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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2005*

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**ENROLLED**

SENATE BILL NO. 746

(By Senator Helmick, et al )

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PASSED April 9, 2005

In Effect 90 days from Passage

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**Senate Bill No. 746**

(BY SENATORS HELMICK, SHARPE, CHAFIN, PLYMALE, PREZIOSO,  
EDGELL, LOVE, BAILEY, BOWMAN, MCCABE, UNGER, MINEAR,  
BOLEY, FACEMYER, YODER, GULLS AND SPROUSE)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-13A-3a, §11-13A-3b and §11-13A-3d of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-13A-5b, all relating to the reduction from five percent to four percent in the severance tax imposed on natural gas produced from wells placed in service on or after the first day of December, two thousand five; the reduction from three and twenty-two hundredths percent to one and twenty-two hundredths percent in the severance tax imposed on timber produced on or after the first day of December, two thousand five; reducing the period of availability of a certain five-year severance tax exemption for coalbed methane production; reducing from five percent to four percent the severance tax on gas produced from coalbed methane wells on or after the first day of December, two thousand five; and dedicating and distributing ten percent of coalbed methane severance tax for benefit of counties and municipalities.

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

That §11-13A-3a, §11-13A-3b and §11-13A-3d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-13A-5b, all to read as follows:

**ARTICLE 13A. SEVERANCE TAXES.**

**§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.**

1 (a) *Imposition of tax.* – For the privilege of engaging or  
2 continuing within this state in the business of severing  
3 natural gas or oil for sale, profit or commercial use, there  
4 is hereby levied and shall be collected from every person  
5 exercising such privilege an annual privilege tax: *Pro-*  
6 *vided,* That effective for all taxable periods beginning on  
7 or after the first day of January, two thousand, there is an  
8 exemption from the imposition of the tax provided in this  
9 article on the following: (1) Free natural gas provided to  
10 any surface owner; (2) natural gas produced from any well  
11 which produced an average of less than five thousand  
12 cubic feet of natural gas per day during the calendar year  
13 immediately preceding a given taxable period; (3) oil  
14 produced from any oil well which produced an average of  
15 less than one-half barrel of oil per day during the calendar  
16 year immediately preceding a given taxable period; and (4)  
17 for a maximum period of ten years, all natural gas or oil  
18 produced from any well which has not produced market-  
19 able quantities of natural gas or oil for five consecutive  
20 years immediately preceding the year in which a well is  
21 placed back into production and thereafter produces  
22 marketable quantities of natural gas or oil.

23 (b) *Rate and measure of tax.* –

24 (1) The tax imposed in subsection (a) of this section shall  
25 be five percent of the gross value of the natural gas or oil  
26 produced, as shown by the gross proceeds derived from the

27 sale thereof by the producer, except as otherwise provided  
28 in this article.

29 (2) With respect to natural gas produced from wells  
30 placed in service on or before the thirtieth day of Novem-  
31 ber, two thousand five, the tax imposed in subsection (a)  
32 of this section shall be five percent of the gross value of the  
33 natural gas produced, as shown by the gross proceeds  
34 derived from the sale thereof by the producer, except as  
35 otherwise provided in this article.

36 (3) With respect to natural gas produced from wells  
37 placed in service on or after the first day of December, two  
38 thousand five, the tax imposed in subsection (a) of this  
39 section shall be four percent of the gross value of the  
40 natural gas produced, as shown by the gross proceeds  
41 derived from the sale thereof by the producer, except as  
42 otherwise provided in this article.

43 (c) *Tax in addition to other taxes.* – The tax imposed by  
44 this section shall apply to all persons severing gas or oil in  
45 this state, and shall be in addition to all other taxes  
46 imposed by law.

47 (d) (1) The Legislature finds that in addition to the  
48 production reports and financial records which must be  
49 filed by oil and gas producers with the state Tax Commis-  
50 sioner in order to comply with this section, oil and gas  
51 producers are required to file other production reports  
52 with other agencies, including, but not limited to, the  
53 office of oil and gas, the Public Service Commission and  
54 county assessors. The reports required to be filed are  
55 largely duplicative, the compiling of the information in  
56 different formats is unnecessarily time consuming and  
57 costly, and the filing of one report or the sharing of  
58 information by agencies of government would reduce the  
59 cost of compliance for oil and gas producers.

