

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Originating**

### **Senate Bill 718**

BY SENATORS TARR, SYPOLT, SWOPE, HAMILTON,

CLEMENTS, ROBERTS, NELSON, AND MARTIN

[Originating in the Committee on Finance; reported on

March 29, 2021]



1 A BILL to amend and reenact §11-13EE-2, §11-13EE-3, §11-13EE-5, and §11-13EE-16 the Code  
2 of West Virginia, 1931, as amended, all relating generally to the Coal Severance Tax  
3 Rebate; defining terms; providing for rebate of severance tax when capital investment  
4 made in new machinery and equipment directly used in severance of coal, or in coal  
5 preparation and processing plants; providing rules and procedures for claiming rebate and  
6 transfer to successors; and providing that changes clarifying application of rebate are to  
7 be applied retroactive to capital investments placed into service after the original effective  
8 date of this article.

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

**ARTICLE 13EE. COAL SEVERANCE TAX REBATE.**

**§11-13EE-2. Definitions.**

1 (a) *General.* — When used in this article, or in the administration of this article, terms  
2 defined in subsection (b) shall have the meanings ascribed to them by this section, unless a  
3 different meaning is clearly required by either the context in which the term is used, or by specific  
4 definition, in this article.

5 (b) *Terms defined.* —

6 (1) “Affiliated group” means one or more chains of corporations, limited liability entities, or  
7 partnerships, or any combination thereof, connected through the ownership of stock or ownership  
8 interests with a common parent which is a corporation, limited liability entity, or partnership, but  
9 only if the common parent owns directly, or indirectly, a controlling interest in each of the members  
10 of the group.

11 (2) “Base period” means the five-year period directly preceding the year the qualifying  
12 capital investment in new machinery and equipment was placed into service.

13 (3) “Base period annual average severance taxes” means the annual average of the State  
14 portion of severance taxes paid under §11-13A-3 of this code during the five-year period directly  
15 preceding the year the qualifying capital investment in new machinery and equipment was placed

16 into service. The annual average of the state portion of severance taxes is found by taking the  
17 cumulative total of the State portion of severance taxes paid from all mines operated within the  
18 State by the eligible taxpayer and dividing the aggregate cumulative total of the State portion of  
19 severance taxes by five.

20 ~~(2) “Business” means and is limited to the activity of producing coal for sale, profit or~~  
21 ~~commercial use including coal preparation and processing.~~

22 (3) ~~(4)~~ “Capital investment in new machinery and equipment” means:

23 (A) Tangible personal property in the form of machinery and equipment that is purchased  
24 on or after the effective date of this article and placed in service for direct use in the production of  
25 coal, when the original or first use of the machinery or equipment in this State commences ~~in this~~  
26 ~~State~~ on or after the effective date of this article; ~~and~~

27 (B) Tangible personal property in the form of machinery and equipment that is leased by  
28 the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or  
29 after the effective date of this article, if the original or first use of the machinery or equipment  
30 commences in this State, with the taxpayer, on or after the effective date of this article and the  
31 machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has  
32 a useful life of 5 or more years for federal income tax purposes.

33 (C) Tangible personal property in the form of materials used for infrastructure  
34 improvements to real property on or after the effective date of this article and placed in service for  
35 direct use in the production of coal, when the original or first use of the materials used for the  
36 infrastructure upgrades commences in this State on or after the effective date of this article. Such  
37 infrastructure upgrades include, but are not limited to, materials used for construction of haul  
38 roads or access roads, culverts, belt lines, and ventilation fans; and

39 (D) Repair or refurbishment costs to tangible personal property directly used in the  
40 production of coal that are incurred on or after the effective date of this article, which are  
41 capitalized for federal income tax purposes.

