

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **Senate Bill 655**

**FISCAL  
NOTE**

BY SENATORS FERNS, CLINE, MULLINS AND LEONHARDT)

[ Introduced February 20, 2016;

Referred to the Committee on Finance.]

1 A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; to  
 2 amend and reenact §11-15-8 of said code; and to amend and reenact §11-21-12 of said  
 3 code, all relating generally to taxes; reducing the severance tax on coal to four percent;  
 4 eliminating the exception for professional services from the consumer use and sales tax;  
 5 and providing an adjustment decreasing federal adjusted gross income of up to \$20,000  
 6 in Social Security benefits.

*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; that §11-15-8 of said code be amended and reenacted; that §11-21-12 of said code  
 3 be amended and reenacted, all to read as follows:

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

**§11-13A-3. Imposition of tax or 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 privilege an annual privilege tax.

6 (b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be  
 7 ~~five percent~~ 4% of the gross value of the natural resource produced ~~or the health care service~~  
 8 ~~provided~~, as shown by the gross income derived from the sale or furnishing thereof by the  
 9 producer ~~or the provider of the health care service~~, except as otherwise provided in this article.

10 For health care services, the tax imposed in subsection (a) of this section shall be five percent of  
 11 the gross value of the health care service provided, as shown by the gross income derived from

12 the sale or furnishing thereof by the provider of the health care service. In the case of coal, this  
13 ~~five percent~~ 4% rate of tax includes the thirty-five one hundredths of one percent additional  
14 severance tax on coal imposed by the state for the benefit of counties and municipalities as  
15 provided in section six of this article.

16 (c) "*Certain health care services*" defined. -- For purposes of this section, the term "certain  
17 health care services" means, and is limited to, behavioral health services.

18 (d) *Tax in addition to other taxes.* -- The tax imposed by this section shall apply to all  
19 persons severing or processing (or both severing and processing) in this state natural resources  
20 enumerated in subsection (a) of this section and to all persons providing certain health care  
21 services in this state as enumerated in subsection (c) of this section and shall be in addition to all  
22 other taxes imposed by law.

23 (e) *Effective date.* -- This section, as amended in the year 1993, shall apply to gross  
24 proceeds derived after May31 of such year. The language of this section, as in effect on January  
25 1, of such year, shall apply to gross proceeds derived prior to June 1 of such year and, with  
26 respect to such gross proceeds, shall be fully and completely preserved.

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

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

38 benefit of counties and municipalities as provided in section six of this article.

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

43 (iii) The seam thickness shall be based on the weighted average isopach mapping of  
 44 actual coal thickness by mine as certified by a professional engineer.

## **ARTICLE 15. CONSUMER SALES AND SERVICE TAX.**

### **§11-15-8. Furnishing of services included; exceptions.**

1 The provisions of this article apply not only to selling tangible personal property and  
 2 custom software, but also to the furnishing of all services, except ~~professional and~~ personal  
 3 services, and except those services furnished by businesses subject to the control of the Public  
 4 Service Commission when the service or the manner in which it is delivered is subject to regulation  
 5 by the Public Service Commission.

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General.* -- The West Virginia adjusted gross income of a resident individual means his  
 2 or her federal adjusted gross income as defined in the laws of the United States for the taxable  
 3 year with the modifications specified in this section.

4 (b) *Modifications increasing federal adjusted gross income.* -- There shall be added to  
 5 federal adjusted gross income unless already included therein the following items:

6 (1) Interest income on obligations of any state other than this state or of a political  
 7 subdivision of any other state unless created by compact or agreement to which this state is a  
 8 party;

9 (2) Interest or dividend income on obligations or securities of any authority, commission

10 or instrumentality of the United States, which the laws of the United States exempt from federal  
11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal  
13 income tax purposes for the taxable year that is not allowed as a deduction under this article for  
14 the taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or  
16 securities the income from which is exempt from tax under this article, to the extent deductible in  
17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as  
19 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the  
20 federal taxable year;

21 (6) The amount of a lump sum distribution for which the taxpayer has elected under  
22 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for  
23 federal income tax purposes; and

24 (7) Amounts withdrawn from a medical savings account established by or for an individual  
25 under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article  
26 sixteen of said chapter that are used for a purpose other than payment of medical expenses, as  
27 defined in those sections.

28 (c) *Modifications reducing federal adjusted gross income.* -- There shall be subtracted from  
29 federal adjusted gross income to the extent included therein:

30 (1) Interest income on obligations of the United States and its possessions to the extent  
31 includable in gross income for federal income tax purposes;

32 (2) Interest or dividend income on obligations or securities of any authority, commission  
33 or instrumentality of the United States or of the State of West Virginia to the extent includable in  
34 gross income for federal income tax purposes but exempt from state income taxes under the laws  
35 of the United States or of the State of West Virginia, including federal interest or dividends paid

36 to shareholders of a regulated investment company, under Section 852 of the Internal Revenue  
37 Code for taxable years ending after June 30, 1987;

38 (3) Any amount included in federal adjusted gross income for federal income tax purposes  
39 for the taxable year that is not included in federal adjusted gross income under this article for the  
40 taxable year;

41 (4) The amount of any refund or credit for overpayment of income taxes imposed by this  
42 state, or any other taxing jurisdiction, to the extent properly included in gross income for federal  
43 income tax purposes;

44 (5) Annuities, retirement allowances, returns of contributions and any other benefit  
45 received under the West Virginia Public Employees Retirement System, the West Virginia State  
46 Teachers Retirement System and all forms of military retirement, including regular Armed Forces,  
47 Reserves and National Guard, including any survivorship annuities derived therefrom, to the  
48 extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding  
49 any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of  
50 benefits received under the West Virginia Public Employees Retirement System, the West Virginia  
51 State Teachers Retirement System and, including any survivorship annuities derived therefrom,  
52 to the extent includable in gross income for federal income tax purposes for taxable years  
53 beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal  
54 retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total  
55 modification under this paragraph shall not exceed \$2,000 per person receiving retirement  
56 benefits and this limitation shall apply to all returns or amended returns filed after December 31,  
57 1988;

