

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 567

FISCAL
NOTE

BY SENATOR MAYNARD

[Introduced February 02, 2022; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-4-9 of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding thereto a new article, designated §11-13LL-1; and to amend and
3 reenact §22-3-32 of said code, all relating to exempting unmined rare earth metals and
4 rare earth elements from taxation in West Virginia; and defining terms of unmined rare
5 earth metals and unmined rare earth elements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-9. Assessment of different estates; undivided interests.

1 Whenever in chapter 11 or chapter 37, the words land or lands or tract or tracts of lands,
2 or lot or lots, or real estate, or part or parcel of a tract or lot, or estate or estates in land or aliquot
3 part of land, are used, they shall be read to include an undivided interest in land and an undivided
4 interest in any estate in land, and such interests may be by the assessor charged to such owner
5 on the land books separately to each owner according to his interest therein and shall be subject
6 to all the provisions of chapters 11 and 37 in relation to assessments, advertisements,
7 delinquencies, sales, forfeitures, redemptions and tax deeds as now apply to entire tracts, so far
8 as the state is concerned. Each such undivided interest so separately assessed shall be
9 considered as if such undivided interest were a separate tract. And any such assessment of an
10 undivided interest heretofore made upon which the taxes shall have been duly paid, and any
11 return of delinquency or sale for taxes based on such an assessment, shall, so far as the state is
12 concerned, be treated and held as valid and sufficient; and in such case any and all title which
13 has become vested in the state because of any forfeiture or sale of any such interest when so
14 assessed shall be vested in the party who would have had the title and been entitled to said
15 interest if this section had been valid and in force when such assessment was made, but such
16 validation shall not extend to the deprivation of title of such a third party as shall have meanwhile

17 acquired valid title thereto by virtue of other provisions of law. Upon proper showing to the
18 assessor, such an undivided interest shall be entered on the landbooks at the instance of the
19 owner or the state and be back taxed as if it were a separate tract; but any person whose land or
20 undivided interest therein is delinquent or as to which there is a purported assessment on which
21 the taxes are unpaid for any of the years 1926 to 1934, inclusive, shall be estopped from pleading
22 at law or in equity any defect in the assessment, advertisement, delinquency, sale, forfeiture,
23 redemption or tax deed so long as the taxes or any part of same on such land or undivided interest
24 therein are unpaid. When any person becomes the owner of the surface, and another or others
25 become the owner of the coal, oil, gas, ore, limestone, fireclay, or other minerals or mineral
26 substances in and under the same, or of the timber thereon, the assessor shall assess such
27 respective estates, or any undivided interest therein, to the respective owners thereof, or to
28 groups of same requesting such group assessment, at their true and actual value, according to
29 the rule prescribed in this chapter. Unmined rare earth elements or unmined rare earth metals,
30 as defined in §11-13LL-1, are exempt from assessment and/or taxation. When any person or
31 persons are, or become, the owner or owners of any undivided interest or interests in land, or in
32 the surface, coal, oil, gas, ore, limestone, fireclay, timber or other estate or estates therein, the
33 owner or owners of such undivided interest or interests shall have their land, or estate or interest
34 or undivided interest in such land, or in such estate in land, entered on the landbooks of the county
35 in which it or a part of it is situated, and cause himself to be charged with taxes legally levied on
36 such interest or undivided interest, but may on request of such owner to the assessor, and without
37 consent or acquiescence of the other joint owner or owners of the other undivided interest or
38 interests have such undivided interest or interests assessed to him or them separately and
39 independently of the other undivided interest or interests therein; and all such assessments of
40 undivided interests heretofore entered on the assessment books are hereby validated insofar as
41 the same are now in, or liable to vest in the state. The words "owner or owners" as used in this
42 section shall include any claimant or claimants who now appear as such on the assessment books

43 or are entitled to have the land or interest in land or interest in an estate in land claimed by him
44 or them to be entered and assessed for taxation. All acts and parts of acts relating to the taxation,
45 delinquency, sale, procuring of tax deeds by individual purchasers, advertisement, forfeiture and
46 redemption of lands or real estate shall also apply with the same force to said estates in land, and
47 any cotenant, coparcener or joint tenant, in the absence of satisfactory proof of a fiduciary
48 relationship, shall be entitled to acquire by tax purchase for his own account the interest of any,
49 or all of his co-owners in any tract, lot, estate or parcel of land, without being required to hold the
50 same under any constructive trust; and the burden of proof shall rest on any person alleging such
51 a constructive trust, and such a constructive trust shall prima facie be nonexistent.

52 In any tax sale by a sheriff, school commissioner or commissioner of forfeited lands, only
53 the tract, lot, estate, interest or undivided interest proceeded against in that particular instance
54 shall pass to the purchaser, so far as the state is concerned, so that any other estate, interest or
55 undivided interest in the same tract not embraced in such sale shall not be affected by such sale,
56 nor shall the title, or rights of the owners or claimants of such other estate, interest, or undivided
57 interest in land be affected thereby.

