “Qualified coal mining activity” means any business or other activity subject to the tax  
218 imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession  
219 and producing coal for sale, profit or commercial use including the treatment process described  
220 as mining in §11-13A-4(a)(1) of this code.

221 (24) “Qualified investment” means capital investment in new machinery and equipment  
222 directly used in the production of coal in this state that is depreciable, or amortizable, for federal  
223 income tax purposes and has a useful life for federal income tax purposes of 5 or more years  
224 when it is placed in service or use in this state.

225 (25) “Rebate” means the amount of rebate allowable under §11-13EE-4 of this article.

226 (26) “Related person” means:

227 (A) A corporation, partnership, association or trust controlled by the taxpayer;

228 (B) An individual, corporation, partnership, association or trust that is in control of the  
229 taxpayer;

230 (C) A corporation, partnership, association or trust controlled by an individual, corporation,  
231 partnership, association or trust that is in control of the taxpayer; or

232 (D) A member of the same controlled group as the taxpayer.

233 For purposes of this subdivision, the term “control,” with respect to a corporation, means  
234 ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined  
235 voting power of all classes of the stock of the corporation entitled to vote. “Control,” with respect  
236 to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest  
237 in the principal or income of the trust. The ownership of stock in a corporation, of a capital or  
238 profits interest in a partnership or association or of a beneficial interest in a trust is determined in  
239 accordance with the rules for constructive ownership of stock provided in section 267 (c) of the  
240 United States Internal Revenue Code, other than paragraph (3) of that section.

241 (27) “State portion of severance taxes paid” means the portion of severance taxes due  
242 under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

243 (28) “Tangible personal property” means and is limited to new machinery and equipment  
244 that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of 5  
245 or more years for federal income tax purposes when it is placed in service or use in this state.

246 (29) “Taxpayer” means any person exercising the privilege of severing, extracting,  
247 reducing to possession and producing coal for sale, profit or commercial use coal, which privilege  
248 is taxable under §11-13A-3 of this code.

249 (30) “This code” means the Code of West Virginia, 1931, as amended.

250 (31) “This state” means the State of West Virginia.

251 (32) “United States Internal Revenue Code” or “Internal Revenue Code” means the  
252 Internal Revenue Code as defined in §11-24-3 of this code.

**§11-13EE-4. Rebate allowable.**

1 (a) *Rebate allowable.* — Eligible taxpayers shall be allowed a rebate for a portion of state  
2 severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting,  
3 reducing to possession and producing coal for sale, profit or commercial use that is attributable  
4 to the increase in the production of coal that is attributable to and the consequence of the  
5 taxpayer’s capital investment in new machinery and equipment used at the coal mine, or coal

6 preparation and processing facility. The amount of this rebate shall be determined and applied as  
7 hereinafter provided in this article.

8 (b) Amount of rebate. — The amount of rebate allowable is determined by multiplying the  
9 amount of the taxpayer's capital investment in new machinery and equipment directly used in the  
10 production of coal at a coal mining operation in this state by 35 percent. The product of this  
11 computation establishes the maximum amount of rebate allowable under this article for the capital  
12 investment in new machinery and equipment.

13 (c) Application of rebate amount. — The amount of rebate allowable is determined by  
14 applying the rebate amount determined in subsection (b) of this section against 80 percent of the  
15 state portion of the severance tax paid on the privilege of severing, extracting, reducing to  
16 possession and producing coal for sale, profit or commercial use that is directly attributable to the  
17 increased production of coal at the mine due to taxpayer's capital investment in new machinery  
18 and equipment at the mine or coal processing and preparation plant.

19 (d) The amount of severance tax attributable to the increase in coal production at a mine  
20 due to the capital investment in new machinery and equipment shall be determined by comparing  
21 (1) the state portion of the severance tax due under §11-13A-3 of this code on coal produced from  
22 the mine during calendar year 2018, before allowance of any tax credits, except as provided in  
23 subsection (e) of this section (d), (2) with the state severance tax due on coal produced at the  
24 mine during the then current calendar year in which the capital investment in new mining  
25 machinery and equipment is placed in service or use, before allowance for any tax credits. When  
26 the amount in (2) is greater than the amount in (1), the difference is the amount of state severance  
27 tax due to the increase in coal production at the mine that is attributable to the capital investment  
28 in new machinery and equipment: *Provided*, That when the producer of the coal operates more  
29 than one mine in this state, or is a member of a controlled or affiliated group that operates one or  
30 more coal mines in this state, no credit shall be allowed unless the total coal production from all  
31 mines operated by the taxpayer or by members of the affiliated or controlled group in this state