42           ~~(4)~~ (5) “Coal mine” or “mine” includes:

43           (A) A “surface mine” or “surface mining operation” which means:

44           (i) Activities conducted on the surface of lands for the removal of coal, or, subject to the  
45 requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an  
46 underground coal mine, including the drainage and discharge from the mine. The activities  
47 include: Excavation for the purpose of obtaining coal, including, but not limited to, common  
48 methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the  
49 uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other  
50 chemical or physical processing; the cleaning, concentrating or other processing or preparation  
51 and loading of coal for commercial purposes at or near the mine site; and

52           (ii) The areas upon which the above activities occur or where the activities disturb the  
53 natural land surface. The areas also include any adjacent land, the use of which is incidental to  
54 the activities; all lands affected by the construction of new roads or the improvement or use of  
55 existing roads to gain access to the site of the activities and for haulage; and excavations,  
56 workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles,  
57 overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage  
58 areas, processing areas, shipping areas and other areas upon which are sited structures,  
59 facilities, or other property or materials on the surface, resulting from or incident to the activities:  
60 *Provided*, That the activities do not include the extraction of coal incidental to the extraction of  
61 other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of  
62 minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining  
63 does not include any of the following:

64           (I) Coal extraction authorized pursuant to a government-financed reclamation contract;

65           (II) Coal extraction authorized as an incidental part of development of land for commercial,  
66 residential, industrial or civic use; or

67 (III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract;  
68 and

69 (B) An “underground mine” which includes the shafts, slopes, drifts or inclines connected  
70 with, or intended in the future to be connected with, excavations penetrating coal seams or strata,  
71 which excavations are ventilated by one general air current or divisions thereof, and connected  
72 by one general system of mine haulage over which coal may be delivered to one or more points  
73 outside the mine, and the surface structures or equipment connected or associated therewith  
74 which contribute directly or indirectly to the mining, preparation or handling of coal.

75 ~~(5)~~ (6) “Coal mining operation” includes the mine and the coal preparation and processing  
76 plant.

77 ~~(6)~~ (7) “Coal preparation and processing plant” means any facility (excluding underground  
78 mining operations) which prepares coal by one or more of the following processes: breaking,  
79 crushing, screening, wet or dry cleaning, and thermal drying.

80 ~~(7)~~ (8) “Coal production” means the privilege of severing, extracting, reducing to  
81 possession and producing coal for sale, profit or commercial use and includes the processing of  
82 coal at a coal preparation and processing plant.

83 ~~(8)~~ (9) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean  
84 the Tax Commissioner of the State of West Virginia, or his or her delegate.

85 ~~(9)~~ (10) “Controlled group” means one or more chains of corporations connected through  
86 stock ownership with a common parent corporation if stock possessing at least 50 percent of the  
87 voting power of all classes of stock of each of the corporations is owned, directly or indirectly, by  
88 one or more of the corporations; and the common parent owns directly stock possessing at least  
89 50 percent of the voting power of all classes of stock of at least one of the other corporations.

90 ~~(10)~~ (11) “Controlling interest” means:

91 (A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the  
92 total combined voting power of all classes of stock of the corporation, or more than 50 percent

93 ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all  
94 classes of stock of the corporation;

95 (B) For a partnership, association, trust or other entity other than a limited liability  
96 company, more than 50 percent, ownership, directly or indirectly, of the capital, profits, or  
97 beneficial interest in the partnership, association, trust, or other entity;

98 (C) For a limited liability company, either more than 50 percent ownership, directly or  
99 indirectly, of the total membership interest of the limited liability company, or more than 50 percent  
100 ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of  
101 the limited liability company.

102 ~~(11)~~ (12) "Corporation" means any corporation, joint-stock company or association, and  
103 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a  
104 certificate of interest or ownership or similar written instrument.

105 ~~(12)~~ (13) "Delegate" used in the phrase "or his delegate," when used in reference to the  
106 Tax Commissioner, means any officer or employee of the State Tax Department duly authorized  
107 by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to  
108 perform the functions mentioned or described in this article.

109 ~~(13)~~ (14) "Directly used or consumed in the production of coal" means used or consumed  
110 in those activities or operations which constitute an integral and essential part of the production  
111 of coal, as contrasted with and distinguished from those activities or operations which are simply  
112 incidental, convenient or remote to the production of coal.