58 When for any year or years after 1925, the undivided interest of any person shall not have
59 been entered and taxed on the landbooks, or where such interest may have been assessed, and
60 taxes thereon for any one or more, or all, of said years shall not have been paid to the state, such
61 person, or his successor in title, or a co-owner of same, shall be entitled to redeem his and/or any
62 or all of his co-owners' interest from the state, so far as the state has title or claim thereto by
63 reason of such nonentry or nonpayment of taxes, and the same has not been vested in third
64 persons under the laws of West Virginia, upon application to the Auditor in writing, and payment
65 of such amount as the Auditor shall find to be due the state on account of taxes that should have
66 been paid; and in such cases the Auditor shall issue certificates of redemption in manner and
67 form provided by law for redemption of land, and such redemption shall thereafter estop the state
68 from asserting any claim to such interest on account of such nonentry or nonpayment of taxes:

69 ~~Provided, however,~~ That redemption under this section shall be made prior to the time the state
 70 shall sell the same, in any proceeding for the purpose, or before January 1, 1939, whichever first
 71 occurs; but the failure of any person, owning, claiming, or having the right to redeem any other
 72 undivided interest in the land, or estate in land, to redeem as aforesaid, shall in no wise affect,
 73 impair the right of, or preclude any co-owner from redeeming his interest under this section. The
 74 owner may be permitted by the Auditor, upon application in writing, to redeem said land or estate
 75 in land or his undivided interest therein, to the extent that the title thereto has not passed to
 76 strangers, by payment of such an amount as the taxes on same respectively would have been
 77 with interest and penalties. If one co-owner redeems the undivided interest of one or more of his
 78 co-owners by paying the taxes on same as above, such co-owner so redeeming shall be
 79 ,subrogated to the lien of the state for so much of such taxes as should have been paid by such
 80 other co-owner against the interest of such other co-owner in such property. He shall lose his right
 81 to such lien, however, unless within one year after such redemption by him, he shall file with the
 82 clerk of the county court his claim in writing against such other co-owner, accompanied by the tax
 83 receipt or a duplicate thereof. The clerk shall docket such claim on the judgment lien docket in his
 84 office and properly index the same. Such lien may be enforced as other liens are enforced.

85 Nothing in this section shall affect the right of any party to any action or suit heretofore
 86 finally adjudicated, or that may be now pending or that may be instituted on or before July 1, 1935.

ARTICLE 13LL. UNMINED RARE EARTH ELEMENTS EXEMPT FROM TAXATION.

§11-13LL-1. Unmined rare earth elements exempt.

1 All unmined rare earth metals and unmined rare earth elements are exempt from taxation
 2 in West Virginia. Rare-earth elements (REE), also called rare-earth metals or rare-earth oxides,
 3 are defined as a set of 17 soft heavy metals, including, but not limited to yttrium, lanthanum,
 4 cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium,
 5 dysprosium, holmium, erbium, thulium, ytterbium, and lutetium. Scandium is also considered a
 6 rare-earth element for the purpose of this article.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-32. Special tax on coal production; mines and minerals operations fund.

1 (a) Imposition of tax. – Upon every person in this state engaging in the privilege of
2 severing, extracting, reducing to possession or producing coal for sale, profit or commercial use,
3 there is hereby imposed an annual tax equal to two cents per ton of coal produced by such person
4 for sale, profit or commercial use during such person's taxable year. The special tax imposed by
5 this section is in addition to all other taxes levied by law. In no event may a ton of coal be taxed
6 more than once under the provisions of this section.

7 (b) Payment and collection of tax. – The tax imposed by this section shall be collected by
8 the Tax Commissioner in the same manner, at the same time, and upon the same tonnage as the
9 minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected:
10 *Provided*, That under no circumstance shall this tax be construed to be an increase in either the
11 minimum severance tax imposed by said article twelve-b or the severance tax imposed by article
12 thirteen of said chapter eleven. Every person liable for payment of this special tax shall pay the
13 amount due without notice or demand for payment. The Tax Commissioner shall provide to the
14 director a quarterly listing of all persons known to be delinquent in payment of the special tax. The
15 director may take such delinquencies into account in making determinations on the issuance,
16 renewal or revision of any permit.

17 (c) Mining and Reclamation Operations Fund. – The special fund previously created in the
18 State Treasury known as the Mines and Minerals Operations Fund is renamed the Mining and
19 Reclamation Operations Fund. The Tax Commissioner shall, at least quarterly, deposit into the
20 fund the net amount of tax collected under this section, including any additions to tax, penalties
21 and interest collected with respect thereto. The Treasurer shall deposit all moneys deposited in
22 or credited to this fund in an interest-bearing account, with the amount of interest earned being

23 credited to this fund as it is earned. The moneys in this special fund shall be expended solely for
24 the purposes of carrying out those statutory duties relating to the enforcement of environmental
25 regulatory programs for the coal industry as imposed by this chapter and the federal Surface
26 Mining Control and Reclamation Act of 1977 and any amendments thereto. Expenditures from
27 the fund are not authorized from collections but are to be made only in accordance with
28 appropriations by the Legislature and in accordance with the provisions of article three, chapter
29 twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of
30 this code.

31 (d) General procedure and administration. – Each and every provision of the “West
32 Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of the code
33 applies to the special tax imposed by this section with like effect as if such act were applicable
34 only to the special tax imposed by this section and were set forth in extenso in this article,
35 notwithstanding the provisions of section three of said article ten.

36 (e) The provisions of this article are not applicable to unmined rare earth metals and
37 unmined rare earth elements, as defined in §11-13LL-1, and such metals and elements are
38 exempt from taxation.

39 ~~(e)~~ (f) Crimes and penalties. – Each and every provision of the West Virginia Tax Crimes
40 and Penalties Act set forth in article nine of said chapter eleven applies to the special tax imposed
41 by this section with like effect as if such act were applicable only to the special tax imposed by
42 this section and set forth in extenso in this article, notwithstanding the provisions of section two
43 of said article nine.

44 ~~(f)~~ (g) Effective date. -- The special tax imposed by this section applies to all coal produced
45 in this state after September 30, 1991.

NOTE: The purpose of this bill is to exempt rare earth metals and rare earth elements from
taxation in West Virginia.

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