60 (2) On or before the first day of July, two thousand three,  
61 the Tax Commissioner shall design a common form that

62 may be used for each of the reports regarding production  
63 that are required to be filed by oil and gas producers,  
64 which form shall readily permit a filing without financial  
65 information when such information is unnecessary. The  
66 Commissioner shall also design such forms so as to permit  
67 filings in different formats, including, but not limited to,  
68 electronic formats.

**§11-13A-3b. Imposition of tax on privilege of severing timber.**

1 (a) *Imposition of tax.* – For the privilege of engaging or  
2 continuing within this state in the business of severing  
3 timber for sale, profit or commercial use, there is hereby  
4 levied and shall be collected from every person exercising  
5 such privilege an annual privilege tax.

6 (b) *Rate and measure of tax.* – The tax imposed in  
7 subsection (a) of this section shall be three and twenty-two  
8 hundredths percent of the gross value of the timber  
9 produced, as shown by the gross proceeds derived from the  
10 sale thereof by the producer, except as otherwise provided  
11 in this article: *Provided,* That the tax imposed in subsec-  
12 tion (a) of this section on timber produced on or after the  
13 first day of December, two thousand five, shall be one and  
14 twenty-two hundredths percent of the gross value of the  
15 timber produced, as shown by the gross proceeds derived  
16 from the sale thereof by the producer, except as otherwise  
17 provided in this article.

18 (c) *Tax in addition to other taxes.* – The tax imposed by  
19 this section shall apply to all persons severing timber in  
20 this state, and shall be in addition to all other taxes  
21 imposed by law.

22 (d) *Effective date.* – This section, as amended in the year  
23 one thousand nine hundred ninety-three, shall apply to  
24 gross proceeds derived after the thirty-first day of May of  
25 such year. The language of section three of this article, as  
26 in effect on the first day of January of such year, shall  
27 apply to gross proceeds derived prior to the first day of

28 June of such year and, with respect to such gross income,  
29 shall be fully and completely preserved.

**§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.**

1 (a) The Legislature hereby finds and declares the follow-  
2 ing:

3 (1) That coalbed methane is underdeveloped and an  
4 under-utilized resource within this state which, where  
5 practicable, should be captured and not be vented or  
6 wasted;

7 (2) The health and safety of persons engaged in coal  
8 mining is a paramount concern to the state. The Legisla-  
9 ture intends to preserve coal seams for future safe mining,  
10 to facilitate the expeditious, safe evacuation of coalbed  
11 methane from the coalbeds of this state and to ensure the  
12 safety of miners by encouraging the advance removal of  
13 coalbed methane;

14 (3) The United States Environmental Protection  
15 Agency's Coalbed Methane Outreach Program encourages  
16 coal mines in the United States to remove and use methane  
17 that is otherwise wasted during mining. These projects  
18 have important economic benefits for the mines and their  
19 local economies while they also reduce emissions of  
20 methane; and

21 (4) The initial costs of development of coalbed methane  
22 wells can be large in comparison to conventional wells and  
23 deoxygenation and water removal increase development  
24 expenditures.

25 The Legislature, therefore, concludes that an incentive to  
26 coalbed methane development should be implemented to  
27 encourage capture of methane gas that would otherwise be  
28 vented to the atmosphere.

29 (b) *Imposition of tax.* – In lieu of the annual privilege  
30 tax imposed on the severance of natural gas or oil pursu-

31 ant to section three-a of this article, for the privilege of  
32 engaging or continuing within this state in the business of  
33 severing coalbed methane for sale, profit or commercial  
34 use, there is hereby levied and shall be collected from  
35 every person exercising such privilege an annual privilege  
36 tax: *Provided*, That effective for taxable years beginning  
37 on or after the first day of January, two thousand one,  
38 there is an exemption from the imposition of the tax  
39 provided in this article for a maximum period of five years  
40 for all coalbed methane produced from any coalbed  
41 methane well placed in service after the first day of  
42 January, two thousand. For purposes of this section, the  
43 terms "coalbed methane" and "coalbed methane well"  
44 have the meaning ascribed to them in section two, article  
45 twenty-one, chapter twenty-two of this code. The exemp-  
46 tion from tax provided by this section is applicable to any  
47 coalbed methane well placed in service before the first day  
48 of December, two thousand five.

49 (c) *Rate and measure of tax.* – The tax imposed on  
50 subsection (b) of this section is five percent of the gross  
51 value of the coalbed methane produced, as shown by the  
52 gross proceeds derived from the sale thereof by the pro-  
53 ducer, except as otherwise provided in this article:  
54 *Provided*, That for tax years beginning on or after the first  
55 day of January, two thousand five, the tax imposed in  
56 subsection (b) of this section is four percent of the gross  
57 value of the coalbed methane gas produced on or after the  
58 first day of December, two thousand five, as shown by the  
59 gross proceeds derived from the sale thereof by the pro-  
60 ducer, except as otherwise provided in this article.