113 (A) Uses of tangible personal property which constitute direct use or consumption in the  
114 production of coal include only:

115 (i) New machinery and equipment that is depreciable, or amortizable, for federal income  
116 tax purposes, that has a useful life of 5 or more years for federal income tax purposes, and that  
117 are directly used in the production of coal in this state;

118 (ii) Transportation of coal within the coal mine from the coal face or coal deposit to the  
119 exterior of the mine or to a point where the extracted coal is transported away from the mine;

120 (iii) Directly and physically recording the flow of coal during the production of coal including  
121 those coal treatment processes specified in §11-13A-4 of this code;

122 (iv) Safety equipment and apparatus directly used in the production of coal, or to secure  
123 the safety of mine personnel is direct use in the production of coal;

124 (v) Controlling or otherwise regulating atmospheric conditions required for the production  
125 of coal;

126 (vi) Transformers, pumps, rock dusting equipment and other property used to supply  
127 electricity or water, or to supply or apply rock dust directly used in the production of coal;

128 (vii) Storing, removal or transportation of economic waste, including coal gob, resulting  
129 from the production of coal;

130 (viii) Engaging in pollution control or environmental quality or protection activity directly  
131 relating to the production of coal; or

132 (ix) Otherwise using as an integral and essential part of the production of coal.

133 (B) Uses of tangible personal property which do not constitute direct use or consumption  
134 in the production of coal include, but are not limited to:

135 (i) Heating and illumination of office buildings;

136 (ii) Janitorial or general cleaning activities;

137 (iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly  
138 used in the production of coal or to secure the safety of mine personnel is direct use in the  
139 production of coal when the tangible personal property is depreciable, or amortizable, for federal  
140 income tax purposes and has a useful life of 5 or more years for federal income tax purposes  
141 when it is placed in service or use;

142 (iv) Production planning, scheduling of work or inventory control;

143 (v) Marketing, general management, supervision, finance, training, accounting and  
144 administration;

145 (vi) Measuring or determining weight, and ash content, water content and other physical  
146 and chemical characteristics of the coal after production;

147 (vii) An activity or function incidental or convenient to the production of coal, rather than  
148 an integral and essential part of these activities.

149 ~~(14)~~ (15) "Eligible taxpayer" means:

150 (A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of  
151 producing coal for sale, profit or commercial use for at least 2 years before the capital investment  
152 in machinery and equipment is placed in service or use in this state; or

153 (B) A taxpayer that has experienced a change in business composition through merger,  
154 acquisition, split-up, spin-off or other ownership changes or changes in the form of the business  
155 organization from limited liability company to C corporation, or partnership, or from one form of  
156 business organization to a different form of business organization, may constitute an eligible  
157 taxpayer if the entity currently operating in this state was operating in a different form of business  
158 organization in this state at least 2 years before the capital investment in new machinery and  
159 equipment is placed in service or use in this state. In the case of business composition change  
160 through merger, acquisition, split-up, spin-off or other ownership changes the current business  
161 may constitute an eligible taxpayer if at least 50 percent of the business assets of such component  
162 were actively and directly used in coal production activity in this state for such two-year period. If  
163 less than 50 percent of the assets of the current entity were not actively and directly used in coal  
164 production activity in this state for such two-year period, then the current entity resulting from a  
165 business composition change through merger, acquisition, split-up, spin-off or other ownership,  
166 shall not constitute an eligible taxpayer.

167 (C) When the rebate applicant is part of a controlled or affiliated group, for purposes of  
168 determining the increase in the State portion of severance taxes paid, the increase in coal

169 production tonnage, and the increase in full-time and full-time equivalent employment, the term,  
170 “eligible taxpayer” includes all members of the rebate applicant’s controlled or affiliated group.  
171 Thus, the increase in the State portion of severance taxes is determined by subtracting the base  
172 period annual average severance taxes paid by the eligible taxpayer’s controlled or affiliated  
173 group for all coal mined in this State from the State portion of severance taxes paid by the eligible  
174 taxpayer’s controlled or affiliated group for all coal mined in this State during the tax year for which  
175 the rebate is claimed. Likewise, the “eligible taxpayer’s” total aggregate production tonnage and  
176 total employment figures referenced in §11-13EE-3(c)(1) & (2) are determined by reference to  
177 the controlled group or affiliated group’s total aggregate production tonnage and total employment  
178 numbers across all mines operated by the controlled or affiliated group with in the State.

179 (16) “Full-time employee” means an employee who is compensated by an annual salary  
180 and who works, on average, at least 35 hours per week.

181 (17) “Full-time equivalent employee” means the quotient obtained by dividing the total  
182 number of hours for which hourly employees were compensated for employment over the 12-  
183 month period in question by 1,820.

184 ~~(15) “Includes” and “including” when used in a definition contained in this article, shall not~~  
185 ~~be deemed to exclude other things otherwise within the generally understood meaning of the term~~  
186 ~~defined.~~

187 ~~(16)~~ (18) “Original use” means the first use to which the property is put by anyone in this  
188 State.

189 ~~(17)~~ (19) “Partnership” includes a syndicate, group, pool, joint venture or other  
190 unincorporated organization through or by means of which any business, operation or venture is  
191 carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-  
192 24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The  
193 term “partner” includes a member in such a syndicate, group, pool, joint venture or other  
194 unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

195           ~~(18)~~ (20) “Person” includes any natural person, corporation, partnership, limited liability  
196 company or other business entity.

197           ~~(19)~~ (21) “Production of coal” means privilege of severing, extracting, reducing to  
198 possession and producing coal for sale, profit or commercial use and includes the processing of  
199 coal at the coal preparation and processing plant.

200           ~~(20)~~ (22) “Property” means tangible personal property and is limited to new machinery and  
201 equipment that is depreciable or amortizable for federal income tax purposes and that has a useful  
202 life of 5 or more years for federal income tax purposes.

203           ~~(24)~~ (23) “Property purchased or leased for business expansion” means:

204           (A) *Included property*. — Except as provided in subparagraph (B) of this section, the term  
205 “property purchased or leased for business expansion” means tangible personal property, but  
206 only if the tangible personal property was purchased, or leased and placed in service or use by  
207 the taxpayer, for use in West Virginia. This term includes only:

208           (i) Tangible personal property placed in service or use by the taxpayer on or after the  
209 effective date of this article, with respect to which depreciation, or amortization in lieu of  
210 depreciation, is allowable in determining the personal or corporation net income tax liability of the  
211 business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which  
212 has a useful economic life at the time the property is placed in service or use in this state, of 5 or  
213 more years.

214           (ii) Tangible personal property acquired by written lease having a primary term of 5 years  
215 or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax  
216 purposes and that has a useful life of 5 or more years for federal income purposes when it is  
217 placed in service or use, and when the lease commences and was executed by the parties thereto  
218 on or after the effective date of this article, if used as a component part of a new or expanded coal  
219 mining operation in this state shall be included within this definition.

220 (iii) Repair or refurbishment costs to tangible personal property directly used in the  
221 production of coal that are incurred on or after the effective date of this article, which are  
222 capitalized for federal income tax purposes.

223 (B) *Excluded property*. — The term “property purchased or leased for business expansion”  
224 shall not include:

225 (i) Machinery and equipment owned or leased by the taxpayer and for which credit was  
226 taken or is claimed under any other article of this chapter for capital investment in the new  
227 machinery and equipment;

228 (ii) Repair costs, including materials used in the repair, unless for federal income tax  
229 purposes, the cost of the repair must be capitalized and not expensed;

230 (iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

231 (iv) Airplanes;

232 (v) Off-premise transportation equipment;

233 (vi) Machinery and equipment that is primarily used outside this state;

234 (vii) Machinery and equipment that is acquired incident to the purchase of the stock or  
235 assets of the seller; and

236 (viii) Used machinery and equipment.

237 (C) *Purchase date*. — New machinery and equipment shall be deemed to have been  
238 purchased prior to a specified date only if:

239 (i) The machinery or equipment was owned by the taxpayer prior to the effective date of  
240 this article or was acquired by the taxpayer pursuant to a binding purchase contract which was in  
241 effect prior to the effective date of this article; or

242 (ii) In the case of leased machinery and equipment, there was a binding written lease or  
243 contract to lease identifiable machinery or equipment in effect prior to the effective date of this  
244 article.

245 ~~(22)~~ (24) “Purchase” means any acquisition of new machinery or equipment, but only if:

246 (A) The machinery or equipment is not acquired from a person whose relationship to the  
247 person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of  
248 the United States Internal Revenue Code, as defined in §11-24-3 of this code;

249 (B) The machinery or equipment is not acquired by one component member of a controlled  
250 group from another component member of the same controlled group; and

251 (C) The basis of the machinery or equipment for federal income tax purposes, in the hands  
252 of the person acquiring it, is not determined:

253 (i) In whole or in part by reference to the federal adjusted basis of the machinery or  
254 equipment in the hands of the person from whom it was acquired; or

255 (ii) Under Section 1014 (e) of the United States Internal Revenue Code.

256 ~~(23)~~ (25) “Qualified coal mining activity” means any business or other activity subject to  
257 the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to  
258 possession and producing coal for sale, profit or commercial use including the treatment process  
259 described as mining in §11-13A-4(a)(1) of this code.

260 ~~(24)~~ (26) “Qualified investment” means capital investment in new machinery and  
261 equipment directly used in the production of coal in this state that is depreciable, or amortizable,  
262 for federal income tax purposes and has a useful life for federal income tax purposes of 5 or more  
263 years when it is placed in service or use in this state.

264 ~~(25)~~ (27) “Rebate” means the amount of rebate allowable under §11-13EE-4 of this article.

265 ~~(26)~~ (28) “Related person” means:

266 (A) A corporation, partnership, association or trust controlled by the taxpayer;

267 (B) An individual, corporation, partnership, association or trust that is in control of the  
268 taxpayer;

269 (C) A corporation, partnership, association or trust controlled by an individual, corporation,  
270 partnership, association or trust that is in control of the taxpayer; or

271 (D) A member of the same controlled group as the taxpayer.

272 For purposes of this subdivision, the term “control,” with respect to a corporation, means  
273 ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined  
274 voting power of all classes of the stock of the corporation entitled to vote. “Control,” with respect  
275 to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest  
276 in the principal or income of the trust. The ownership of stock in a corporation, of a capital or  
277 profits interest in a partnership or association or of a beneficial interest in a trust is determined in  
278 accordance with the rules for constructive ownership of stock provided in section 267 (c) of the  
279 United States Internal Revenue Code, other than paragraph (3) of that section.

280 ~~(27)~~ (29) “State portion of severance taxes paid” means the portion of severance taxes  
281 due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

282 ~~(28)~~ (30) “Tangible personal property” means and is limited to new machinery and  
283 equipment that is depreciable, or amortizable, for federal income tax purposes and that has a  
284 useful life of 5 or more years for federal income tax purposes when it is placed in service or use  
285 in this state.

286 ~~(29)~~ (31) “Taxpayer” means any person exercising the privilege of severing, extracting,  
287 reducing to possession and producing coal for sale, profit or commercial use coal, which privilege  
288 is taxable under §11-13A-3 of this code.

289 ~~(30)~~ (32) “This code” means the Code of West Virginia, 1931, as amended.

290 ~~(31)~~ (33) “This state” means the State of West Virginia.

291 ~~(32)~~ (34) “United States Internal Revenue Code” or “Internal Revenue Code” means the  
292 Internal Revenue Code as defined in §11-24-3 of this code

**§11-13EE-3. Rebate allowable.**

1 (a) Rebate allowable. — Eligible taxpayers shall be allowed a rebate against a portion of  
2 severance taxes imposed by §11-13A-3 of this code on the privilege of engaging in the production  
3 of coal in an amount not to exceed 35 percent of the eligible taxpayer’s qualified investment in

4 tangible personal property purchased or leased for business expansion, subject to the limitations  
5 in subsections (b) and (c).

6 (b) Maximum rebate limited to 80% of increase above base period severance taxes. —

7 The maximum amount of rebate allowable for any given tax year is limited to an amount not to  
8 exceed 80 percent of the increase in the State portion of severance taxes paid for coal mined at  
9 the specific mine where the qualified investment is made when compared to the State portion of  
10 severance taxes paid for coal mined at the specific mine where the qualified investment is made  
11 during the base period.

