

1 **H. B. 2258**

2  
3 (By Delegate T. Campbell)

4 [Introduced January 12, 2011; referred to the  
5 Committee on Finance.]  
6

7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend and reenact §11-13A-2 and §11-13A-3 of the Code of  
11 West Virginia, 1931, as amended; and to amend said code by  
12 adding thereto a new section, designated §11-27-38, all  
13 relating to eliminating the severance tax and the health care  
14 provider tax on behavior health providers.

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

16 That §11-13A-2 and §11-13A-3 of the Code of West Virginia,  
17 1931, as amended, be amended and reenacted; and to amend said code  
18 by adding thereto a new section, designated §11-27-38, all to read  
19 as follows:

20 **ARTICLE 13A. SEVERANCE TAXES.**

21 **§11-13A-2. Definitions.**

22 (a) *General rule.* -- When used in this article, or in the  
23 administration of this article, the terms defined in subsection  
24 (b), (c) or (d) of this section shall have the meanings ascribed to

1 them by this section, unless a different meaning is clearly  
2 required by the context in which the term is used or by specific  
3 definition.

4 (b) *General terms defined.* -- Definitions in this subsection  
5 apply to all persons subject to the taxes imposed by this article.

6 (1) "Business" includes all activities engaged in, or caused  
7 to be engaged in, with the object of gain or economic benefit,  
8 direct or indirect, and whether engaged in for profit, or not for  
9 profit, or by a governmental entity: *Provided,* That "business"  
10 does not include services rendered by an employee within the scope  
11 of his or her contract of employment. Employee services, services  
12 by a partner on behalf of his or her partnership and services by a  
13 member of any other business entity on behalf of that entity are  
14 the business of the employer or partnership, or other business  
15 entity as the case may be, and reportable as such for purposes of  
16 the taxes imposed by this article.

17 (2) "Corporation" includes associations, joint-stock companies  
18 and insurance companies. It also includes governmental entities  
19 when and to the extent such governmental entities engage in  
20 activities taxable under this article.

21 (3) "Delegate" in the phrase "or his or her delegate," when  
22 used in reference to the Tax Commissioner, means any officer or  
23 employee of the state Tax Division of the Department of ~~Tax~~ and  
24 Revenue duly authorized by the Tax Commissioner directly, or

1 indirectly by one or more redelegations of authority, to perform  
2 the function mentioned or described in this article or regulations  
3 promulgated thereunder.

4 (4) "Fiduciary" means and includes a guardian, trustee,  
5 executor, administrator, receiver, conservator or any person acting  
6 in any fiduciary capacity for any person.

7 (5) "Gross proceeds" means the value, whether in money or  
8 other property, actually proceeding from the sale or lease of  
9 tangible personal property, or from the rendering of services,  
10 without any deduction for the cost of property sold or leased or  
11 expenses of any kind.

12 (6) "Includes" and "including", when used in a definition  
13 contained in this article, shall not be deemed to exclude other  
14 things otherwise within the meaning of the term being defined.

15 (7) "Partner" includes a member of a syndicate, group, pool,  
16 joint venture or other organization which is a "partnership" as  
17 defined in this section.

18 (8) "Partnership" includes a syndicate, group, pool, joint  
19 venture or other unincorporated organization through or by means of  
20 which any privilege taxable under this article is exercised and  
21 which is not within the meaning of this article a trust or estate  
22 or corporation. "Partnership" includes a limited liability company  
23 which is treated as a partnership for federal income tax purposes.

24 (9) "Person" or "company" are herein used interchangeably and

1 include any individual, firm, partnership, mining partnership,  
2 joint venture, association, corporation, trust or other entity, or  
3 any other group or combination acting as a unit, and the plural as  
4 well as the singular number, unless the intention to give a more  
5 limited meaning is declared by the context.

6 (10) "Sale" includes any transfer of the ownership or title to  
7 property, whether for money or in exchange for other property or  
8 services, or any combination thereof. "Sale" includes a lease of  
9 property, whether the transaction be characterized as a rental,  
10 lease, hire, bailment or license to use. "Sale" also includes  
11 rendering services for a consideration, whether direct or indirect.

12 (11) "Service" includes all activities engaged in by a person  
13 for a consideration which involve the rendering of a service as  
14 distinguished from the sale of tangible personal property:

15 *Provided*, That "service" does not include: (a) Services rendered  
16 by an employee to his or her employer under a contract of  
17 employment; (b) contracting; or (c) severing or processing natural  
18 resources.

