

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4570

FISCAL
NOTE

BY DELEGATES BATES, MILEY, FLUHARTY, MORGAN,

SHAFFER, GUTHRIE, MANCHIN, FLEISCHAUER,

HORNBUCKLE, PERDUE AND MOORE

[Introduced February 16, 2016; Referred

to the Committee on Finance.]

1 A BILL to amend and reenact §11-13V-4 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new article, designated §11-13DD-1, §11-13DD-2
 3 and §11-13DD-3, all relating to continuing certain severance taxes that are dedicated to
 4 the Workers' Compensation Debt Reduction Fund towards the State Road Fund upon
 5 satisfaction of debt; and providing a tax credit against the tax for taxpayers that create
 6 value-added jobs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13V. WORKERS COMPENSATION DEBT REDUCTION ACT.

§11-13V-4. Imposition of tax.

1 (a) *Imposition of additional tax on privilege of severing coal.* -- Upon every person
 2 exercising the privilege of engaging within this state in severing, extracting, reducing to
 3 possession or producing coal for sale, profit or commercial use, there is ~~hereby~~ imposed an
 4 additional annual severance tax for exercising the privilege after November 30, 2005. The tax
 5 ~~shall be~~ is \$.56 per ton and the measure of the tax is tons of clean coal severed or produced in
 6 this state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the
 7 taxable year. When the person mining the coal sells raw coal, the measure of tax ~~shall be~~ is per
 8 ton of clean coal, determined in accordance with rules promulgated by the Tax Commissioner as
 9 provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment
 10 before July 1, 2005, the rule may be promulgated as an emergency legislative rule. This tax ~~shall~~
 11 ~~be~~ is in addition to all taxes imposed with respect to the severance and production of coal in this
 12 state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this
 13 chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-
 14 two of this code, if applicable.

15 (b) *Imposition of additional tax on privilege of severing natural gas.* -- For the privilege of
16 engaging or continuing within this state in the business of severing natural gas for sale, profit or
17 commercial use, there is hereby levied and shall be collected from every person exercising this
18 privilege an additional annual privilege tax. The rate of this additional tax shall be is \$.047 per mcf
19 of natural gas and the measure of the tax is natural gas produced after November 30, 2005,
20 determined at the point where the production privilege ends for purposes of the tax imposed by
21 section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by
22 section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection
23 shall be collected with respect to natural gas produced after November 30, 2005.

24 (c) *Imposition of additional tax on privilege of severing timber.* -- For the privilege of
25 engaging or continuing within this state in the business of severing timber for sale, profit or
26 commercial use, there is hereby levied and shall be collected from every person exercising this
27 privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of
28 the gross value of the timber produced, determined at the point where the production privilege
29 ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon
30 which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax
31 imposed by this subsection shall be collected with respect to timber produced after November 30,
32 2005: *Provided*, That during the period of discontinuance of the tax as provided in subsection (d),
33 section three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection
34 shall be determined as provided in this subsection in the same manner as if the tax described
35 under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to
36 the provisions of subsection (g) of this section.

37 (d) *No pyramiding of tax burden.* -- Each ton of coal and each mcf of natural gas severed
38 in this state after the effective date of the taxes imposed by this section shall be included in the
39 measure of a tax imposed by this section only one time.

40 (e) *Effect on utility rates.* -- The Public Service Commission shall, upon the application of

41 any public utility that, as of the effective date of the taxes imposed by this section, is not currently
42 making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs
43 because the mechanism historically used to make ~~such~~ periodic adjustments is suspended by an
44 order of the commission, allow ~~such~~ the utility to defer, for future recovery from its customers, any
45 increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas
46 severed in this state and utilized in the production of electricity generated or produced in this state
47 and sold to customers in this state; coal and natural gas severed in this state and utilized in the
48 production of electricity not generated or produced in this state that is sold to customers in this
49 state; and natural gas severed in this state that is sold to customers in this state.

50 (f) *Dedication of new taxes.* -- The net amount of all moneys received by the Tax
51 Commissioner from collection of the taxes imposed by this section, including any interest,
52 additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter
53 eleven of this code, shall be deposited in the Workers Compensation Debt Reduction Fund
54 created in article two-d, chapter twenty-three of this code. As used in this section, "net amount of
55 all taxes received by the Tax Commissioner" means the gross amount received by the Tax
56 Commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this
57 article, including the amount of any interest on the overpayment amount due the taxpayer under
58 the provisions of section fourteen, article ten of this chapter.