12 (c) Additional Limiting Factors. —

13 (1) In order to qualify for any severance tax rebate under this Article in a given rebate  
14 year, the eligible taxpayer must meet the following requirements:

15 (A) No credit shall be allowed unless the aggregate total coal production tonnage from all  
16 mines operated by the eligible taxpayer in this State during the year for which the rebate or rebate  
17 carryover is claimed has increased above the annual average aggregate total coal production  
18 tonnage from all mines operated by the eligible taxpayer during the base period; and

19 (B) No credit shall be allowed unless the aggregate total number of full-time employees,  
20 along with full-time equivalent employees, at all mines operated by the eligible taxpayer in this  
21 State during the rebate year has increased above the annual average aggregate total number of  
22 full-time employees, along with full-time equivalent employees, at all mines operated by the  
23 eligible taxpayer in this State during the base period.

24 (2) The increase in the State portion of severance taxes paid against which the rebate  
25 may be taken is further limited by a factor, the numerator of which is the increase in coal  
26 production, measured in tons produced, at all mines operated by the taxpayer, the denominator  
27 of which is the increase in coal production, measured in tons produced, at the specific mine where  
28 investment is made; *Provided*, That in no instance may the factor exceed 1. The increase in coal  
29 production is determined by subtracting the base period coal production, measured in tons

30 produced, from the coal production, measured in tons produced, during the tax year for which the  
31 rebate is claimed.

32 (d) When the eligible taxpayer has produced coal in this State for 2 years before making  
33 the capital investment in new machinery and equipment, but was not in business during a full  
34 five-year base period, then the eligible taxpayer's base severance tax amount shall be the amount  
35 of State severance tax due under §11-13A-3 of this code on coal produced in this State during  
36 the most recent tax year prior to making the investment.

37 (e) No rebate shall be allowed under this article when credit is claimed under any other  
38 article of this chapter for capital investment in the new machinery and equipment. No credit shall  
39 be allowed under any other article of this chapter when rebate is allowed under this article for the  
40 capital investment in new machinery and equipment.

41 ~~(a) *Rebate allowable.* — Eligible taxpayers shall be allowed a rebate for a portion of state~~  
42 ~~severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting,~~  
43 ~~reducing to possession and producing coal for sale, profit or commercial use that is attributable~~  
44 ~~to the increase in the production of coal that is attributable to and the consequence of the~~  
45 ~~taxpayer's capital investment in new machinery and equipment used at the coal mine, or coal~~  
46 ~~preparation and processing facility. The amount of this rebate shall be determined and applied as~~  
47 ~~hereinafter provided in this article.~~

48 ~~(b) *Amount of rebate.* — The amount of rebate allowable is determined by multiplying the~~  
49 ~~amount of the taxpayer's capital investment in new machinery and equipment directly used in the~~  
50 ~~production of coal at a coal mining operation in this state by 35 percent. The product of this~~  
51 ~~computation establishes the maximum amount of rebate allowable under this article for the capital~~  
52 ~~investment in new machinery and equipment.~~

53 ~~(c) *Application of rebate amount.* — The amount of rebate allowable is determined by~~  
54 ~~applying the rebate amount determined in subsection (b) of this section against 80 percent of the~~  
55 ~~state portion of the severance tax paid on the privilege of severing, extracting, reducing to~~

56 ~~possession and producing coal for sale, profit or commercial use that is directly attributable to the~~  
57 ~~increased production of coal at the mine due to taxpayer's capital investment in new machinery~~  
58 ~~and equipment at the mine or coal processing and preparation plant.~~

59 ~~(d) The amount of severance tax attributable to the increase in coal production at a mine~~  
60 ~~due to the capital investment in new machinery and equipment shall be determined by comparing~~  
61 ~~(1) the state portion of the severance tax due under §11-13A-3 of this code on coal produced from~~  
62 ~~the mine during calendar year 2018, before allowance of any tax credits, except as provided in~~  
63 ~~subsection (e) of this section (d), (2) with the state severance tax due on coal produced at the~~  
64 ~~mine during the then current calendar year in which the capital investment in new mining~~  
65 ~~machinery and equipment is placed in service or use, before allowance for any tax credits. When~~  
66 ~~the amount in subdivision (2) of this section is greater than the amount in subdivision (1) of this~~  
67 ~~section, the difference is the amount of state severance tax due to the increase in coal production~~  
68 ~~at the mine that is attributable to the capital investment in new machinery and equipment:~~  
69 ~~*Provided*, That when the producer of the coal operates more than one mine in this state, or is a~~  
70 ~~member of a controlled or affiliated group that operates one or more coal mines in this state, no~~  
71 ~~credit shall be allowed unless the total coal production from all mines operated by the taxpayer or~~  
72 ~~by members of the affiliated or controlled group in this state has increased by at least the increase~~  
73 ~~in production at the mine at which the capital investment in new machinery and equipment was~~  
74 ~~made: *Provided, however*, That in no case shall the severance tax attributable to any mine other~~  
75 ~~than the specific mine at which capital investment in new machinery and equipment is directly~~  
76 ~~used in a coal mining operation has been placed in service or use be offset by this rebate.~~

77 ~~(e) When the eligible taxpayer is a new business that has produced coal in this state for 2~~  
78 ~~years before making the capital investment in new machinery and equipment, then, for purposes~~  
79 ~~of item (1) in subsection (d), the base shall be the amount of state severance tax due under §11-~~  
80 ~~13A-3 of this code on coal produced in this state during the second year of this two-year period.~~

81 ~~(f) When the operator of the coal mine at which capital investment in new machinery and~~  
82 ~~equipment was made operates one or more other coal mines in this state, the operator may not~~  
83 ~~cease production of coal, or reduce the production of coal, at one or more of those mines during~~  
84 ~~the tax years for which rebate is allowed under this article. The Tax Commissioner shall~~  
85 ~~promulgate a legislative rule providing exceptions to this subsection.~~

86 ~~(g) When the operator of the coal mine at which capital investment in new machinery and~~  
87 ~~equipment was made is a member of a controlled or affiliated group that operates one or more~~  
88 ~~other coal mines in this state, then the controlled or affiliated group, as the case may be, may not~~  
89 ~~cease production of coal, or reduce the production of coal, at one or more of those mines during~~  
90 ~~the tax years for which rebate is allowed under this article. The Tax Commissioner shall~~  
91 ~~promulgate a legislative rule providing exceptions to this subsection.~~

92 ~~(h) No rebate shall be allowed under this article when credit is claimed under any other~~  
93 ~~article of this chapter for capital investment in the new machinery and equipment. No credit shall~~  
94 ~~be allowed under any other article of this chapter when rebate is allowed under this article for the~~  
95 ~~capital investment in new machinery and equipment.~~

**§11-13EE-5. Claim for rebate.**

1 (a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim  
2 under this article for rebate of up to 80 percent of the increase in the state portion of the additional  
3 severance taxes paid under §11-13A-3 of this code. ~~that are directly attributable to taxpayer's~~  
4 ~~capital investment in new machinery and equipment placed in service or use during that taxable~~  
5 ~~year as set forth in §11-13EE-4.~~

6 (b) When the amount of rebate claimed exceeds 80 percent of the additional state  
7 severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate  
8 amount may be carried forward and refunded by the Tax Commissioner after severance taxes  
9 due in subsequent years are paid: *Provided*, That the carryforward period may not exceed 10

10 years from the date the capital investment in new machinery and equipment is placed in service  
11 or use in this state.

**§11-13EE-16. Effective date.**

1           The rebate allowed by this article is allowed for capital investment in new machinery and  
2 equipment placed in service or use in this state on or after July 1, 2019. As the changes in sections  
3 §11-13EE-2, §11-13EE-3, and §11-13EE-5 are intended to clarify the original intent and meaning  
4 of this Article, the amendments to this Article made during the 2021 Legislative session are  
5 retroactive and shall be applied to any rebate claims made for all qualified investments placed  
6 into service after the original effective date of this Article (July 1, 2019) for which no rebate claim  
7 has been previously made.