

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4439

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[Originating in the Committee on Finance;

February 21, 2020.]

1 A BILL to amend and reenact §11-13EE-3 of the Code of West Virginia, 1931, as amended,
2 relating to a coal severance tax rebate; clarifying the methodology for determining the
3 eligibility for said rebate; clarifying methods of calculation for the amount of severance tax
4 attributable to the increase in coal production at a mine due to new qualifying capital
5 investments; providing that when the producer of the coal operates more than one mine
6 in this state, or is a member of a controlled or affiliated group that operates one or more
7 coal mines in this state, any rebate allowed is further limited to 80 percent of the state
8 portion of the increase in the aggregate total amount of severance taxes paid in the rebate
9 year when compared to the aggregate total amount of severance taxes paid in the base-
10 year period; but, subject to the individual and aggregate severance tax limitations, a rebate
11 up to the maximum rebate shall only be allowed if the aggregate total coal production
12 tonnage in the rebate year is greater than the aggregate total coal production tonnage
13 during the base-year period from all mines, including the mine where the qualifying
14 investment was made, operated by the taxpayer or by members of the affiliated or
15 controlled group in this state; and no rebate shall be allowed if the aggregate total coal
16 production tonnage in the rebate year is less than the aggregate total coal production
17 tonnage during the base-year period; making technical corrections regarding internal code
18 references; and clarifying that calculations are to be made with totals before the allowance
19 of any tax credits are applied in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-3. Rebate allowable.

1 (a) *Rebate allowable.* Eligible taxpayers shall be are allowed a rebate for a portion of state
2 severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting,
3 reducing to possession and producing coal for sale, profit, or commercial use that is attributable
4 to the increase in the production of coal that is attributable to, and the consequence of, the

5 taxpayer's capital investment in new machinery, equipment, or improvements to real property
6 used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall
7 be determined and applied as ~~hereinafter~~ provided in this article.

8 (b) *Amount of rebate.*—The amount of rebate allowable is determined by multiplying the
9 amount of the taxpayer's capital investment in new machinery, equipment, or improvements to
10 real property directly used in the production of coal at a coal mining operation in this state by 35
11 percent. The product of this computation establishes the maximum amount of rebate allowable
12 under this article for the capital investment in new machinery, equipment, or improvements to real
13 property.

14 (c) *Application of rebate amount.*—The amount of rebate allowable is determined by
15 applying the rebate amount determined in subsection (b) of this section against 80 percent of the
16 state portion of the severance tax paid on the privilege of severing, extracting, reducing to
17 possession, and producing coal for sale, profit, or commercial use that is directly attributable to
18 the increased production of coal at the mine due to taxpayer's capital investment in new
19 machinery, equipment, or improvements to real property at the mine or coal processing and
20 preparation plant.

21 (d) The amount of severance tax attributable to the increase in coal production at a mine
22 due to the capital investment in new machinery, equipment, or improvements to real property ~~shall~~
23 ~~be~~ is determined by comparing: (1) The state portion of the severance tax due under §11-13A-3
24 of this code on coal produced from the mine during calendar year 2018, or if the taxpayer has
25 produced coal for five years at the mine at which its capital investment in new machinery,
26 equipment, or improvements to real property are placed in service or use the average of the state
27 portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine
28 during the five year period ending on December 31, 2018, whichever is less, before allowance of
29 any tax credits, except as provided in §11-13EE-3(e) of this code; and (2) ~~with~~ the state severance
30 tax due on coal produced at the mine during the then current calendar year in which the rebate

31 amount is claimed, before allowance for any tax credits. When the amount in subdivision (2) of
32 ~~this section~~ subsection is greater than the amount in subdivision (1) of this ~~section~~ subsection,
33 the difference is the amount of state severance tax due to the increase in coal production at the
34 mine that is attributable to the capital investment in new machinery, equipment, or improvements
35 to real property: *Provided*, That when the producer of the coal operates more than one mine in
36 this state, or is a member of a controlled or affiliated group that operates one or more coal mines
37 in this state, ~~no credit shall be allowed unless the total coal production from all mines operated by~~
38 ~~the taxpayer or by members of the affiliated or controlled group in this state has increased~~ any
39 rebate allowed is further limited to 80 percent of the state portion of the increase in the aggregate
40 total amount of severance taxes paid in the rebate year when compared to the aggregate total
41 amount of severance taxes paid in the base-year period, but, subject to the individual and
42 aggregate severance tax limitations, a rebate up to the maximum rebate shall only be allowed if
43 the aggregate total coal production tonnage in the rebate year is greater than the aggregate total
44 coal production tonnage during the base-year period from all mines, including the mine where the
45 qualifying investment was made, operated by the taxpayer or by members of the affiliated or
46 controlled group in this state; and no rebate shall be allowed if the aggregate total coal production
47 tonnage in the rebate year is less than the aggregate total coal production tonnage during the
48 base-year period: *Provided, however*, That in no case ~~shall~~ may the severance tax attributable to
49 any mine other than the specific mine at which capital investment in new machinery, equipment,
50 or improvements to real property is directly used in a coal mining operation has been placed in
51 service or use be offset by this rebate.

52 (e) When the eligible taxpayer is a new business that has produced coal in this state for
53 at least two years before making the capital investment in new machinery, equipment, or
54 improvements to real property then, for purposes of subdivision (1) in subsection (d) of this
55 section, the base ~~shall be~~ is the average amount of state severance tax due under §11-13A-3 of
56 this code before allowance of any tax credits on coal produced in this state during this two-year
57 period.

58 (f) No rebate ~~shall be~~ is allowed under this article when credit is claimed under any other
59 article of this chapter for capital investment in the new machinery, equipment, or improvements
60 to real property. No credit ~~shall be~~ is allowed under any other article of this chapter when rebate
61 is allowed under this article for the capital investment in new machinery, equipment, or
62 improvements to real property.

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