

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 421

BY SENATOR KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Finance;

reported on February 24, 2016]

1 A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §11-15-9i of said code, all relating to the termination of behavioral
3 health severance and business privilege tax; specifying effective date of the termination;
4 establishing method of payment of outstanding refund claims; generating replacement
5 revenue stream by changing the durable medical goods sales tax exemption to home
6 users only; specifying effective dates of this amendment; providing method to claim this
7 exemption; and providing definitions for clarification.

Be it enacted by the Legislature of West Virginia:

1 That §11-13A-3 of the Code of West Virginia, 1931, be amended and reenacted; and that
2 §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 ~~or~~ 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.* — ~~The~~ Subject to the provisions of subsection (g) of this
7 section, the tax imposed in subsection (a) of this section shall be five percent of the gross value
8 of the natural resource produced or the health care service provided, as shown by the gross
9 income derived from the sale or furnishing thereof by the producer or the provider of the health
10 care service, except as otherwise provided in this article. In the case of coal, this five percent rate
11 of 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 (i) (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 (ii) (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 ~~(iii)~~ (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 of the behavioral health severance and business privilege tax. — For
44 taxable years beginning on and after July 1, 2016, there shall be no tax imposed upon providers
45 of health care services under the provisions of this article.

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

6 (b) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this
7 chapter, the purchase of durable medical equipment, as defined in section two, article fifteen-b of
8 this chapter, to be dispensed upon prescription by a health care provider and intended for use in
9 the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax
10 imposed by this article: *Provided*, That the durable medical equipment is purchased by an

11 individual for exclusive use by the purchaser or another individual and used predominantly by the
12 recipient individual in his or her home environment.

13 (1) *Effective Dates.* — The provisions of this subsection shall apply to purchases made on
14 and after July 1, 2016, and shall terminate on and after July 1, 2018.

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

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

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

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

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

45 ~~(c)~~ (4) The term “durable medical goods”, as used in this article, means “durable medical
46 equipment” as defined in article fifteen-b of this chapter.

47 (5) For purposes of this section, the term “nursing home or facility” means any institution,
48 residence or place, or any part or unit thereof, however named, in this state which is advertised,
49 offered, maintained or operated by the ownership or management, whether for a consideration or
50 not, for the express or implied purpose of providing accommodations and care, for a period of
51 more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and
52 in need of extensive, ongoing nursing care due to physical or mental impairment or which provides
53 services for the rehabilitation of persons who are convalescing from illness or incapacitation:
54 *Provided*, That the care or treatment in a household, whether for compensation or not, of any
55 person related by blood or marriage, within the degree of consanguinity of second cousin to the
56 head of the household, or his or her spouse, may not be deemed to constitute a nursing home
57 within the meaning of this article.

58 (6) For purposes of this section, the term “assisted care center” means any living facility,
59 residence or place of accommodation, however named, available for four or more residents, in
60 this state which is advertised, offered, maintained or operated by the ownership or management,
61 whether for a consideration or not, for the express or implied purpose of having personal
62 assistance or supervision, or both, provided to any residents therein who are dependent upon the

63 services of others by reason of physical or mental impairment and who may also require nursing
64 care at a level that is not greater than limited and intermittent nursing care: *Provided*, That the
65 care or treatment in a household, whether for compensation or not, of any person related by blood
66 or marriage, within the degree of consanguinity of second cousin to the head of the household,
67 or his or her spouse, may not be deemed to constitute an assisted living residence within the
68 meaning of this article.

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