32 has increased by at least the increase in production at the mine at which the capital investment  
33 in new machinery and equipment was made: *Provided, however,* That in no case shall the  
34 severance tax attributable to any mine other than the specific mine at which capital investment in  
35 new machinery and equipment is directly used in a coal mining operation has been placed in  
36 service or use be offset by this rebate.

37 (e) When the eligible taxpayer is a new business that has produced coal in this state for 2  
38 years before making the capital investment in new machinery and equipment, then, for purposes  
39 of item (1) in subsection (d), the base shall be the amount of state severance tax due under §11-  
40 13A-3 of this code on coal produced in this state during the second year of this two-year period.

41 (f) When the operator of the coal mine at which capital investment in new machinery and  
42 equipment was made operates one or more other coal mines in this state, the operator may not  
43 cease production of coal, or reduce the production of coal, at one or more of those mines during  
44 the tax years for which rebate is allowed under this article. The Tax Commissioner shall  
45 promulgate a legislative rule providing exceptions to this subsection.

46 (g) When the operator of the coal mine at which capital investment in new machinery and  
47 equipment was made is a member of a controlled or affiliated group that operates one or more  
48 other coal mines in this state, then the controlled or affiliated group, as the case may be, may not  
49 cease production of coal, or reduce the production of coal, at one or more of those mines during  
50 the tax years for which rebate is allowed under this article. The Tax Commissioner shall  
51 promulgate a legislative rule providing exceptions to this subsection.

52 (h) No rebate shall be allowed under this article when credit is claimed under any other  
53 article of this chapter for capital investment in the new machinery and equipment. No credit shall  
54 be allowed under any other article of this chapter when rebate is allowed under this article for the  
55 capital investment in new machinery and equipment.

**§11-13EE-5. Information required to determine amount of rebate allowable.**

1       (a) A taxpayer claiming rebate under this article who operates more than one coal mine in  
2 this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 et  
3 seq. of this code that shows, for each coal mine, the number of tons of coal produced and the  
4 gross value of the coal produced at each mine during the taxable year.

5       (b) When a taxpayer claiming rebate under this article is a member of an affiliated or  
6 controlled group, as the case may be, that operates more than one coal mine in this state the  
7 group shall provide a schedule with its annual severance tax return filed under §11-13A-1 et seq.  
8 of this code for the taxable year that shows for each coal mine operated in this state by the  
9 affiliated or controlled group, as the case may be, the number of tons of coal produced at each  
10 mine and the gross value of the coal produced at each mine during the taxable year.

**§11-13EE-6. Claim for rebate.**

1       (a) After the severance taxes due for the taxable year are paid, a taxpayer may file a  
2 claim under this article for rebate of up to 80 percent of the state portion of the additional  
3 severance taxes paid under §11-13A-3 of this code that are directly attributable to taxpayer's  
4 capital investment in new machinery and equipment placed in service or use during that taxable  
5 year as set forth in §11-13EE-4.

6       (b) When the amount of rebate claimed exceeds 80 percent of the additional state  
7 severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate  
8 amount may be carried forward and refunded by the Tax Commissioner after severance taxes  
9 due in subsequent years are paid: *Provided*, That the carryforward period may not exceed 10  
10 years from the date the capital investment in new machinery and equipment is placed in service  
11 or use in this state.

**§11-13EE-7. Suspension of payment of rebate.**

1       (a) No rebate may be paid under this article when the taxpayer, or any member of the  
2 taxpayer's combined or affiliated group, as the case may be, is delinquent in the payment of



3 severance taxes imposed pursuant to §11-13A-3 of this code, until such time as the delinquency  
4 is cured.

5 (b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting  
6 an assessment in the Office of Tax Appeals or in any court of this state, or is complying with the  
7 terms of any payment plan agreement with the Tax Commissioner.

