

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 618

An Act to amend and reenact §§ 15.2-6009, 45.1-161.62, 45.1-361.5, 45.1-361.38, 46.2-1143, 58.1-3343, 58.1-3712, 58.1-3713, 58.1-3713.01, 58.1-3713.3, 58.1-3930, 58.1-3932, and 58.1-3959 of the Code of Virginia; to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 37.1, consisting of sections numbered 58.1-3740 through 58.1-3745; and to repeal §§ 58.1-3713.1, 58.1-3713.2, and 58.1-3713.5 of the Code of Virginia, relating to local coal severance taxes.

[S 918]

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-6009, 45.1-161.62, 45.1-361.5, 45.1-361.38, 46.2-1143, 58.1-3343, 58.1-3712, 58.1-3713, 58.1-3713.01, 58.1-3713.3, 58.1-3930, 58.1-3932, and 58.1-3959 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 37.1, consisting of sections numbered 58.1-3740 through 58.1-3745, as follows:

§ 15.2-6009. Capitalization of Authority.

On September 1, 1988, and on the first day of each month thereafter, each county and city shall remit to the Virginia Coalfield Economic Development Fund ~~twenty-five~~ 25 percent of the revenues collected during the next to last calendar month from the ~~coal~~ and (i) gas road improvement tax pursuant to § 58.1-3713 and (ii) local coal road improvement severance license tax pursuant to subsection B of § 58.1-3741.

§ 45.1-161.62. Annual reports; condition to issuance of license following transfer of ownership.

A. The operator or his agent of every mine shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the names of the operator, any agent, and their officers, of the mine; (ii) the quantity of coal mined; and (iii) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.

B. Whenever the owner of a mine shall transfer the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the tons of coal produced since the January 1 previous to the date of such sale or transfer of such mine. A license will not be issued covering such transfer of ownership until the report is furnished.

C. The operator or his agent of every coal mine shall annually, by February 15, mail or deliver to the Department (i) an affidavit, certified by the Commissioner of Revenue of the locality in which the coal mining operations are conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703, 58.1-3712, ~~and~~ 58.1-3713, ~~and~~ 58.1-3741 due with respect to the coal mining operations have been paid; and (ii) an affidavit, certified by the Treasurer of the locality in which the coal mining operations are conducted, stating that all personal property, real estate and mineral land taxes due with respect to coal mining operations have been paid.

§ 45.1-361.5. Exclusivity of regulation and enforcement.

No county, city, town or other political subdivision of the Commonwealth shall impose any condition, or require any other local license, permit, fee or bond to perform any gas, oil, or geophysical operations which varies from or is in addition to the requirements of this chapter. However, no provision of this chapter shall be construed to limit or supersede the jurisdiction and requirements of other state agencies, local land-use ordinances, regulations of general purpose, or §§ 58.1-3712, 58.1-3712.1, 58.1-3713, ~~58.1-3713.1, 58.1-3713.2 and~~ 58.1-3713.3, 58.1-3741, 58.1-3742, and 58.1-3743.

§ 45.1-361.38. Report of permitted activities and production required; contents.

A. Each holder of a permit for gas or oil wells or gathering pipelines shall file monthly and annual reports of his activities as prescribed by the Director. These reports shall be for the purpose of obtaining information regarding the production and sale of gas and oil resources, as well as information concerning the ownership and control of permitted activities. Filing of these reports by a permittee shall be a condition of such permit. Every annual report filed by a permittee shall contain a certification that such permittee has paid all severance taxes levied under the provisions of §§ 58.1-3712, 58.1-3712.1 ~~and~~, 58.1-3713, ~~and~~ 58.1-3741.

B. At the same time that a permittee files the monthly and annual reports as required by subsection A, the permittee shall send copies of the reports by mail to the commissioner of revenue of the political subdivision where the permitted wells are located.

§ 46.2-1143. Overweight permits for coal haulers; trucks hauling gravel, sand, crushed stone, or liquids produced from gas or oil wells in certain counties; penalties.

A. The Commissioner upon written application by the owner or operator of vehicles used exclusively

for hauling coal or coal byproducts from a mine or other place of production to a preparation plant, electricity-generation facility, loading dock, or railroad shall issue, without a fee, a permit authorizing those vehicles to operate with gross weights in excess of those established in § 46.2-1126 on the conditions set forth in this section.

B. Vehicles with three axles may have a maximum gross weight, when loaded, of no more than 60,000 pounds, a single axle weight of not more than 24,000 pounds and a tandem axle weight of no more than 45,000 pounds. Vehicles with four axles may have a maximum gross weight, when loaded, of no more than 70,000 pounds, a single axle weight of no more than 24,000 pounds, and a tri-axle weight of no more than 50,000 pounds. Vehicles with five axles having no less than 35 feet of axle space between extreme axles may have a maximum gross weight, when loaded, of no more than 90,000 pounds, a single axle weight of no more than 20,000 pounds, and a tandem axle weight of no more than 40,000 pounds. Vehicles with six axles may have a maximum gross weight, when loaded, of no more than 110,000 pounds, a single axle weight of no more than 24,000 pounds, a tandem axle weight of no more than 44,000 pounds, and a tri-axle weight of no more than 54,500 pounds.

C. No load of any vehicle operating under a permit issued according to this section shall rise above the top of the bed of such vehicle, not including extensions of the bed. Three-axle vehicles shall not carry loads in excess of the maximum bed size in cubic feet for such vehicle which shall be computed by a formula of 60,000 pounds minus the weight of the empty truck divided by the average weight of coal. For the purposes of this section, the average weight of coal shall be 52 pounds per cubic foot. Four-axle vehicles shall not carry loads in excess of the maximum bed size for such vehicle which shall be computed by a formula of 70,000 pounds minus the weight of the truck empty divided by the average weight of coal. Five-axle vehicles shall not carry loads in excess of the maximum bed size for such vehicle, which shall be computed by a formula of 90,000 pounds minus the weight of the truck empty divided by the average weight of coal. Six-axle vehicles shall not carry loads in excess of the maximum bed size for such vehicle, which shall be computed by a formula of 110,000 pounds minus the weight of the truck empty divided by the average weight of coal.

D. For the purposes of this section, "bed" means that part of the vehicle used to haul coal. Bed size shall be based on its interior dimensions, which may be determined by measuring the exterior of the bed, with volume expressed in cubic feet. In order to ensure compliance with this section by visual inspection, if the actual bed size of the vehicle exceeds the maximum as provided above, the owner or operator shall be required to paint a horizontal line two inches wide on the sides of the outside of the bed of the vehicle, clearly visible to indicate the uppermost limit of the maximum bed size applicable to the vehicle as provided in this section. In addition, one hole two inches high and six inches long on each side of the bed shall be cut in the center of the bed and at the top of the painted line. Any vehicle in violation of this section shall subject the vehicle's owner or operator or both to a penalty of \$250 for a first offense, \$500 for a second offense within a 12-month period, and \$1,000 and revocation of the permit for a third offense within a 12-month period from the first offense.

E. If the bed of any vehicle is enlarged beyond the maximum bed size for which its permit was granted, or if the line or holes required are altered so that the vehicle exceeds the bed size for which its permit was granted, the owner, operator, or both shall be subject to a penalty of \$1,000 for each offense and revocation of the permit. Upon revocation, a permit shall not be reissued for six months. The penalties provided in this section shall be in lieu of those imposed under § 46.2-1135.

F. For any vehicle with a valid permit issued pursuant to the conditions required by this section, when carrying loads which do not rise above the top of the bed or the line indicating the bed's maximum size, if applicable, it shall be, in the absence of proof to the contrary, prima facie evidence that the load is within the applicable weight limits. If any vehicle is stopped by enforcement officials for carrying a load rising above the top of the bed or the line indicating the bed's maximum size, the operator of the vehicle shall be permitted to shift his load within the bed to determine whether the load can be contained in the bed without rising above its top or above the line.

G. No such permit shall be valid for the operation of any such vehicle for a distance of more than 85 miles within the Commonwealth of Virginia from the preparation plant, loading dock, or railroad.

H. In counties that impose a severance tax on coal and gases as authorized by § 58.1-3712 or a severance license tax on coal producers as authorized by § 58.1-3741, the Commissioner, upon written application by the owner or operator of vehicles used exclusively for hauling gravel, sand, or crushed stone no more than 50 miles from origin to destination, shall issue a permit authorizing those vehicles to operate with the weight limits prescribed in subsection B. Nothing contained in this subsection shall authorize any extension of weight limits provided in § 46.2-1127 for operation on interstate highways. Any weight violation hauling sand, gravel, or crushed stone under this subsection shall be subject to the penalties authorized by § 46.2-1135.

The fee for a permit issued under this subsection shall be \$70, to be allocated as follows: (i) \$65 to the Highway Maintenance and Operating Fund, with a portion equal to the percentage of the Commonwealth's total lane miles represented by the lane miles eligible for maintenance payments pursuant to §§ 33.1-23.5:1 and 33.1-41.1 being redistributed on the basis of lane miles to the applicable localities pursuant to §§ 33.1-23.5:1 and 33.1-41.1, to be used to assist in funding needed highway

pavement and bridge maintenance and rehabilitation and (ii) a \$5 administrative fee to the Department.

I. In counties that impose a severance tax on ~~coal and~~ gases as authorized by § 58.1-3712 *or a severance license tax on coal producers as authorized by § 58.1-3741*, the weight limits prescribed in subsection B shall also apply to motor vehicles hauling liquids produced from a gas or oil well and water used for drilling and completion of a gas or oil well no more than 50 miles from origin to destination. Nothing contained in this subsection shall authorize any extension of weight limits provided in § 46.2-1127 for operation on interstate highways. Any weight violation involving hauling liquids produced from a gas or oil well and water used for drilling and completion of a gas or oil well under this subsection shall be subject to the penalties authorized by § 46.2-1135.

§ 58.1-3343. Effect of lien on certain real estate jointly owned.

The lien on real estate owned by more than one person as tenants in common, joint tenants or otherwise for the payment of all prior, present and subsequent taxes and levies or assessments thereof, including any tax, levy, or assessment authorized under §§ 58.1-3712, 58.1-3713, ~~or~~ § 58.1-3713.4, *or 58.1-3741*, shall not be impaired if such real estate was or is assessed in the name of one of such owners with the notation, "and another," or "and others," or "and wife," or "and husband," or the appropriate abbreviations of such words, or their legal equivalents, so as to indicate that the real estate was or is owned by more than one person.

§ 58.1-3712. Counties and cities authorized to levy severance tax on gases.

A. The governing body of any county or city may levy a license tax on every person engaging in the business of severing ~~coal or~~ gases from the earth. Such tax shall be at a rate not to exceed one percent of the gross receipts from the sale of ~~coal or~~ gases severed within such county. Such gross receipts shall be the fair market value measured at the time such ~~coal or~~ gases are utilized or sold for utilization in such county or city or at the time they are placed in transit for shipment therefrom, provided that if the tax provided herein is levied, such county or city cannot enact the provisions of § 58.1-3286 relating to a tax on gross receipts. In calculating the fair market value, no person engaging in the production and operation of severing gases from the earth in connection with coal mining shall be allowed to take deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.

B. Notwithstanding any other provision of this section or law, for purposes of calculating the fair market value of gases severed in Buchanan County, except as otherwise provided in a settlement agreement regarding the calculation of fair market value, including deductions for transportation and compression costs, between the County and the taxpayer, no person engaging in the production and operation of severing gases from the earth in connection with coal mining shall be allowed to take deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.

C. Any county or city enacting a license tax under this section may require producers of ~~coal or~~ gas and common carriers to maintain records and file reports showing the quantities of and receipts from ~~coal or~~ gases which they have produced or transported.

§ 58.1-3713. (Expires December 31, 2014) Local gas road improvement and Virginia Coalfield Economic Development Authority tax.

A. In addition to the taxes authorized under § 58.1-3712, any county or city may adopt a license tax on every person engaging in the business of severing ~~coal or~~ gases from the earth. The rate of such tax shall not exceed one percent. The provisions of § 58.1-3712 as they relate to measurement of gross receipts, filing of reports and record keeping shall be applicable to the tax imposed under this section.

