

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 421

By Senator Kessler

(By Request of the Executive)

[Passed March 3, 2016; in effect 90 days from passage]

1 AN ACT to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §11-15-9i of said code, all relating to termination of behavioral
3 health severance and business privilege tax; specifying effective date of termination;
4 establishing method of payment of outstanding refund claims; generating replacement
5 revenue stream by suspending exemption of certain purchases of durable medical
6 equipment from consumer sales and service tax for certain period; continuing exemption
7 for specified purchases of durable medical equipment; specifying effective dates;
8 providing method to claim exemption; and providing definitions and conditions for
9 exemption.

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; and that §11-15-9i of said code be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.

**§11-13A-3. Imposition of tax on 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.* — Subject to the provisions of subsection (g) of this section,
7 the tax imposed in subsection (a) of this section shall be five percent of the gross value of the
8 natural resource produced or the health care service provided, as shown by the gross income

9 derived from the sale or furnishing thereof by the producer or the provider of the health care
10 service, except as otherwise provided in this article. In the case of coal, this five percent rate of
11 tax includes the thirty-five one hundredths of one percent additional severance tax on coal
12 imposed by the state for the benefit of counties and municipalities as provided in section six of
13 this article.

14 (c) *“Certain health care services” defined.* — For purposes of this section, the term “certain
15 health care services” means, and is limited to, behavioral health services.

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

21 (e) *Effective date.* — This section, as amended in 1993, shall apply to gross proceeds
22 derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall
23 apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds,
24 shall be fully and completely preserved.

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

29 (1) For coal mined by underground methods from seams with an average thickness of
30 thirty-seven inches to forty-five inches, the tax imposed in subsection (a) of this section shall be
31 two percent of the gross value of the coal produced. For coal mined by underground methods
32 from seams with an average thickness of less than thirty-seven inches, the tax imposed in
33 subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross

34 value is determined from the sale of the mined coal by the producer. This rate of tax includes the
35 thirty-five one hundredths of one percent additional severance tax imposed by the state for the
36 benefit of counties and municipalities as provided in section six of this article.

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

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

43 (g)(1) *Termination and expiration of the behavioral health severance and business*
44 *privilege tax.* — The tax imposed upon providers of health care services under the provisions of
45 this article shall expire, terminate and cease to be imposed with respect to privileges exercised
46 on or after July 1, 2016. Expiration of the tax as provided in this subsection shall not relieve any
47 person from payment of any tax imposed with respect to privileges exercised before the expiration
48 date.

49 (2) *Refunds made.* — The Tax Commissioner will issue a requisition on the treasury for
50 any amount finally, administratively or judicially determined to be an overpayment of the tax
51 terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any
52 refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the
53 Treasurer shall pay the warrant out of the fund into which the amount refunded was originally
54 paid.

ARTICLE 15. CONSUMERS SALE AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

1 (a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this
2 chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility
3 enhancing equipment and prosthetic devices, all as defined in section two, article fifteen-b of this

4 chapter, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation,
5 treatment or prevention of injury or disease are exempt from the tax imposed by this
6 article: *Provided*, That the exemption provided for the purchase by a health care provider of
7 durable medical equipment is suspended for the period beginning on and after July 1, 2016, and
8 continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

9 (b) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this
10 chapter, the purchase of durable medical equipment, as defined in section two, article fifteen-b of
11 this chapter, to be dispensed upon prescription by a health care provider and intended for use in
12 the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax
13 imposed by this article: *Provided*, That the durable medical equipment is purchased by an
14 individual for exclusive use by the purchaser or another individual and used predominantly by the
15 recipient individual in his or her home environment.

16 (1) *Effective Dates.* — The provisions of this subsection shall apply to purchases made on
17 and after July 1, 2016.

18 (2) *Per se exemption.* — The exemption set forth by this subsection shall be given without
19 the necessity of an exemption certificate, direct pay permit or refund or credit request.

20 (c) *Definitions.* — The following definitions shall apply:

21 (1) For purposes of this section, “used predominantly by the recipient individual in his or
22 her home environment”, with reference to durable medical equipment, means that the equipment
23 is sold to an individual for use by the individual purchaser or by another individual at home,
24 regardless of where the individual resides. For purposes of this definition, the term “home” means
25 and includes facilities such as nursing homes, assisted care centers and school dormitories, of
26 which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified
27 from the exemption because the equipment is incidentally used on the streets, in commercial
28 establishments, in public places and in locations other than the home, so long as use in the home
29 is the predominant use. For purposes of this definition, the term “individual” means and is limited

30 to a single, separate human being and specifically excludes any health care provider, or provider
31 of nursing services, personal care services, behavioral care services, residential care or assisted
32 living care, or any entity or organization other than a human being.

33 (2) When the equipment is sold to a facility such as a hospital, nursing home, medical
34 clinic, dental office, chiropractor or optician office, then this shall not constitute a use of the
35 equipment by the recipient individual in his or her home environment. The fact that a nursing
36 home may use the equipment only for its residents does not make the equipment exempt for
37 home use: *Provided*, That nothing in this section shall be interpreted to void or abrogate lawful
38 assertion and application of the purchases for resale exemption as it may apply to any purchaser
39 of durable medical equipment.

40 (3) For purposes of this section, "health care provider" means any person licensed to
41 prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic
42 devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or
43 disease. For purposes of this section, the term "health care provider" includes any hospital,
44 medical clinic, nursing home or provider of inpatient hospital services and any provider of
45 outpatient hospital services, physician services, nursing services, ambulance services, surgical
46 services or veterinary services: *Provided*, That the amendment to this subsection enacted during
47 the 2009 regular legislative session shall be effective on or after July 1, 2009.

48 (4) The term "durable medical goods", as used in this article, means "durable medical
49 equipment" as defined in section two, article fifteen-b of this chapter.

50 (5) For purposes of this section, the term "nursing home or facility" means any institution,
51 residence or place, or any part or unit thereof, however named, in this state which is advertised,
52 offered, maintained or operated by the ownership or management, whether for a consideration or
53 not, for the express or implied purpose of providing accommodations and care, for a period of
54 more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and
55 in need of extensive, ongoing nursing care due to physical or mental impairment or which provides

56 services for the rehabilitation of persons who are convalescing from illness or incapacitation:
57 *Provided*, That the care or treatment in a household, whether for compensation or not, of any
58 person related by blood or marriage, within the degree of consanguinity of second cousin to the
59 head of the household, or his or her spouse, may not be deemed to constitute a nursing home
60 within the meaning of this article.

61 (6) For purposes of this section, the term “assisted care center” means any living facility,
62 residence or place of accommodation, however named, available for four or more residents, in
63 this state which is advertised, offered, maintained or operated by the ownership or management,
64 whether for a consideration or not, for the express or implied purpose of having personal
65 assistance or supervision, or both, provided to any residents therein who are dependent upon the
66 services of others by reason of physical or mental impairment and who may also require nursing
67 care at a level that is not greater than limited and intermittent nursing care: *Provided*, That the
68 care or treatment in a household, whether for compensation or not, of any person related by blood
69 or marriage, within the degree of consanguinity of second cousin to the head of the household,
70 or his or her spouse, may not be deemed to constitute an assisted living residence within the
71 meaning of this article.

72 (7) For purposes of this section, the term “school dormitory” means housing or a unit of
73 housing provided primarily for students as a temporary or permanent dwelling place or abode and
74 owned, operated or controlled by an institution of higher education, and shall be synonymous with
75 the term “residence hall”.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor