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SENATE BILL NO. 338

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact § 58.1-3712 of the Code of Virginia, relating to local severance taxes on gases severed from the earth.

Patron—Puckett

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3712 of the Code of Virginia is amended and reenacted as follows:

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

A. *1.* The governing body of any county or city may levy a license tax on every person engaging in the business of severing gases from the earth. Such *license* tax shall be at a rate not to exceed one percent of the gross receipts from the ~~sale of~~ gases severed within such county *or city by the licensee*. Such gross receipts shall be the ~~fair market value measured at the time such 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~~ *volume of gas, measured in per thousand cubic feet (MCF), severed from the earth in the locality during the respective tax reporting period multiplied by the average price received per MCF, as adjusted in subdivision 2, by the licensee during that same period from arm's-length sales of gas severed by the licensee in the Commonwealth to buyers who are not affiliated with the licensee. However, if more than 50 percent of the volume of gas severed in the Commonwealth and sold by the licensee during the tax reporting period is sold to an affiliated party of the licensee or in other than an arm's-length transaction, then the price received by the licensee for purposes of calculating gross receipts shall be the New York Mercantile Exchange average price for gas per MCF for the tax reporting period, as adjusted in subdivision 2.*

2. The price received for purposes of calculating gross receipts shall be the average actual price received in dollars without any deductions allowed except for:

a. A production cost deduction of $0.75 per MCF of gas severed by the licensee during the tax reporting period; and

b. A transportation cost deduction equal to the lesser of (i) $0.25 per MCF of gas severed by the licensee during the tax reporting period or (ii) the licensee's average actual costs per MCF charged for the same tax reporting period by parties unaffiliated with the licensee for transporting gas through Federal Energy Regulatory Commission (FERC) regulated pipelines. Such average actual transportation costs shall be verified by invoice or other documentation from the operator of the FERC-regulated pipeline or such other evidence as may be acceptable to the commissioner of the revenue, or any officer of the county or city performing the duties of a commissioner of the revenue.

Licensees claiming a deduction for transportation costs may be required to disclose to the commissioner of the revenue the amount deducted for transportation charges pursuant to this subdivision in any other county or city imposing the tax pursuant to this section.

~~In~~ *3. However, in* calculating ~~the fair market value~~ *gross receipts*, 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*, and any deduction described in subdivision A 2*.

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

B. Notwithstanding any other provision of this section or law, for purposes of calculating the ~~fair market value of~~ *gross receipts from* gases severed in Buchanan County, except as otherwise provided in a settlement agreement *entered into prior to January 1, 2014*, 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*, and any deduction described in subdivision A 2*.

C. Any county or city enacting a license tax under this section may require ~~producers of gas and common carriers~~ *licensees* to maintain records and file reports showing the quantities of and receipts from gases which they have produced or transported*, including such other documentation as may be necessary to verify the transportation cost deduction described in subdivision A 2*.