The moneys collected for each county or city from the ~~tax~~ taxes imposed under authority of this section *and subsection B of § 58.1-3741* shall be paid into a special fund of such county or city to be called the Coal and Gas Road Improvement Fund of such county or city, and shall be spent for such improvements to public roads as the coal and gas road improvement advisory committee and the governing body of such county or city may determine as provided in subsection B of this section. The county may also, in its discretion, elect to improve city or town roads with its funds if consent of the city or town council is obtained. Such funds shall be in addition to those allocated to such counties from state highway funds which allocations shall not be reduced as a result of any revenues received from the tax imposed hereunder. In those localities which comprise the Virginia Coalfield Economic Development Authority, the tax imposed under this section *or subsection B of § 58.1-3741* shall be paid as follows: (i) three-fourths of the revenue shall be paid to the Coal and Gas Road Improvement Fund and used for the purposes set forth herein; however, one-fourth of such revenue may be used to fund the construction of new water and/or sewer systems and lines in areas with natural water supplies which are insufficient from the standpoint of quality or quantity, and (ii) one-fourth of the revenue shall be paid to the Virginia Coalfield Economic Development Fund. Furthermore, with regard to the portion paid to the Coal and Gas Road Improvement Fund, a county or city may provide for an additional one-fourth allocation for the construction of new water or sewer systems or lines or the repair or enhancement of existing water or sewer systems or lines in areas with natural water supplies which are insufficient from the standpoint of quality or quantity; however, if this option is initiated by a county or city, it must satisfy the requirements set forth in § 58.1-3713.01. Notwithstanding the foregoing limitations regarding

revenues used for water systems and/or sewer systems, such revenues designated for water and water systems and/or sewer systems shall be distributed directly to the local public service authority for such purposes instead of the local governing body.

B. Any county or city imposing the tax authorized in this section *or in subsection B of § 58.1-3741* shall establish a Coal and Gas Road Improvement Advisory Committee, to be composed of four members: (i) a member of the governing body of such county or city, appointed by the governing body, (ii) a representative of the Department of Transportation, and (iii) two citizens of such county or city connected with the coal and gas industry, appointed for a term of four years, initially commencing July 1, 1989, by the chief judge of the circuit court.

Such committee shall develop on or before July 1 of each year a plan for improvement of roads during the following fiscal year. Such plan shall have the approval of three members of the committee and shall be submitted to the governing body of the county or city for approval. The governing body may approve or disapprove such plan, but may make no changes without the approval of three members of the committee.

C. The provisions of this section shall expire on December 31, 2014.

§ 58.1-3713.01. Distribution of local coal and gas road improvement taxes for water and sewer projects applicable to the additional one-fourth allocation.

The governing body of any county or city imposing a local ~~coal and~~ gas road improvement tax ~~which is authorized by~~ under subsection A of § 58.1-3713 ~~to use or a local coal road improvement severance license tax under subsection B of § 58.1-3741 that is using~~ an additional one-fourth of the revenue from such tax to fund the construction of new water or sewer systems or lines or the repair or enhancement of existing water systems or lines shall develop and adopt by resolution an annual plan for such water and/or sewer projects and an annual plan for the funding of such water and/or sewer projects in areas in its county or city where natural water supplies are insufficient from the standpoint of quality or quantity. Plans shall establish a priority for funding water and/or sewer projects in such city or county. Consideration for funding shall be given to (i) replacing water supplies lost due to mining activities and providing emergency water services to areas that have lost water due to mining activities; (ii) preserving water supplies that are jeopardized due to permitted mining which is occurring or is near commencement; (iii) facilitating development of water and/or sewer projects which will promote diversified industrial development; and (iv) increasing the capacity of publicly owned water and/or sewer treatment or supply facilities.

Plans shall encourage the development of regional water and/or sewer projects. "Regional water and/or sewer project" means a project involving two or more public water and/or sewer service providers located in the same or neighboring political subdivisions. In order to promote cost savings and economic development, funding may be provided for regional water and/or sewer projects as provided in this section. If a regional water and/or sewer project encompasses an area for which plans are developed by two or more local governing bodies, the project shall not be funded unless it is agreed to by all of the affected local governing bodies.

A county or city shall not expend local coal and gas road improvement tax revenue for water and/or sewer projects in a manner that is inconsistent with the priority for funding set forth in an approved plan.

§ 58.1-3713.3. Validation of local coal and gas severance tax ordinances and local coal and gas road improvement tax ordinances.

A. All ordinances adopted pursuant to §§ 58.1-3712 and 58.1-3713 prior to October 1, 1989, shall be valid as if they had been enacted as of January 1, 1985, as long as similar ordinances had been validly enacted under the predecessor provisions to §§ 58.1-3712 and 58.1-3713 and in substantial compliance therewith. Any such local tax ordinances are declared to be validly adopted and enacted as of January 1, 1985, notwithstanding the failure of the locality to change the reference in the local tax ordinance after the enactment of this title, effective January 1, 1985.

B. All ordinances adopted pursuant to §§ 58.1-3712, 58.1-3713, and 58.1-3713.4 prior to January 1, 2001, shall be valid and presumed to include all the provisions of §§ 58.1-3712, 58.1-3713, and 58.1-3713.4 as long as such ordinances were in substantial compliance therewith at the time of their adoption.

