

SB 404

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2004

**ENROLLED**

Committee Substitute for  
**SENATE BILL NO.** 404

(By Senator Helmick )

**PASSED** March 13, 2004

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 404**

(SENATOR HELMICK, *original sponsor*)

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[Passed March 13, 2004; in effect from passage.]

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AN ACT to amend and reenact §11-13A-2 of the code of West Virginia, 1931, as amended, relating to severance taxes; clarifying the term “behavioral health services”; and removing the term “community care services”.

*Be it enacted by the Legislature of West Virginia:*

That §11-13A-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 13A. SEVERANCE TAXES.**

**§11-13A-2. Definitions.**

- 1 (a) *General rule.* – When used in this article, or in the
- 2 administration of this article, the terms defined in subsec-
- 3 tion (b), (c) or (d) of this section shall have the meanings
- 4 ascribed to them by this section, unless a different mean-

5 ing is clearly required by the context in which the term is  
6 used or by specific definition.

7 (b) *General terms defined.* – Definitions in this subsec-  
8 tion apply to all persons subject to the taxes imposed by  
9 this article.

10 (1) “Business” includes all activities engaged in, or  
11 caused to be engaged in, with the object of gain or eco-  
12 nomic benefit, direct or indirect, and whether engaged in  
13 for profit, or not for profit, or by a governmental entity:  
14 *Provided*, That “business” does not include services  
15 rendered by an employee within the scope of his or her  
16 contract of employment. Employee services, services by a  
17 partner on behalf of his or her partnership and services by  
18 a member of any other business entity on behalf of that  
19 entity are the business of the employer or partnership, or  
20 other business entity as the case may be, and reportable as  
21 such for purposes of the taxes imposed by this article.

22 (2) “Corporation” includes associations, joint-stock  
23 companies and insurance companies. It also includes  
24 governmental entities when and to the extent such govern-  
25 mental entities engage in activities taxable under this  
26 article.

27 (3) “Delegate” in the phrase “or his delegate”, when used  
28 in reference to the tax commissioner, means any officer or  
29 employee of the state tax division of the department of tax  
30 and revenue duly authorized by the tax commissioner  
31 directly, or indirectly by one or more redelegations of  
32 authority, to perform the function mentioned or described  
33 in this article or regulations promulgated thereunder.

34 (4) “Fiduciary” means and includes a guardian, trustee,  
35 executor, administrator, receiver, conservator or any  
36 person acting in any fiduciary capacity for any person.

37 (5) “Gross proceeds” means the value, whether in money  
38 or other property, actually proceeding from the sale or  
39 lease of tangible personal property, or from the rendering

40 of services, without any deduction for the cost of property  
41 sold or leased or expenses of any kind.

42 (6) "Includes" and "including", when used in a definition  
43 contained in this article, shall not be deemed to exclude  
44 other things otherwise within the meaning of the term  
45 being defined.

46 (7) "Partner" includes a member of a syndicate, group,  
47 pool, joint venture or other organization which is a  
48 "partnership" as defined in this section.

49 (8) "Partnership" includes a syndicate, group, pool, joint  
50 venture or other unincorporated organization through or  
51 by means of which any privilege taxable under this article  
52 is exercised and which is not within the meaning of this  
53 article a trust or estate or corporation. "Partnership"  
54 includes a limited liability company which is treated as a  
55 partnership for federal income tax purposes.

56 (9) "Person" or "company" are herein used interchange-  
57 ably and include any individual, firm, partnership, mining  
58 partnership, joint venture, association, corporation, trust  
59 or other entity, or any other group or combination acting  
60 as a unit, and the plural as well as the singular number,  
61 unless the intention to give a more limited meaning is  
62 declared by the context.

63 (10) "Sale" includes any transfer of the ownership or  
64 title to property, whether for money or in exchange for  
65 other property or services, or any combination thereof.  
66 "Sale" includes a lease of property, whether the transac-  
67 tion be characterized as a rental, lease, hire, bailment or  
68 license to use. "Sale" also includes rendering services for  
69 a consideration, whether direct or indirect.

70 (11) "Service" includes all activities engaged in by a  
71 person for a consideration which involve the rendering of  
72 a service as distinguished from the sale of tangible per-  
73 sonal property: *Provided*, That "service" does not include:  
74 (A) Services rendered by an employee to his or her em-

75 ployer under a contract of employment; (B) contracting; or  
76 (C) severing or processing natural resources.

77 (12) "Tax" means any tax imposed by this article and,  
78 for purposes of administration and collection of such tax,  
79 it includes any interest, additions to tax or penalties  
80 imposed with respect thereto under article ten of this  
81 chapter.

82 (13) "Tax commissioner" or "commissioner" means the  
83 tax commissioner of the state of West Virginia or his or her  
84 delegate.