59 (g) ~~Sunset expiration date of taxes~~ Redirection of tax to State Road Fund -- The new
60 taxes imposed by this section shall, ~~expire and not be imposed~~ with respect to privileges
61 exercised, be redirected to the State Road Fund as provided in section one, article three of
62 chapter seventeen of this code, on and after the first day of the month following the month in
63 which the Governor certifies to the Legislature that: (1) The revenue bonds issued pursuant to
64 article two-d, chapter twenty-three of this code, have been retired, or payment of the debt service
65 provided for; and (2) that an independent certified actuary has determined that the unfunded
66 liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided

67 for in its entirety. ~~Expiration of the taxes imposed in this section as provided in this subsection~~
68 ~~shall not relieve any person from payment of any tax imposed with respect to privileges exercised~~
69 ~~before the expiration date.~~

ARTICLE 13DD. TAX CREDIT FOR VALUE-ADDED PRODUCTS FOR INDUSTRIES

PAYING ROAD FUND PRESERVATION TAXES.

§11-13DD-1. Legislative purpose.

1 The Legislature finds and declares that the crisis of funding for state roads has risen to a
2 critical point and the continuation of the Workers' Compensation Fund reduction tax established
3 in section four, article thirteen-v of this chapter is necessary to preserve the state's infrastructure
4 without further tax increases in this state. The Legislature further finds that establishing a tax
5 credit against this continued assessment to reward industries that add jobs in West Virginia by
6 converting raw materials to valued-added products will incentivize extractive industries to develop
7 businesses in this state rather than exporting raw materials, and will also fulfill a critical need by
8 creating new jobs in West Virginia. Therefore, a tax credit against the Workers'
9 Compensation/Highway Fund assessment on these industries will facilitate economic growth in
10 this state.

§11-13DD-2. Credit allowed; amount and duration of credit; recapture of credit and effective date.

1 (a) There is allowed to eligible taxpayers a credit against the taxes imposed in articles
2 twenty-one and twenty-four of this chapter. For the purpose of this article, "eligible taxpayer"
3 means a person, firm, partnership, corporation or other entity who is subject to the tax assessed
4 provided in section four, article thirteen-v of this chapter, and that also invests capital into hiring
5 employees to produce valued-added products in state for sale or export. For purposes of this
6 section, "value-added product" means products derived from processing a raw product. The
7 following enterprises established and placed into production in this state, following enactment of

8 this article, qualify as processing extracted or severed materials into value-added products: (1)
9 The conversion of lumber into furniture, toys, collectibles and home furnishings or other similar
10 products; (2) the conversion of natural gas and coal bed methane gas into electric production or
11 through utilizing other derivatives of gas that are used for industrial and commercial activities and
12 products produced, and (3) the conversion of coal and coal products into electrical energy or other
13 products.

14 (b) Effective for taxable years beginning July 1, 2016, any entity subject to the tax and
15 engaged in the production of value added products in West Virginia is allowed a tax credit,
16 according to the schedule herein, for every one hour spent by a new permanent, full time
17 employee training to learn a skill specific thereto, or production of, value added products.

18 (c) For purposes of this section, tax credits for hours spent by a new permanent, full time
19 employee is allowed for wages for every one hour spent by a new employee as specified herein
20 up to the maximum tax paid pursuant by the taxpayer to this section.

21 (d) The credit set forth in this article applies to personal income tax liabilities and
22 corporation net income tax liabilities arising after December 31, 2015.

23 (e) As a condition of receiving the credit established in this article, the eligible taxpayer
24 shall employ the person or persons for a period of time at least equal to one year. In the event
25 the person is employed for less than one year the credit shall be recaptured at the rate of twenty
26 percent of the dollar value of the credit for each month under twelve months the person works.

**§11-13DD-3. Application of credit; limitation of credit; Tax Commissioner may promulgate
legislative rule; notice of credit.**

1 (a) The credit allowed in this article shall be applied to either the taxpayer's personal
2 income tax liability or corporation net income tax liability, as the case may be.

3 (b) The credit allowed in this article may not exceed the maximum tax due and is not
4 refundable, or carried forward or backward to other tax years.

5 (c) The Tax Commissioner may propose rules for promulgation in accordance with the

6 provisions of article three, chapter twenty-nine-a of this code as necessary to effectuate the
7 purposes of this article, including adding to the list of activities considered “valued added
8 products” that are appropriate for treatment as value added products eligible for the tax credit
9 created pursuant to section two of this article.

10 (d) The Tax Commissioner shall develop a written notice setting forth the availability of
11 this credit and shall transmit this to make employers aware of the tax credit allowed in this article.

NOTE: The purpose of this bill is to extend the current tax paid by extraction industries for the purpose of funding the State Road Fund and providing a tax credit from the tax for production of value-added products that employ state workers.

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