C. 1. Any locality that imposed the tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for the 2008, 2009, 2010, or 2011 license year *for coal, gas, or oil severed from the earth prior to July 1, 2013*, shall (if it has not already done so by the effective date of this subsection) amend its local ordinance with regard to such taxes to adopt or include the uniform ordinance provisions of § 58.1-3703.1, with the exception of subdivisions A 1 and A 3 of such section, in the local ordinance with an effective date retroactive to the 2008 license year. As of the effective date of this subsection, each such locality shall allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1, provided that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes. Such rights and remedies shall include, but shall not be limited to, the appeal procedures set forth under subdivisions A 5, A 6, and A 7 of § 58.1-3703.1. In addition, each such locality, upon

the provisions of this subsection becoming effective, shall within 60 days thereof provide written notice to all persons upon whom the locality imposed one or more of the taxes under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, or 2011 *for coal, gas, or oil severed from the earth prior to July 1, 2013*, informing the person that the locality has adopted or will adopt the uniform ordinance provisions of § 58.1-3703.1 with regard to such taxes, excluding subdivisions A 1 and A 3 of such section, retroactive to the 2008 license year and for each license year thereafter.

2. Any locality described in subdivision 1 that amends its local ordinance with regard to such taxes, or has amended the same prior to the effective date of this subsection, to expressly include, incorporate by reference, or adopt by incorporation the uniform ordinance provisions of § 58.1-3703.1 shall have met the requirement under subdivision 1 to amend its local ordinance with regard to such taxes, provided that the locality on or after the effective date of this subsection further amends its local ordinance to make such inclusion, incorporation by reference, or adoption by incorporation retroactive to the 2008 license year. Nothing in this subdivision shall relieve the locality from (i) the notice requirements under subdivision 1 or (ii) the requirement under subdivision 1 to allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1 except that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes.

3. Each locality amending its ordinance pursuant to subdivision 1 or 2 shall amend its ordinance in accordance with the respective subdivision within 90 days of the effective date of this subsection.

4. Each local ordinance amended as provided under this subsection shall be deemed valid and properly enacted for purposes of any tax imposed pursuant to § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, or 2012 *for coal, gas, or oil severed from the earth prior to July 1, 2013*. Further, each such ordinance shall be deemed to have met the requirement of subsection A of § 58.1-3703.1 to include in the local ordinance provisions substantially similar to those set forth under such subsection.

5. a. Notwithstanding any other provision of law, any person assessed with a license tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, 2012, or 2013 *for coal, gas, or oil severed from the earth prior to July 1, 2013*, shall be allowed to file an administrative appeal of the same under § 58.1-3703.1 to the commissioner of the revenue or other local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Such person shall be allowed to file the administrative appeal regardless of whether an appealable event, as defined in § 58.1-3703.1, occurs on or after the effective date of this subsection. Such appeal to the commissioner of the revenue or other local assessing official may be further appealed to the Tax Commissioner pursuant to subdivision A 6 of § 58.1-3703.1 and to the appropriate circuit court pursuant to subdivision A 7 of § 58.1-3703.1, in accordance with the procedures and time frames for the appeal as provided under the respective subdivision.

b. Notwithstanding any other provision of law, any person assessed with a license tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, 2012, or 2013 *for coal, gas, or oil severed from the earth prior to July 1, 2013*, who elects not to file an appeal of the same pursuant to § 58.1-3703.1 may apply for relief of the same pursuant to § 58.1-3980 or 58.1-3984 only during the period beginning July 1, 2013, and ending July 1, 2014. If such person elects not to file an appeal of such license tax pursuant to § 58.1-3703.1 but applies for relief of the same pursuant to § 58.1-3980 or 58.1-3984, then the period for collecting any such license tax shall expire as provided in § 58.1-3940, two years after a final determination pursuant to § 58.1-3981, or two years after the final decision in a court application pursuant to § 58.1-3984, whichever is later.

c. Notwithstanding the provisions of § 58.1-3940, the period for collecting any license tax imposed under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license years 2008 and 2009 *for coal, gas, or oil severed from the earth prior to July 1, 2013*, shall expire on January 1, 2016, unless a longer period is provided under law.

