

DEPARTMENT OF TAXATION

2006 Fiscal Impact Statement

1. **Patron** William C. Wampler, Jr.

2. **Bill Number** SB 365

3. **Committee** Senate Finance

House of Origin:

 Introduced

 X **Substitute**

 Engrossed

4. **Title** Coal Employment and Production Incentive
Tax Credit

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

The Department understands that the patron will introduce a substitute for this legislation. This fiscal impact statement addresses the substitute bill.

This bill would allow the Coal Employment and Production Incentive Tax Credit earned for coal purchased on or after January 1, 2006, to be allocated between the purchasers and certain sellers of coal. In addition, credits earned by a person with an economic interest in coal on or after January 1, 2006, and prior to July 1, 2011, could be redeemed by the taxpayer if the credits exceeded the tax liability of the taxpayer. Finally, the carryover period for this credit would be extended from five years to ten years for coal purchased and consumed on or after January 1, 2001.

This bill would also extend the sunset date for the Coalfield Employment Enhancement Tax Credit from January 1, 2008, to January 1, 2015.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

Administrative Impact

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

The provisions of this bill that modify the Coal Employment and Production Incentive Tax Credit would have a negative revenue impact of an unknown amount. Currently, no taxpayers are claiming this credit. It is assumed that this is because electricity generators have no corporate income tax liabilities, as electricity generators can be subject to a minimum tax in lieu of the income tax. This bill, however, would allow the credit to be allocated to a person with an economic interest in coal that does have such a liability. Moreover, any credit that is not usable could be redeemed.

The provisions of this bill that extend the sunset date of the Coalfield Employment Enhancement Tax Credit would have no revenue impact, as the General Fund revenue forecast assumes that expiring credits, exemptions, etc. will be extended.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Mines, Minerals and Energy
Coalfields Economic Development Authority

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Coal Employment and Production Incentive Tax Credit

Effective for taxable years beginning on or after January 1, 2001, the Coal Employment and Production Incentive Tax Credit is a corporate income tax credit of \$3 per ton for the purchase and consumption of Virginia mined coal by an electricity generator in the Commonwealth. Unused amounts of the credit may be carried over for five years.

Coalfield Employment Enhancement Tax Credit

The Coalfield Employment Enhancement Tax Credit provides a credit against any tax imposed by the Commonwealth to Virginia producers of coal and coal methane gas. Two credits are available for coal mining, one for underground mines and another for surface mined coal. The credits are available for taxable years beginning on or after January 1, 1996 through January 1, 2008. To the extent the credit exceeds income tax liability, the excess is refundable up to 90% of the face value of the credit; however, for tax years beginning on and after January 1, 2002, the excess is refundable up to 85%. The remaining 10% or 15% is to be deposited in a regional fund administered by the Coalfield Economic Development Authority.

Credits that are earned in current years cannot be claimed until future taxable years according to the following deferral schedule.

TAXABLE YEAR EARNED	TAXABLE YEAR REDEEMED
2002	2005
2003	2006
2004	2007
2005	2008
2006	2009
2007	2010

For coal mined underground, the credit amount varies according to the seam thickness mined. The credit is equal to \$2.00 per ton for a seam thickness of 36 inches or less and \$1.00 per ton for a seam thickness greater than 36 inches. Seam thickness is certified by the Department of Mines, Minerals and Energy. A credit of \$0.40 per ton is permitted for coal mined by surface mining methods. Also available is a credit for coal methane gas producers of \$0.01 per million BTU's of gas produced.

The amount of credit earned is subject to a limitation based on employment levels.

Proposal

Virginia Coal Employment and Production Incentive Tax Credit

Effective for purchases of coal made on or after January 1, 2006 from any person with an economic interest in coal, this bill would allow the credit to be allocated between the electricity generator and such person with an economic interest in coal. This would allow the benefit of the credit to be shifted from an electricity generator that is subject to the minimum tax on certain electric suppliers to the person with an economic interest in the coal.

The allocation of the credit could be provided in the contract between the parties for the sale of the coal. The parties could amend any such allocation with a written instrument prior to December 31 of the year that the coal was purchased. All contracts and written instruments would be subject to audit by the Department.

This bill would allow credits earned on or after January 1, 2006, which are allocated to persons with an economic interest in coal to be used against any tax imposed by the Commonwealth. If the credits earned on or after January 1, 2006, and prior to July 1, 2011, exceeded the tax liability of such person, the excess could be redeemed in a manner similar to the Coalfield Employment Enhancement Tax Credit.

Finally, this bill would extend the carryover period for this credit from five years to ten years. This change would be effective for coal purchased and consumed on or after January 1, 2001.

Coalfield Employment Enhancement Tax Credit

This bill would extend the sunset date of when the credit can be earned and claimed to the 2014 and 2017 years, respectively. Under the provisions of this bill, credits earned

after taxable years beginning on or after January 1, 2008 would be claimed according to the schedule below.

TAXABLE YEAR EARNED	TAXABLE YEAR REDEEMED
2008	2011
2009	2012
2010	2013
2011	2014
2012	2015
2013	2016
2014	2017

OTHER LEGISLATION

House Bill 1043 would also allow the Coal Employment and Production Incentive Tax Credit earned for coal purchased on or after January 1, 2006 to be allocated between the purchasers and certain sellers of coal. In addition, such credits earned by a person with an economic interest in coal at any time could be redeemed by the taxpayer if the credits exceeded the tax liability of the taxpayer. Finally, the bill would extend the sunset date for the Coalfield Employment Enhancement Tax Credit from January 1, 2008 to January 1, 2015.

cc : Secretary of Finance

Date: 02/06/2006 AMS
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