WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 478

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 28, 2017; Referred
to the Committee on Energy, Industry and Mining; and
then to the Committee on Finance]
A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating
generally to severance taxes imposed on the privilege of producing coal for sale, profit or
commercial use; specifying effective date; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3 of the Code of West Virginia, 1931, as amended, be amended and
reenacted to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§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.

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

(b) Rate and measure of tax. — Subject to the provisions of subsection (g) of this section,
the tax imposed in subsection (a) of this section shall be is five percent of the gross value of the
natural resource produced or the health care service provided, as shown by the gross income
derived from the sale or furnishing thereof by the producer or the provider of the health care
service, except as otherwise provided in this article. In the case of coal, this five percent rate of
tax includes the thirty-five one hundredths of one percent additional severance tax on coal
imposed by the state for the benefit of counties and municipalities as provided in section six of
this article.

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

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

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

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

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

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

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

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

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

(h) *Tiered severance tax rates on coal.* — The rate of tax on the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession, and producing coal for sale, profit or commercial use, except for thin seam coal which shall continue to be taxed at the rates specified in subsection (f) of this section, is:

(1) For all tons of metallurgical coal produced on and after July 1, 2017:

If gross income from sale of coal during the reporting period is: Rate of tax:

| Less than $50 per ton          | 3.5%   |
| $50 or more but less than $55 per ton | 4%     |
| $55 per ton but less than $60 per ton | 4.5%   |
| $60 per ton but less than $75 per ton | 5%     |
| $75 per ton but less than $85 per ton | 5.5%   |
| $85 per ton but less than $100 per ton | 6%     |
$100 per ton but less than $125 per ton 7%
$125 per ton but less than $150 per ton 8%
$150 per ton but less than $175 per ton 8.5%
$175 per ton but less than $200 per ton 9%
$200 per ton or more 10%

These rates of tax include the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in section six of this article. The rate of tax for each reporting period shall be determined by dividing the gross income of the taxpayer from sales of all coal during the reporting period, exclusive of sales of thin seam coal, by the tons of all coal sold by the taxpayer during the reporting period but not including tons of thin seam coal; and.

(2) For all tons of steam coal produced on and after July 1, 2017:

If gross income from sale of coal during the reporting period is: Rate of tax:

Less than $30 per ton 3.5%
$30 or more but less than $35 per ton 4%
$35 per ton but less than $40 per ton 4.5%
$40 per ton but less than $50 per ton 5%
$50 per ton but less than $55 per ton 5.5%
$55 per ton but less than $60 per ton 6%
$60 per ton but less than $65 per ton 6.5%
$65 per ton but less than $70 per ton 7%
$70 per ton but less than $80 per ton 7.5%
$80 per ton but less than $90 per ton 8%
$90 per ton but less than $100 per ton 9%
$100 per ton or more 10%
These rates of tax include the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in section six of this article. The rate of tax for each reporting period shall be determined by dividing the gross income of the taxpayer from sales of all coal during the reporting period, exclusive of sales of thin seam coal, by the tons of all coal sold by the taxpayer during the reporting period but not including tons of thin seam coal.

NOTE: The purpose of this bill is to impose that severance tax on the privilege of producing coal at graduated rates depending upon the gross income of the taxpayer derived from sales of coal during the reporting period divided by tons of coal produced and sold by the taxpayer during the reporting period. Thin seam coal is excluded from both computations.

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