d. Notwithstanding any other provision of law, collection activity shall be suspended on the assessment of additional license tax for license year 2008, 2009, 2010, or 2011 ~~for taxes on severing coal, gases, or oil from the earth~~ *for coal, gas, or oil severed from the earth prior to July 1, 2013*, pursuant to § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4. In addition, collection activity shall be suspended on the assessment of additional license tax for license year 2012 or 2013 for such taxes on ~~severing coal, gases, or oil from the earth~~ *for coal, gas, or oil severed from the earth prior to July 1, 2013*, provided that, in filing severance tax returns for the severance of coal, gases, or oil from the earth in the locality in license year 2012 and 2013, the person filing the return includes with the return a good faith payment of the tax due or a good faith report of the tax due. The good faith payment or report of tax due shall be in accordance with the methodology used by that person as of January 1, 2010, to report the person's gross receipts to the locality for purposes of such taxes unless such person and the locality have entered into a contract or agreement on an alternate methodology to report the person's gross receipts. As used in this subsection, "additional license tax" means all amounts of license tax, penalty, and interest that are in addition to the amount of license tax paid by a person or reported by a person as due in filing severance tax returns for the severance of coal, gases, or oil from the earth in the locality.

Collection activity shall not be required to be suspended if collection of any tax, interest, or penalty is jeopardized by delay as defined in § 58.1-3703.1. However, nothing herein shall be construed or interpreted as to require the suspension of collection activity for any amount of unpaid license tax (and any interest and penalty related thereto) reported by a person as due in filing a severance tax return for the severance of coal, gas, or oil from the earth.

Collection activity on additional license tax for license year 2008, 2009, 2010, or 2011 *for coal, gas, or oil severed from the earth prior to July 1, 2013*, may commence on July 1, 2013, unless other law requires the suspension of collection activity. Collection activity on additional license tax for license year 2012 or 2013 *for coal, gas, or oil severed from the earth prior to July 1, 2013*, if suspended pursuant to this subdivision, may commence on or after July 1, 2013, unless other law requires the suspension of collection activity.

6. Except as otherwise provided in subdivision 5, nothing in this subsection shall be construed or interpreted as extending or decreasing any limitations period for appealing any of the taxes imposed under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 *for coal, gas, or oil severed from the earth prior to July 1, 2013*, or extending any period for the collection of such taxes.

CHAPTER 37.1.

LOCAL COAL SEVERANCE LICENSE TAXES.

§ 58.1-3740. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Coal producer" means any holder of an economic interest. Such persons shall be deemed to be engaged in the business of severing coal from the earth.

"Economic interest" means the interest possessed by a person who has acquired by capital investment any interest in the coal in place and secures, by any form of legal relationship, income from the extraction of the coal, to which he must look for a return of his capital. A person who has no capital investment in the coal deposit shall not possess an economic interest merely because through a contractual relation he possesses a mere economic or pecuniary advantage derived from production such as persons who have a contractual right to purchase or process the coal upon production or persons entitled to compensation for extracting or mining the coal. For purposes of this chapter, "economic interest" does not include interests possessed by a person who receives only royalty payments solely because of such royalty payments. Apart from the royalty interest exclusion in this definition, it is the intent of the General Assembly that "economic interest" shall have essentially the same meaning as for purposes of 26 C.F.R. § 1.611-1.

"Gross receipts" means the purchase price received by a coal producer for the sale of coal to an unaffiliated purchaser in an arm's-length transaction. "Gross receipts" does not include the cost of transporting the coal to such an unaffiliated purchaser. In circumstances in which the coal is (i) utilized by the coal producer or an affiliated individual or entity or (ii) sold in a related-party transaction or under circumstances that indicate the sale is not an arm's-length transaction, "gross receipts" shall be determined by multiplying the volume of coal utilized or sold by (a) the average sale price received by the coal producer in arm's-length transactions for the sale of other coal reasonably deemed by the commissioner of the revenue or other local assessing official of the locality to be of comparable quality during the same time frame or (b) if no such other sales are available, the sale price of other coal reasonably deemed by the commissioner of the revenue or other local assessing official of the locality to be of comparable quality, sold by other coal producers engaged in the severance of similar coal within the county or city or neighboring counties or cities during the same time frame. No deductions shall be taken from gross receipts except for a deduction for non-local coal transportation and processing costs.