8 (c) In the case of a taxpayer that files a combined tax return as a member of a unitary  
9 group, no rebate under this article that is earned by one member of the combined group, but not  
10 fully used by or allowed to that member, may be claimed, in whole or in part, by another member  
11 of the group.

**§11-13EE-8. Burden of proof; application required; failure to make timely application.**

1 (a) *Burden of proof.* — The burden of proof is on the taxpayer to establish by clear and  
2 convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

3 (b) *Application for rebate required.* —

4 (1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid  
5 under this article for any capital investment in new machinery and equipment placed in service or  
6 use until the person asserting a claim for the allowance of rebate under this article makes written  
7 application to the Tax Commissioner for allowance of rebate as provided in this section.

8 (2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner,  
9 no later than the last day for filing the severance tax return, determined by including any  
10 authorized extension of time for filing the return, for the taxable year in which the machinery and  
11 equipment to which the rebate relates is placed in service or use and all information required by  
12 the form is provided.

13 (3) A separate application for rebate is required for each taxable year during which the  
14 taxpayer places new machinery and equipment in service or use in a mine or coal preparation  
15 and processing facility in this state.

16 (c) Failure to make timely application. — The failure to timely apply for the rebate results  
17 in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This  
18 penalty applies annually until the application is filed.

**§11-13EE-9. Identification of investment credit property.**

1 Every taxpayer who claims credit under this article shall maintain sufficient records to  
2 establish the following facts for each item of qualified investment property:

3 (1) Its identity;

4 (2) Its actual or reasonably determined cost;

5 (3) Its useful life for federal income tax purposes;

6 (4) The month and taxable year in which it was placed in service;

7 (5) The amount of credit taken; and

8 (6) The date it was disposed of or otherwise ceased to be qualified investment property.

**§11-13EE-10. Failure to keep records of investment credit property.**

1 A taxpayer who does not keep the records required for identification of investment credit  
2 property is subject to the following rules:

3 (1) A taxpayer is treated as having disposed of, during the taxable year, any machinery  
4 and equipment that the taxpayer cannot establish was still on hand, in this state, at the end of that  
5 year.

6 (2) If a taxpayer cannot establish when capital investment in new machinery and  
7 equipment property was reported for purposes of claiming this credit during the taxable year the  
8 machinery or equipment was placed in service or use, the taxpayer is treated as having placed it  
9 in service or use in the most recent prior taxable year in which similar machinery and equipment  
10 was placed in service or use, unless the taxpayer can establish that the machinery and equipment  
11 placed in service or use in the most recent taxable year is still on hand. In that event, the taxpayer  
12 will be treated as having placed the returned machinery and equipment in service or use in the  
13 next most recent taxable year.

**§11-13EE-11. Transfer of qualified investment property to successors.**

1        (a) Mere change in form of business. – Machinery and equipment may not be treated as  
2 disposed of under §11-13EE-12 of this article, by reason of a mere change in the form of  
3 conducting the business as long as the machinery and equipment is retained in the successor  
4 business in this state, and the transferor business retains a controlling interest in the successor  
5 business. In this event, the successor business is allowed to claim the rebate amount of credit  
6 still available with respect to the machinery and equipment transferred, and the transferor  
7 business may not be required to redetermine the amount of rebate allowed in earlier years.

8        (b) Transfer or sale to successor. – Machinery and equipment is not treated as disposed  
9 of under §11-13EE-12 of this article by reason of any transfer or sale to a successor business  
10 which continues to operate machinery and equipment at the mine in this state at which the  
11 machinery and equipment was first placed in service or use. Upon transfer or sale, the successor  
12 shall acquire the amount of rebate, if any, that remains available under this article, and the  
13 transferor business is not required to redetermine the amount of rebate allowed in earlier years.

**§11-13EE-12. Recapture of rebate; recapture tax imposed.**

1        (a) When recapture tax applies. —

2        (1) Any person who places machinery and equipment in service or use for purposes of  
3 this credit and who fails to use the machinery and equipment for at least 5 years in the production  
4 of coal in this state shall pay the recapture tax imposed by subsection (b) of this section.

5        (2) This section does not apply when §11-13EE-11 of this article applies. However, the  
6 successor, or the successors, and the person, or persons, who previously claimed credit under  
7 this article with respect to the machinery and equipment, are jointly and severally liable for  
8 payment of any recapture tax subsequently imposed under this section with respect to the  
9 machinery and equipment used to qualify for rebate under this article.