19 (12) "Tax" means any tax imposed by this article and, for  
20 purposes of administration and collection of such tax, it includes  
21 any interest, additions to tax or penalties imposed with respect  
22 thereto under article ten of this chapter.

23 (13) "Tax Commissioner" or "Commissioner" means the Tax  
24 Commissioner of the State of West Virginia or his or her delegate.

1           (14) "Taxable year" means the calendar year, or the fiscal  
2 year ending during such calendar year, upon the basis of which a  
3 tax liability is computed under this article. In the case of a  
4 return made under this article, or regulations of the Tax  
5 Commissioner, for a fractional part of a year, the term "taxable  
6 year" means the period for which such return is made.

7           (15) "Taxpayer" means any person subject to any tax imposed by  
8 this article.

9           (16) "This code" means the Code of West Virginia, 1931, as  
10 amended.

11          (17) "This state" means the State of West Virginia.

12          (18) "Withholding agent" means any person required by law to  
13 deduct and withhold any tax imposed by this article or under  
14 regulations promulgated by the Tax Commissioner.

15          (c) *Specific definitions for producers of natural resources.*

16 --

17          (1) "Barrel of oil" means 42 U.S. gallons of 231 cubic inches  
18 of liquid at a standard temperature of 60 degrees Fahrenheit.

19          (2) "Coal" means and includes any material composed  
20 predominantly of hydrocarbons in a solid state.

21          (3) "Cubic foot of gas" means the volume of gas contained in  
22 one cubic foot at a standard pressure base of 14.73 pounds per  
23 square inch (absolute) and a standard temperature of 60 degrees  
24 Fahrenheit.

1           (4) "Economic interest" for the purpose of this article is  
2 synonymous with the economic interest ownership required by Section  
3 611 of the Internal Revenue Code in effect on December 31, 1985,  
4 entitling the taxpayer to a depletion deduction for income tax  
5 purposes: *Provided*, That a person who only receives an arm's  
6 length royalty shall not be considered as having an economic  
7 interest.

8           (5) "Extraction of ores or minerals from the ground" includes  
9 extraction by mine owners or operators of ores or minerals from the  
10 waste or residue of prior mining only when such extraction is sold.

11           (6) "Gross value" in the case of natural resources means the  
12 market value of the natural resource product, in the immediate  
13 vicinity where severed, determined after application of post  
14 production processing generally applied by the industry to obtain  
15 commercially marketable or usable natural resource products. For  
16 all natural resources, "gross value" is to be reported as follows:

17           (a) For natural resources severed or processed (or both  
18 severed and processed) and sold during a reporting period, gross  
19 value is the gross proceeds received or receivable by the taxpayer.

20           (b) In a transaction involving related parties, gross value  
21 shall not be less than the fair market value for natural resources  
22 of similar grade and quality.

23           (c) In the absence of a sale, gross value shall be the fair  
24 market value for natural resources of similar grade and quality.

1           (d) If severed natural resources are purchased for the purpose  
2 of processing and resale, the gross value is the amount received or  
3 receivable during the reporting period reduced by the amount paid  
4 or payable to the taxpayer actually severing the natural resource.  
5 If natural resources are severed outside the State of West Virginia  
6 and brought into the State of West Virginia by the taxpayer for the  
7 purpose of processing and sale, the gross value is the amount  
8 received or receivable during the reporting period reduced by the  
9 fair market value of natural resources of similar grade and quality  
10 and in the same condition immediately preceding the processing of  
11 the natural resources in this state.

12           (e) If severed natural resources are purchased for the purpose  
13 of processing and consumption, the gross value is the fair market  
14 value of processed natural resources of similar grade and quality  
15 reduced by the amount paid or payable to the taxpayer actually  
16 severing the natural resource. If severed natural resources are  
17 severed outside the State of West Virginia and brought into the  
18 State of West Virginia by the taxpayer for the purpose of  
19 processing and consumption, the gross value is the fair market  
20 value of processed natural resources of similar grade and quality  
21 reduced by the fair market value of natural resources of similar  
22 grade and quality and in the same condition immediately preceding  
23 the processing of the natural resources.

24           (f) In all instances, the gross value shall be reduced by the

1 amount of any federal energy tax imposed upon the taxpayer after  
2 June 1, 1993, but shall not be reduced by any state or federal  
3 taxes, royalties, sales commissions or any other expense.