61 (d) *Tax in addition to other taxes.* – The tax imposed by  
62 this section applies to all persons severing coalbed meth-  
63 ane in this state, and is in addition to all other taxes  
64 imposed by law.

65 (e) Except as specifically provided in this section,  
66 application of the provisions of this article apply to

67 coalbed methane in the same manner and with like effect  
68 as the provisions apply to natural gas.

**§11-13A-5b. Dedication of ten percent of coalbed methane severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to coalbed methane producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the Office of State Treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.**

1 (a) Effective the first day of December, two thousand  
2 five, ten percent of the tax attributable to the severance of  
3 coalbed methane imposed by section three-d of this article  
4 is hereby dedicated for the use and benefit of counties and  
5 municipalities within this state and shall be distributed to  
6 the counties and municipalities as provided in this section.

7 (b) Seventy-five percent of this dedicated tax shall be  
8 distributed by the State Treasurer in the manner specified  
9 in this section to the various counties of this state in which  
10 the coalbed methane upon which this additional tax is  
11 imposed was located at the time it was removed from the  
12 ground. Those counties are referred to in this section as  
13 the "coalbed methane producing counties". The remaining  
14 twenty-five percent of the net proceeds of this additional  
15 tax on coalbed methane shall be distributed among all the  
16 counties and municipalities of this state in the manner  
17 specified in this section.

18 (c) The Tax Commissioner is hereby granted plenary  
19 power and authority to promulgate reasonable rules  
20 requiring the furnishing by coalbed methane producers of  
21 such additional information as may be necessary to



22 compute the allocation required under the provisions of  
23 subsection (f) of this section. The Tax Commissioner is  
24 also hereby granted plenary power and authority to  
25 promulgate such other reasonable rules as may be neces-  
26 sary to implement the provisions of this section.

27 (d) In order to provide a procedure for the distribution of  
28 seventy-five percent of the dedicated tax on coalbed  
29 methane to the coalbed methane producing counties, a  
30 special fund known as the Coalbed Methane County  
31 Revenue Fund is hereby established in the State Trea-  
32 surer's Office. In order to provide a procedure for the  
33 distribution of the remaining twenty-five percent of the  
34 dedicated tax on coalbed methane to all counties and  
35 municipalities of the state, without regard to coalbed  
36 methane having been produced in those counties or  
37 municipalities, a special fund known as the All Counties  
38 and Municipalities Coalbed Methane Revenue Fund is  
39 hereby established in the State Treasurer's Office. Sev-  
40 enty-five percent of the dedicated tax on coalbed methane  
41 shall be deposited in the Coalbed Methane County Reve-  
42 nue Fund and twenty-five percent of the dedicated tax on  
43 coalbed methane shall be deposited in the All Counties and  
44 Municipalities Coalbed Methane Revenue Fund, from time  
45 to time, as the proceeds are received by the Tax Commis-  
46 sioner. The moneys in the funds shall be distributed to the  
47 respective counties and municipalities entitled to the  
48 moneys in the manner set forth in subsection (e) of this  
49 section.

50 (e) The moneys in the Coalbed Methane County Revenue  
51 Fund and the moneys in the All Counties and Municipali-  
52 ties Coalbed Methane Revenue Fund shall be allocated  
53 among and distributed annually to the counties and  
54 municipalities entitled to the moneys by the State Trea-  
55 surer in the manner specified in this section. On or before  
56 each distribution date, the State Treasurer shall determine  
57 the total amount of moneys in each fund which will be  
58 available for distribution to the respective counties and

59 municipalities entitled to the moneys on that distribution  
60 date. The amount to which a coalbed methane producing  
61 county is entitled from the Coalbed Methane County  
62 Revenue Fund shall be determined in accordance with  
63 subsection (f) of this section, and the amount to which  
64 every county and municipality shall be entitled from the  
65 All Counties and Municipalities Coalbed Methane Revenue  
66 Fund shall be determined in accordance with subsection  
67 (g) of this section. After determining, as set forth in  
68 subsections (f) and (g) of this section, the amount each  
69 county and municipality is entitled to receive from the  
70 respective fund or funds, a warrant of the State Auditor  
71 for the sum due to the county or municipality shall issue  
72 and a check drawn thereon making payment of the sum  
73 shall thereafter be distributed to the county or municipal-  
74 ity.