10        (b) Recapture tax imposed. — The recapture tax imposed by this subsection is the amount  
11 determined as follows. If the taxpayer prematurely removes machinery and equipment placed in

12 service (when considered as a class) from economic service in the taxpayer's coal production  
13 activity in this state, the taxpayer shall recapture the amount of rebate claimed under this article  
14 for the taxable year, and all preceding taxable years, attributable to the machinery and equipment  
15 which has been prematurely removed from service. The amount of tax due under this subsection  
16 is an amount equal to the amount of rebate that is recaptured under this subsection.

17 (d) *Payment of recapture tax.* — The amount of tax recaptured under this section is due  
18 and payable on the day the person's annual return is due for the taxable year, in which this section  
19 applies, under §11-13A-1 *et seq.* of this code. When the employer is a partnership, limited liability  
20 company or S corporation for federal income tax purposes, the recapture tax shall be paid by  
21 those persons who are partners in the partnership, members in the company, or shareholders in  
22 the S corporation, in the taxable year in which recapture tax is imposed under this section.

**§11-13EE-13. Interpretation and construction.**

1 (a) No inference, implication or presumption of legislative construction or intent may be  
2 drawn or made by reason of the location or grouping of any particular section, provision or portion  
3 of this article; and no legal effect may be given to any descriptive matter or heading relating to  
4 any section, subsection or paragraph of this article.

5 (b) The provisions of this article shall be reasonably construed in order to effectuate the  
6 legislative intent recited in §11-13EE-2 of this article.

**§11-13EE-14. Rebate report.**

1 (a) The Tax Commissioner shall provide to the Joint Committee on Government and  
2 Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the  
3 amount of rebate claimed pursuant to this article. The report is to include the amount of rebate  
4 claimed against the severance tax imposed pursuant to §11-13A-3 of this code.

5 (b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner  
6 may require to prepare the report: *Provided*, That the information provided is subject to the  
7 confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

8           (c) The Tax Commissioner shall also identify any issues the Tax Commissioner has in the  
9 administration and enforcement of this rebate and make suggestions the Commissioner may have  
10 for improving the credit or the administration of the rebate.

**§11-13EE-15. Rules.**

1           The Tax Commissioner may promulgate such interpretive, legislative and procedural rules  
2 as the Commissioner deems to be useful or necessary to carry out the purpose of this article and  
3 to implement the intent of the Legislature. The tax commissioner may promulgate emergency  
4 rules if they are filed in the West Virginia Register before January 1, 2020. All rules shall be  
5 promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

**§11-13EE-16. Severability.**

1           (a) If any provision of this article or the application thereof is for any reason adjudged by  
2 any court of competent jurisdiction to be invalid, the judgment may not affect, impair or invalidate  
3 the remainder of the article, but shall be confined in its operation to the provision thereof directly  
4 involved in the controversy in which the judgment shall have been rendered, and the applicability  
5 of the provision to other persons or circumstances may not be affected thereby.

6           (b) If any provision of this article or the application thereof is made invalid or inapplicable  
7 by reason of the repeal or any other invalidation of any statute therein addressed or referred to,  
8 such invalidation or inapplicability may not affect, impair or invalidate the remainder of the article,  
9 but shall be confined in its operation to the provision thereof directly involved with, pertaining to,  
10 addressing or referring to the statute, and the application of the provision with regard to other  
11 statutes or in other instances not affected by any such repealed or invalid statute may not be  
12 abrogated or diminished in any way.

**§11-13EE-17. Effective date.**

1           The rebate allowed by this article is allowed for capital investment in new machinery and  
2 equipment placed in service or use in this state on or after the effective date of this article.

NOTE: The purpose of this bill is to establish the North Central Appalachian Coal Tax Rebate, which would be allowed for capital investment in new machinery and equipment directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article. The rebate amount would be 35% of the cost of the new machinery and equipment. The rebate amount is limited to 80% of the State portion of the severance taxes attributable to the additional coal produced as a result of the new machinery and equipment. Rules are provided to protect the existing severance tax base attributable to the production of coal.

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