4 (g) For natural gas, gross value is the value of the natural  
5 gas at the wellhead immediately preceding transportation and  
6 transmission.

7 (h) For limestone or sandstone quarried or mined, gross value  
8 is the value of such stone immediately upon severance from the  
9 earth.

10 (7) "Mining" includes not merely the extraction of ores or  
11 minerals from the ground, but also those treatment processes  
12 necessary or incidental thereto.

13 (8) "Natural resources" means all forms of minerals including,  
14 but not limited to, rock, stone, limestone, coal, shale, gravel,  
15 sand, clay, natural gas, oil and natural gas liquids which are  
16 contained in or on the soils or waters of this state and includes  
17 standing timber.

18 (9) "Processed" or "processing" as applied to:

19 (A) Oil and natural gas shall not include any conversion or  
20 refining process; and

21 (B) Limestone or sandstone quarried or mined shall not include  
22 any treatment process or transportation after the limestone or  
23 sandstone is severed from the earth.

24 (10) "Related parties" means two or more persons,



1 organizations or businesses owned or controlled directly or  
2 indirectly by the same interests. Control exists if a contract or  
3 lease, either written or oral, is entered into whereby one party  
4 mines or processes natural resources owned or held by another party  
5 and the owner or lessor participates in the severing, processing or  
6 marketing of the natural resources or receives any value other than  
7 an arm's length passive royalty interest. In the case of related  
8 parties, the Tax Commissioner may apportion or allocate the  
9 receipts between or among such persons, organizations or businesses  
10 if he or she determines that such apportionment or allocation is  
11 necessary to more clearly reflect gross value.

12 (11) "Severing" or "severed" means the physical removal of the  
13 natural resources from the earth or waters of this state by any  
14 means: *Provided*, That "severing" or "severed" shall not include  
15 the removal of natural gas from underground storage facilities into  
16 which the natural gas has been mechanically injected following its  
17 initial removal from earth: *Provided, however*, That "severing" or  
18 "severed" oil and natural gas shall not include any separation  
19 process of oil or natural gas commonly employed to obtain  
20 marketable natural resource products.

21 (12) "Stock" includes shares in an association, joint-stock  
22 company or corporation.

23 (13) "Taxpayer" means and includes any individual,  
24 partnership, joint venture, association, corporation, receiver,

1 trustee, guardian, executor, administrator, fiduciary or  
2 representative of any kind engaged in the business of severing or  
3 processing (or both severing and processing) natural resources in  
4 this state for sale or use. In instances where contracts (either  
5 oral or written) are entered into whereby persons, organizations or  
6 businesses are engaged in the business of severing or processing  
7 (or both severing and processing) a natural resource but do not  
8 obtain title to or do not have an economic interest therein, the  
9 party who owns the natural resource immediately after its severance  
10 or has an economic interest therein is the taxpayer.

11 ~~(d) Specific definitions for persons providing health care~~  
12 ~~items or services.~~

13 ~~"Behavioral health services" means services provided for the~~  
14 ~~care and treatment of persons with mental illness, mental~~  
15 ~~retardation, developmental disabilities or alcohol or drug abuse~~  
16 ~~problems in an inpatient, residential or outpatient setting,~~  
17 ~~including, but not limited to, habilitative or rehabilitative~~  
18 ~~interventions or services and cooking, cleaning, laundry and~~  
19 ~~personal hygiene services provided for such care: Provided, That~~  
20 ~~gross receipts derived from providing behavioral health services~~  
21 ~~that are included in the provider's measure of tax under article~~  
22 ~~twenty-seven of this chapter shall not be include in that~~  
23 ~~provider's measure of tax under this article. The amendment to~~  
24 ~~this definition in the year two thousand four is intended to~~

1 ~~clarify the intent of the Legislature as to the activities that~~  
 2 ~~qualify as behavioral health services, and this clarification shall~~  
 3 ~~be applied retrospectively to the effective date of the amendment~~  
 4 ~~to this section in which the definition of "behavioral health~~  
 5 ~~services" was originally provided as enacted during the first~~  
 6 ~~extraordinary session of the Legislature in the year one thousand~~  
 7 ~~nine hundred ninety-three.~~

8 **§11-13A-3. Imposition of tax or privilege of severing coal,**  
 9 **limestone or sandstone, effective dates therefor;**  
 10 **reduction of severance rate for coal mined by**  
 11 **underground methods based on seam thickness.**

12 (a) *Imposition of tax.* -- Upon every person exercising the  
 13 privilege of engaging or continuing within this state in the  
 14 business of severing, extracting, reducing to possession and  
 15 producing for sale, profit or commercial use coal, limestone or  
 16 sandstone, ~~or in the business of furnishing certain health care~~  
 17 ~~services,~~ there is hereby levied and shall be collected from every  
 18 person exercising such privilege an annual privilege tax.