85 (14) "Taxable year" means the calendar year, or the  
86 fiscal year ending during such calendar year, upon the  
87 basis of which a tax liability is computed under this  
88 article. In the case of a return made under this article, or  
89 regulations of the tax commissioner, for a fractional part  
90 of a year, the term "taxable year" means the period for  
91 which such return is made.

92 (15) "Taxpayer" means any person subject to any tax  
93 imposed by this article.

94 (16) "This code" means the code of West Virginia, one  
95 thousand nine hundred thirty-one, as amended.

96 (17) "This state" means the state of West Virginia.

97 (18) "Withholding agent" means any person required by  
98 law to deduct and withhold any tax imposed by this article  
99 or under regulations promulgated by the tax commis-  
100 sioner.

101 (c) *Specific definitions for producers of natural re-*  
102 *sources. -*

103 (1) "Barrel of oil" means forty-two U. S. gallons of two  
104 hundred thirty-one cubic inches of liquid at a standard  
105 temperature of sixty degrees Fahrenheit.

106 (2) "Coal" means and includes any material composed  
107 predominantly of hydrocarbons in a solid state.

108 (3) "Cubic foot of gas" means the volume of gas con-  
109 tained in one cubic foot at a standard pressure base of  
110 fourteen point seventy-three pounds per square inch  
111 (absolute) and a standard temperature of sixty degrees  
112 Fahrenheit.

113 (4) "Economic interest" for the purpose of this article is  
114 synonymous with the economic interest ownership re-  
115 quired by Section 611 of the Internal Revenue Code in  
116 effect on the thirty-first day of December, one thousand  
117 nine hundred eighty-five, entitling the taxpayer to a  
118 depletion deduction for income tax purposes: *Provided*,  
119 That a person who only receives an arm's length royalty  
120 shall not be considered as having an economic interest.

121 (5) "Extraction of ores or minerals from the ground"  
122 includes extraction by mine owners or operators of ores or  
123 minerals from the waste or residue of prior mining only  
124 when such extraction is sold.

125 (6) "Gross value" in the case of natural resources means  
126 the market value of the natural resource product, in the  
127 immediate vicinity where severed, determined after  
128 application of post production processing generally  
129 applied by the industry to obtain commercially marketable  
130 or usable natural resource products. For all natural  
131 resources, "gross value" is to be reported as follows:

132 (A) For natural resources severed or processed (or both  
133 severed and processed) and sold during a reporting period,  
134 gross value is the gross proceeds received or receivable by  
135 the taxpayer.

136 (B) In a transaction involving related parties, gross value  
137 shall not be less than the fair market value for natural  
138 resources of similar grade and quality.

139 (C) In the absence of a sale, gross value shall be the fair  
140 market value for natural resources of similar grade and  
141 quality.

142 (D) If severed natural resources are purchased for the  
143 purpose of processing and resale, the gross value is the  
144 amount received or receivable during the reporting period  
145 reduced by the amount paid or payable to the taxpayer  
146 actually severing the natural resource. If natural resources  
147 are severed outside the state of West Virginia and brought  
148 into the state of West Virginia by the taxpayer for the  
149 purpose of processing and sale, the gross value is the  
150 amount received or receivable during the reporting period  
151 reduced by the fair market value of natural resources of  
152 similar grade and quality and in the same condition  
153 immediately preceding the processing of the natural  
154 resources in this state.

155 (E) If severed natural resources are purchased for the  
156 purpose of processing and consumption, the gross value is  
157 the fair market value of processed natural resources of  
158 similar grade and quality reduced by the amount paid or  
159 payable to the taxpayer actually severing the natural  
160 resource. If severed natural resources are severed outside  
161 the state of West Virginia and brought into the state of  
162 West Virginia by the taxpayer for the purpose of process-  
163 ing and consumption, the gross value is the fair market  
164 value of processed natural resources of similar grade and  
165 quality reduced by the fair market value of natural  
166 resources of similar grade and quality and in the same  
167 condition immediately preceding the processing of the  
168 natural resources.

169 (F) In all instances, the gross value shall be reduced by  
170 the amount of any federal energy tax imposed upon the  
171 taxpayer after the first day of June, one thousand nine  
172 hundred ninety-three, but shall not be reduced by any  
173 state or federal taxes, royalties, sales commissions or any  
174 other expense.

175 (G) For natural gas, gross value is the value of the  
176 natural gas at the wellhead immediately preceding trans-  
177 portation and transmission.

178 (H) For limestone or sandstone quarried or mined, gross  
179 value is the value of such stone immediately upon sever-  
180 ance from the earth.

181 (7) "Mining" includes not merely the extraction of ores  
182 or minerals from the ground, but also those treatment  
183 processes necessary or incidental thereto.

184 (8) "Natural resources" means all forms of minerals  
185 including, but not limited to, rock, stone, limestone, coal,  
186 shale, gravel, sand, clay, natural gas, oil and natural gas  
187 liquids which are contained in or on the soils or waters of  
188 this state and includes standing timber.