"Non-local coal transportation and processing costs" means only such costs applicable to coal that is severed in one county or city and then transported by the coal producer to another county or city for cleaning, preparation, or processing in order to achieve a dry and clean coal. "Non-local coal transportation and processing costs" includes the costs of transporting the coal from the county or city in which it was severed to the second county or city and the costs of cleaning, preparation, and processing that are incurred within that second county or city. Such costs shall not include any costs associated with blending dry and clean coals unless such blending occurs in the same non-local county or city to which the coal is initially transported for cleaning, preparation, or processing. The amount of the deduction for non-local coal transportation and processing costs shall be calculated by dividing the total actual costs incurred per ton in such non-local transportation, cleaning, preparation, and processing by the total costs per ton of mining, transportation, cleaning, preparation, and processing of such coal to derive a factor or percentage. Such factor or percentage shall then be multiplied by the gross receipts from the sale or utilization of such coal to determine the applicable deduction for non-local coal transportation and processing costs.

"Small mine" means a mine that sells less than 10,000 tons of coal per month.

§ 58.1-3741. Counties and cities authorized to levy severance license tax on the sale of coal.

A. The governing body of any county or city may levy a severance license tax on every coal producer that sells or utilizes coal severed from the earth within its jurisdiction. The rate of tax for the sale or utilization of coal from small mines shall be three-fourths of one percent of the gross receipts

from the sale or utilization of such coal by the coal producer. The rate of tax for all other coal shall be one percent of the gross receipts from the sale or utilization of such coal by the coal producer.

No county or city that imposes the tax authorized by this subsection shall enact the provisions of § 58.1-3286 relating to a tax on gross receipts.

B. In addition to the tax imposed in subsection A, any county or city may impose a local coal road improvement severance license tax on every coal producer that sells or utilizes coal severed from the earth within its jurisdiction. The rate of tax for the sale or utilization of coal from small mines shall be three-fourths of one percent of the gross receipts from the sale or utilization of such coal by the coal producer. The rate of tax for all other coal shall be one percent of the gross receipts from the sale or utilization of such coal by the coal producer. The revenues from such tax shall be utilized as provided for under §§ 58.1-3713, 58.1-3713.01, and 58.1-3742.

C. Any county or city enacting a tax under this section may require coal producers and common carriers to maintain records and file reports showing the quantities of and receipts from coal that they have produced or transported.

§ 58.1-3742. Distribution of local coal road improvement severance tax.

Notwithstanding any other provision of law, the incorporated towns and city situated within the bounds of Wise County shall receive from the county 20 percent of all revenues collected under the local coal road improvement severance license tax imposed under the authority of subsection B of § 58.1-3741. The shares of such 20 percent shall be computed as follows: 25 percent shall be divided among the incorporated towns and the city based on the number of registered motor vehicles in each town and the city, and 75 percent shall be divided equally among the incorporated towns and city. Such funds shall be distributed to the treasurer of such towns and city on a quarterly basis as received by the county.

§ 58.1-3743. Severance license taxes to be paid to jurisdiction in which coal is severed.

All local coal severance license taxes levied pursuant to § 58.1-3741 shall be paid to the locality in which the coal is severed from the earth.

§ 58.1-3744. Uniform ordinance provisions.

The provisions of § 58.1-3703.1 with the exception of subdivisions A 1 and A 3 of such section shall apply to the taxes authorized by this chapter, *mutatis mutandis*.

§ 58.1-3745. Lien on real estate and personal property of businesses severing coal.

There shall be a priority lien upon a debtor's estate for all taxes due and owing under the authority granted by this chapter. Such lien shall be inferior only to real estate and personal property taxes, levies, and penalties; any obligation, bond, or instrument used in lieu of a bond to the Department of Mines, Minerals and Energy under Title 45.1; and liens benefiting the Commonwealth. This lien shall not require a distraint action prior to enforcement.

The purchaser at a sale of real estate to which the lien under this section applies shall cause the proceeds of such sale to be applied to the payment of all taxes and levies assessed and due under the authority granted by this chapter, the provisions of § 55-59.4 notwithstanding. The words "taxes" and "levies" as used in this section include the penalties and interest accruing on such taxes and levies in pursuance of law. In addition to existing remedies for the collection of taxes and levies, the lien imposed hereby shall be enforceable in the same manner as provided in Article 4 (§ 58.1-3965 *et seq.*) of Chapter 39. There shall be a further lien upon the rents of such real estate, whether the same be in money or in kind, for taxes and levies of the current year.

§ 58.1-3930. How liens to be recorded; release of liens.