58 (6) Retirement income received in the form of pensions and annuities after December 31,  
59 1979, under any West Virginia police, West Virginia Firemen=s Retirement System or the West  
60 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police  
61 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any

62 survivorship annuities derived from any of these programs, to the extent includable in gross  
63 income for federal income tax purposes;

64 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January  
65 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the  
66 Armed Forces of the United States of America with the product thereof multiplied by the first  
67 \$30,000 of military retirement income, including retirement income from the regular Armed  
68 Forces, Reserves and National Guard paid by the United States or by this state after December  
69 31, 2000, including any survivorship annuities, to the extent included in gross income for federal  
70 income tax purposes for the taxable year.

71 (B) For taxable years beginning after December 31, 2002, the first \$20,000 of military  
72 retirement income, including retirement income from the regular Armed Forces, Reserves and  
73 National Guard paid by the United States or by this state after December 31, 2002, including any  
74 survivorship annuities, to the extent included in gross income for federal income tax purposes for  
75 the taxable year.

76 (C) In the event that any of the provisions of this subdivision are found by a court of  
77 competent jurisdiction to violate either the Constitution of this state or of the United States, or is  
78 held to be extended to persons other than specified in this subdivision, this subdivision shall  
79 become null and void by operation of law.

80 (8) For taxable years beginning after December 31, 2016, the first \$20,000 of social  
81 security benefits received pursuant to Title 42, U.S.C., Chapter 7.

82 ~~(8)~~ (9) Federal adjusted gross income in the amount of \$8,000 received from any source  
83 after December 31, 1986, by any person who has attained the age of sixty-five on or before the  
84 last day of the taxable year, or by any person certified by proper authority as permanently and  
85 totally disabled, regardless of age, on or before the last day of the taxable year, to the extent  
86 includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person  
87 has a medical certification from a prior year and he or she is still permanently and totally disabled,

88 a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the  
89 federal disability income tax exclusion is acceptable: *Provided, however, That:*

90 (i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this  
91 subsection is \$8,000 per person or more, no deduction shall be allowed under this subdivision;  
92 and

93 (ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this  
94 subsection is less than \$8,000 per person, the total modification allowed under this subdivision  
95 for all gross income received by that person shall be limited to the difference between \$8,000 and  
96 the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

97 ~~(9)~~ (10) Federal adjusted gross income in the amount of \$8,000 received from any source  
98 after December 31, 1986, by the surviving spouse of any person who had attained the age of  
99 sixty-five or who had been certified as permanently and totally disabled, to the extent includable  
100 in federal adjusted gross income for federal tax purposes: *Provided, That:*

101 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this  
102 subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

103 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this  
104 subsection is less than \$8,000 per person, the total modification allowed under this subdivision  
105 for all gross income received by that person shall be limited to the difference between \$8,000 and  
106 the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

107 ~~(40)~~ (11) Contributions from any source to a medical savings account established by or  
108 for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or  
109 section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent  
110 includable in federal adjusted gross income for federal tax purposes: *Provided, That* the amount  
111 subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus  
112 interest earned on the account. For married individuals filing a joint return, the maximum  
113 deduction is computed separately for each individual;

114           ~~(11)~~ (12) For the 2006 taxable year only, severance wages received by a taxpayer from  
115 an employer as the result of the taxpayer's permanent termination from employment through a  
116 reduction in force and through no fault of the employee, not to exceed \$30,000. For purposes of  
117 this subdivision:

118           (i) The term "severance wages" means any monetary compensation paid by the  
119 employer in the taxable year as a result of permanent termination from employment in excess of  
120 regular annual wages or regular annual salary;

121           (ii) The term "reduction in force" means a net reduction in the number of employees  
122 employed by the employer in West Virginia, determined based on total West Virginia employment  
123 of the employer's controlled group;

124           (iii) The term "controlled group" means one or more chains of corporations connected  
125 through stock ownership with a common parent corporation if stock possessing at least fifty  
126 percent of the voting power of all classes of stock of each of the corporations is owned directly or  
127 indirectly by one or more of the corporations and the common parent owns directly stock  
128 possessing at least fifty percent of the voting power of all classes of stock of at least one of the  
129 other corporations;

130           (iv) The term "corporation" means any corporation, joint-stock company or association and  
131 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a  
132 certificate of interest or ownership or similar written instrument; and

133           ~~(12)~~ (13) Any other income which this state is prohibited from taxing under the laws of the  
134 United States.

135           (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or  
136 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as  
137 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under  
138 section nineteen of this article.

139           (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to  
140 be made under this section by a partner or an S corporation shareholder, which relate to items of  
141 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under  
142 section seventeen of this article.

143           (f) *Husband and wife.* -- If husband and wife determine their federal income tax on a joint  
144 return but determine their West Virginia income taxes separately, they shall determine their West  
145 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been  
146 determined separately.

147           (g) *Effective date.* -- (1) Changes in the language of this section enacted in the year 2000  
148 shall apply to taxable years beginning after December 31, 2000.

149           (2) Changes in the language of this section enacted in the year 2002 shall apply to taxable  
150 years beginning after December 31, 2002.

NOTE: The purpose of this bill is to reduce the severance tax on coal to 4%, eliminate the exception for professional services from the consumer use and sales tax, and provide an adjustment decreasing federal adjusted gross income of up to \$20,000 in social security benefits.

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