189 (9) "Processed" or "processing" as applied to:

190 (A) Oil and natural gas shall not include any conversion  
191 or refining process; and

192 (B) Limestone or sandstone quarried or mined shall not  
193 include any treatment process or transportation after the  
194 limestone or sandstone is severed from the earth.

195 (10) "Related parties" means two or more persons,  
196 organizations or businesses owned or controlled directly or  
197 indirectly by the same interests. Control exists if a  
198 contract or lease, either written or oral, is entered into  
199 whereby one party mines or processes natural resources  
200 owned or held by another party and the owner or lessor  
201 participates in the severing, processing or marketing of the  
202 natural resources or receives any value other than an arm's  
203 length passive royalty interest. In the case of related  
204 parties, the tax commissioner may apportion or allocate  
205 the receipts between or among such persons, organizations  
206 or businesses if he determines that such apportionment or  
207 allocation is necessary to more clearly reflect gross value.

208 (11) "Severing" or "severed" means the physical removal  
209 of the natural resources from the earth or waters of this  
210 state by any means: *Provided*, That "severing" or "sev-  
211 ered" shall not include the removal of natural gas from



212 underground storage facilities into which the natural gas  
213 has been mechanically injected following its initial  
214 removal from earth: *Provided, however,* That “severing”  
215 or “severed” oil and natural gas shall not include any  
216 separation process of oil or natural gas commonly em-  
217 ployed to obtain marketable natural resource products.

218 (12) “Stock” includes shares in an association, joint-  
219 stock company or corporation.

220 (13) “Taxpayer” means and includes any individual,  
221 partnership, joint venture, association, corporation,  
222 receiver, trustee, guardian, executor, administrator,  
223 fiduciary or representative of any kind engaged in the  
224 business of severing or processing (or both severing and  
225 processing) natural resources in this state for sale or use.  
226 In instances where contracts (either oral or written) are  
227 entered into whereby persons, organizations or businesses  
228 are engaged in the business of severing or processing (or  
229 both severing and processing) a natural resource but do  
230 not obtain title to or do not have an economic interest  
231 therein, the party who owns the natural resource immedi-  
232 ately after its severance or has an economic interest  
233 therein is the taxpayer.

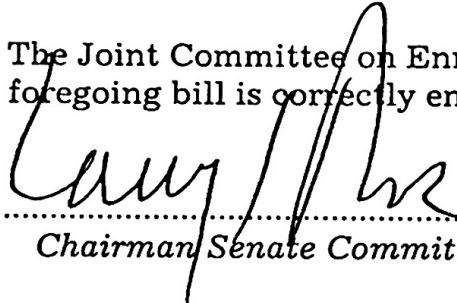
234 (d) *Specific definitions for persons providing health care*  
235 *items or services. –*

236 “Behavioral health services” means services provided for  
237 the care and treatment of persons with mental illness,  
238 mental retardation, developmental disabilities or alcohol  
239 or drug abuse problems in an inpatient, residential or  
240 outpatient setting, including, but not limited to,  
241 habilitative or rehabilitative interventions or services and  
242 cooking, cleaning, laundry and personal hygiene services  
243 provided for such care: *Provided,* That gross receipts  
244 derived from providing behavioral health services that are  
245 included in the provider’s measure of tax under article  
246 twenty-seven of this chapter shall not be included in that  
247 provider’s measure of tax under this article. The amend-

248 ment to this definition in the year two thousand four is  
249 intended to clarify the intent of the Legislature as to the  
250 activities that qualify as behavioral health services, and  
251 this clarification shall be applied retrospectively to the  
252 effective date of the amendment to this section in which  
253 the definition of "behavioral health services" was origi-  
254 nally provided as enacted during the first extraordinary  
255 session of the Legislature in the year one thousand nine  
256 hundred ninety-three.

Enr. Com. Sub. for S. B. No. 404] 10

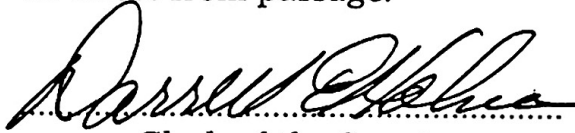
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

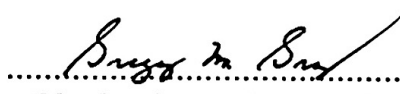
  
.....  
Chairman Senate Committee

  
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Chairman House Committee

Originated in the Senate.

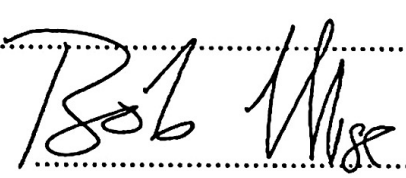
In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within..... *is approved* ..... this the *2nd* .....  
Day of *April* ....., 2004.  
  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 3/26/04  
TIME 3:15pm