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H. B. 2166

(By Delegates Marcum, H. White, R. Phillips, Campbell, Fluharty,
Faircloth, Lynch, Arvon, Sponaugle J. Nelson and R. Smith)

[Introduced January 21, 2015; referred to the
Committee on Energy then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4 and §11-13DD-5, all relating to providing a tax credit to coal producers who sell coal to taxpayers who increase their consumption of West Virginia coal in this state for the purpose of increasing coal production and coal related employment in West Virginia.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4 and §11-13DD-5, all to read as follows:

ARTICLE 13DD. WEST VIRGINIA COAL EMPLOYMENT ENHANCEMENT ACT.

§11-13DD-1. Legislative findings.

The Legislature finds that this state and this region are blessed with large quantities of mineable coal that is suitable for use as fuel to generate electricity and for other industrial uses; that other coal producing states in the region offer incentives to businesses to consume coal produced in

1 those states; that there are sound economic reasons for locating electric power generating facilities
2 and other industrial facilities that consume coal in the coal fields; and that many West Virginia
3 miners work in mines located in this state and that the state will benefit by encouraging additional
4 production of West Virginia coal. Therefore, encouraging greater use of coal produced by West
5 Virginia miners and consumed at West Virginia power plants and industrial facilities, is in the public
6 interest and promotes the general welfare of the people of this state, in that it will increase
7 employment opportunities for West Virginia residents.

8 **§11-13DD-2. Definitions.**

9 (1) *Base year.* – The term “base year” means the calendar year ending on December 31,
10 2014.

11 (2) *Eligible coal.* – The term “eligible coal” means coal produced from a mine located in this
12 state and upon which the severance tax imposed by subsection (b), section three, article thirteen-a
13 of this chapter was paid.

14 (3) *Eligible taxpayer.* – The term “eligible taxpayer” means any person subject to the
15 severance tax imposed by subsection (b), section three, article thirteen-a of this chapter that during
16 the tax year produces and sells eligible coal that is consumed at a power plant or industrial facility
17 located in this state and certified as qualified coal by the purchaser.

18 (4) *Qualified coal.* – The term “qualified coal” means the number of tons of eligible coal
19 consumed at a power plant or industrial facility located in this state during the tax year, in excess of
20 the number of tons of eligible coal consumed at that power plant or industrial facility during the base
21 year.

22 (5) Other terms used in this article have the meanings ascribed to them in section four, article

1 ten of this chapter or section one, article thirteen of this chapter, unless the context in which it is used
2 in this article clearly requires another meaning.

3 **§11-13DD-3. Credit allowed; amount of credit; effective date.**

4 (a) An eligible taxpayer is allowed a credit, as determined under subsection (b) of this section
5 against its liability for taxes imposed by this state as provided in subsection (c) of this section.

6 (b) Amount of credit. - The credit allowed by this subsection is an amount equal to \$3 per ton
7 multiplied by the number of tons of qualified coal produced by the eligible taxpayer during the tax
8 year: *Provided*, That if the amount of severance tax imposed by section three-b, article thirteen-a
9 of this chapter, and paid by the producer of the qualified coal was less than \$3 per ton, then the
10 amount of credit allowed to the eligible taxpayer by this section is an amount equal to the amount
11 of severance tax paid per ton on the qualified coal multiplied by the number of tons of qualified coal
12 consumed by the eligible taxpayer during the tax year.

13 (c) Application of the current year credit allowance. - An eligible taxpayer that produces
14 qualified coal may apply the credit allowed under this article solely to reduce its liability for
15 severance tax imposed by subsection (b), section three, article thirteen-a of this chapter.

16 (d) Unused credit. - If any credit remains after application of subsection (c) of this section,
17 the remaining amount of the credit is carried forward to each ensuing tax year until used as provided
18 in subsection (c) of this section or until the expiration of the third taxable year subsequent to the tax
19 year. If any unused credit remains after the third subsequent year, the amount is forfeited.

20 (e) Effective date. - The credit allowed by this section applies to tax liabilities for calendar
21 years beginning after December 31, 2014.

22 **§11-13DD-4. Certification by purchasers of qualified coal.**

1 (a) A person purchasing eligible coal for consumption at a power plant or industrial facility
2 located in this state during the tax year shall, if timely requested by the eligible taxpayer producing
3 and selling the coal, certify the number of tons of qualified coal that was purchased from the eligible
4 taxpayer during the tax year. The certification for the tax year shall be provided to the eligible
5 taxpayer no later than thirty days following the end of the calendar year.

6 (b) All certifications shall be provided to the eligible taxpayer in the form prescribed by the
7 Tax Commissioner and provide the information the commissioner considers necessary for
8 determining compliance with this article. An employee who signs the certification on behalf of a
9 proprietorship, corporation, partnership or a group or combination acting as a unit is presumed to
10 have authority to make and sign the certification on behalf of his or her employer.

11 **§11-13DD-5. Credit recapture; interest; penalties; additions to tax; statute of limitations.**

12 If it appears upon audit or otherwise that an eligible taxpayer has improperly claimed the
13 credit allowed by this article, the amount improperly claimed and which the eligible taxpayer was
14 not entitled to take shall be recaptured. Amended returns shall be filed for any tax year for which the
15 credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the
16 amended return or returns filed with the Tax Commissioner, along with interest, as provided in
17 section seventeen, article ten of this chapter, and a ten percent penalty, which may be waived by the
18 Tax Commissioner if the taxpayer shows that the overclaimed amount was due to reasonable cause
19 and not due to willful neglect, and other penalties and additions to tax that are applicable pursuant
20 to the provisions of article ten of this chapter. Notwithstanding the provisions of article ten of this
21 chapter, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner
22 is five years from the date of the filing of any tax return on which this credit was taken or five years

- 1 from the date of payment of any tax liability calculated pursuant to the assertion of this credit,
- 2 whichever is later.

NOTE: The purpose of this bill is to provide a tax credit to coal producers who sell coal to taxpayers who increase their consumption of West Virginia coal in this state for the purpose of increasing coal production and coal related employment in West Virginia.

This article is new; therefore, it has been completely underscored.