Liens of delinquent real estate taxes and all liens described under ~~§ 58.1-3713.5~~ 58.1-3745 shall be recorded in the office of the treasurer in a book or an approved visible card system to be kept for the purpose and indexed in the names of the persons against whom the taxes on real estate are assessed, or in a computer system approved by the Auditor of Public Accounts. Any officer collecting any such taxes unless otherwise specifically provided by law, shall forthwith transmit such payment to the treasurer, who shall give his receipt therefor and record the payment, thereby releasing the lien. Where such list is kept in a visible card index file, the treasurer may, at the time of entry of the records of payment, remove from the file the cards on which such payments have been noted; and such cards may, on certification by the Auditor of Public Accounts that the same are no longer needed for audit, be destroyed.

§ 58.1-3932. Card system record and index of delinquent real estate in City of Norfolk.

The City of Norfolk is authorized to keep its record of delinquent real estate and all liens described under ~~§ 58.1-3713.5~~ 58.1-3745 in the Treasurer's office, using a card system record and index, or such other method approved by the Auditor of Public Accounts.

§ 58.1-3959. Petition to ascertain delinquent taxes; exoneration from lien.

Any person interested in real estate may file a petition in the circuit court of the county or city wherein the assessment of taxes was made, for the purpose of having ascertained any and all delinquent taxes due upon such real estate or any delinquent taxes imposed under the authority of §§ 58.1-3712, 58.1-3713, ~~or~~ § 58.1-3713.4, or 58.1-3741. A copy of the petition shall be served upon the county or city attorney, or if there is none, on the attorney for the Commonwealth at least ten days before the date

upon which the petition specifies the court shall be asked to hear the petition. The court may refer the question to a commissioner in chancery for report thereon. The court shall enter final judgment determining what, if any, taxes are due upon the real estate, including any taxes covered by the lien described in § ~~58.1-3713.5~~ 58.1-3745, mentioned in the petition. Upon the payment of any amount so ascertained by the court, and the costs of the proceeding, the land shall be held free and clear of any such tax lien. No writ tax shall be charged. The clerk shall be entitled to a fee of one dollar which, together with other costs, including such fee as the court may deem proper to allow the commissioner in chancery, shall be paid by the petitioner.

2. That §§ 58.1-3713.1, 58.1-3713.2, and 58.1-3713.5 of the Code of Virginia are repealed.

3. That no provision of this act shall be construed or interpreted to change or affect, invalidate, or interfere with any agreement regarding coal severance license taxes entered into between a taxpayer and the commissioner of the revenue or other local assessing official of the locality.

4. That any locality imposing a coal severance license tax as of January 1, 2013, shall amend its local ordinance to be consistent with the provisions of this act with regard to such tax effective July 1, 2013. The provisions of any coal severance license tax local ordinance not consistent with the provisions of this act shall become null and void effective July 1, 2013.

5. That the methodology in use by a taxpayer as of January 1, 2010, to report gross receipts to the locality for purposes of coal severance license taxes shall continue to be applied to severance license tax returns filed up to and through the reporting period that ends June 30, 2013, including returns filed in July 2013 for coal sold in June 2013.

6. That the provisions of this act shall be effective for coal sold or utilized on or after July 1, 2013. To the extent a severance license tax has already been paid in a prior tax period on coal that was severed but not sold, a credit in the amount of such tax previously paid shall be allowed against the tax due upon the sale or utilization of such coal.

7. That commissioners of the revenue or other local assessing officials of counties or cities imposing severance license taxes and coal producers who have paid severance license taxes pursuant to ordinances in existence prior to July 1, 2013, are authorized to sign a settlement agreement mutually releasing any and all respective claims arising out of the past collection, calculation, or reporting of such severance license taxes pursuant to ordinances in existence prior to July 1, 2013.

8. That an emergency exists and this act is in force from its passage, except that (i) the amendments to §§ 15.2-6009, 45.1-161.62, 45.1-361.5, 45.1-361.38, 46.2-1143, 58.1-3343, 58.1-3712, 58.1-3713, 58.1-3713.01, 58.1-3713.3, 58.1-3930, 58.1-3932, and 58.1-3959 of the Code of Virginia pursuant to this act; (ii) Chapter 37.1 (§ 58.1-3740 et seq.), as added by this act, of Title 58.1 of the Code of Virginia; and (iii) the repeal of §§ 58.1-3713.1, 58.1-3713.2, and 58.1-3713.5 pursuant to this act shall become effective on July 1, 2013.