75 (f) The amount to which a coalbed methane producing  
76 county is entitled from the Coalbed Methane County  
77 Revenue Fund shall be determined by dividing the total  
78 amount of moneys in the fund derived from tax on the  
79 severance of coalbed methane then available for distribu-  
80 tion by the total volume of cubic feet of coalbed methane  
81 extracted in this state during the preceding year and  
82 multiplying the quotient thus obtained by the number of  
83 cubic feet of coalbed methane taken from the ground in  
84 the county during the preceding year.

85 (g) The amount to which each county and municipality  
86 is entitled from the All Counties and Municipalities  
87 Coalbed Methane Revenue Fund shall be determined in  
88 accordance with the provisions of this subsection. For  
89 purposes of this subsection "population" means the  
90 population as determined by the most recent decennial  
91 census taken under the authority of the United States:

92 (1) The Treasurer shall first apportion the total amount  
93 of moneys available in the All Counties and Municipalities  
94 Coalbed Methane Revenue Fund by multiplying the total  
95 amount in the fund by the percentage which the popula-

96 tion of each county bears to the total population of the  
97 state. The amount thus apportioned for each county is the  
98 county's "base share".

99 (2) Each county's "base share" shall then be subdivided  
100 into two portions. One portion is determined by multiply-  
101 ing the "base share" by that percentage which the total  
102 population of all unincorporated areas within the county  
103 bears to the total population of the county, and the other  
104 portion is determined by multiplying the "base share" by  
105 that percentage which the total population of all munici-  
106 palities within the county bears to the total population of  
107 the county. The former portion shall be paid to the county  
108 and the latter portion shall be the "municipalities' por-  
109 tion" of the county's "base share". The percentage of the  
110 latter portion to which each municipality in the county is  
111 entitled shall be determined by multiplying the total of the  
112 latter portion by the percentage which the population of  
113 each municipality within the county bears to the total  
114 population of all municipalities within the county.

115 (h) Moneys distributed to any county or municipality  
116 under the provisions of this section, from either or both  
117 special funds, shall be deposited in the county or munici-  
118 pal general fund and may be expended by the county  
119 commission or governing body of the municipality for such  
120 purposes as the county commission or governing body  
121 shall determine to be in the best interest of its respective  
122 county or municipality: *Provided*, That in counties with  
123 population in excess of two hundred thousand, at least  
124 seventy-five percent of the funds received from the  
125 Coalbed Methane County Revenue Fund shall be appor-  
126 tioned to and expended within the coalbed methane  
127 producing area or areas of the county, the coalbed meth-  
128 ane producing areas of each county to be determined  
129 generally by the state Tax Commissioner: *Provided*,  
130 *however*, That the moneys distributed to any county or  
131 municipality under the provisions of this section shall not

132 be budgeted for personal services in an amount to exceed  
133 one fourth of the total amount of the moneys.

134 (i) On or before the first day of November, two thousand  
135 five, and each first day of November thereafter, each  
136 county commission or governing body of a municipality  
137 receiving any such moneys shall submit to the Tax Com-  
138 missioner on forms provided by the Tax Commissioner a  
139 special budget, detailing how the moneys are to be spent  
140 during the subsequent fiscal year. The budget shall be  
141 followed in expending the moneys unless a subsequent  
142 budget is approved by the state Tax Commissioner. All  
143 unexpended balances remaining in the county or munic-  
144 ipality general fund at the close of a fiscal year shall  
145 remain in the general fund and may be expended by the  
146 county or municipality without restriction.

147 (j) On or before the fifteenth day of December, two  
148 thousand five, and each fifteenth day of December thereaf-  
149 ter, the Tax Commissioner shall deliver to the Clerk of the  
150 Senate and the Clerk of the House of Delegates a consoli-  
151 dated report of the budgets, created by subsection (i) of  
152 this section, for all county commissions and municipalities  
153 as of the fifteenth day of July of the current year.

154 (k) The state Tax Commissioner shall retain for the  
155 benefit of the state from the dedicated tax attributable to  
156 the severance of coalbed methane the amount of  
157 thirty-five thousand dollars annually as a fee for the  
158 administration of the additional tax by the Tax Commis-  
159 sioner.

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

*Candy White*  
.....  
Chairman Senate Committee

*Robert Brey*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Holmes*  
.....  
Clerk of the Senate

*Gregory M. Smith*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is disapproved* this the *4th*  
Day of *May*, 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 29 2005

Time

9:45 AM