19 (b) *Rate and measure of tax.* -- The tax imposed in subsection  
 20 (a) of this section shall be five percent of the gross value of the  
 21 natural resource produced, ~~or the health care service provided,~~ as  
 22 shown by the gross income derived from the sale or furnishing  
 23 thereof by the producer, ~~or the provider of the health care~~  
 24 ~~service,~~ except as otherwise provided in this article. In the case

1 of coal, this five percent rate of tax includes the 35/100 of one  
2 percent additional severance tax on coal imposed by the state for  
3 the benefit of counties and municipalities as provided in section  
4 six of this article.

5 ~~(c) "Certain health care services" defined. -- For purposes of~~  
6 ~~this section, the term "certain health care services" means, and is~~  
7 ~~limited to, behavioral health services.~~

8 ~~(d) (c) Tax in addition to other taxes. -- The tax imposed by~~  
9 ~~this section shall apply to all persons severing or processing (or~~  
10 ~~both severing and processing) in this state natural resources~~  
11 ~~enumerated in subsection (a) of this section and to all persons~~  
12 ~~providing certain health care services in this state as enumerated~~  
13 ~~in subsection (c) of this section and shall be in addition to all~~  
14 ~~other taxes imposed by law.~~

15 ~~(e) (d) Effective date. -- This section, as amended in the~~  
16 ~~year 1993, shall apply to gross proceeds derived after May 31 of~~  
17 ~~such that year. The language of this section, as in effect on~~  
18 ~~January 1 of such that year, shall apply to gross proceeds derived~~  
19 ~~prior to June 1 of such that year and, with respect to such gross~~  
20 ~~proceeds, shall be fully and completely preserved.~~

21 ~~(f) (e) Reduction of severance tax rate. -- For tax years~~  
22 ~~beginning after the effective date of this subsection, any person~~  
23 ~~exercising the privilege of engaging within this state in the~~  
24 ~~business of severing coal for the purposes provided in subsection~~  
25 ~~(a) of this section shall be allowed a reduced rate of tax on coal~~

1 mined by underground methods in accordance with the following:

2       ~~(i)~~ (1) For coal mined by underground methods from seams with  
3 an average thickness of thirty-seven inches to forty-five inches,  
4 the tax imposed in subsection (a) of this section shall be two  
5 percent of the gross value of the coal produced. For coal mined by  
6 underground methods from seams with an average thickness of less  
7 than thirty-seven inches, the tax imposed in subsection (a) of this  
8 section shall be one percent of the gross value of the coal  
9 produced. Gross value is determined from the sale of the mined  
10 coal by the producer. This rate of tax includes the thirty-five  
11 one hundredths of one percent additional severance tax imposed by  
12 the state for the benefit of counties and municipalities as  
13 provided in section six of this article.

14       ~~(ii)~~ (2) This reduced rate of tax applies to any new underground  
15 mine producing coal after the effective date of this subsection,  
16 from seams of less than forty-five inches in average thickness or  
17 any existing mine that has not produced coal from seams forty-five  
18 inches or less in thickness in the one hundred eighty days  
19 immediately preceding the effective date of this subsection.

20       ~~(iii)~~ (3) The seam thickness shall be based on the weighted  
21 average isopach mapping of actual coal thickness by mine as  
22 certified by a professional engineer.

23 **ARTICLE 27. HEALTH CARE PROVIDER TAXES.**

24 **§11-27-38. Exemption to apply to behavioral health services.**

25       The provisions of this article do not apply to behavioral

1 health services. For purposes of this section, "behavioral health  
2 services" means services provided for the care and treatment of  
3 persons with mental illness, mental retardation, developmental  
4 disabilities or alcohol or drug abuse problems in an inpatient,  
5 residential or outpatient setting, including, but not limited to,  
6 personal hygiene services provided for such care.

NOTE: The purpose of this bill is to eliminate the severance tax and health care provider tax on behavior health providers.

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