

VIRGINIA ACTS OF ASSEMBLY -- 2018 RECONVENED SESSION

CHAPTER 853

An Act to amend and reenact § 58.1-439.2 of the Code of Virginia, relating to coalfield employment enhancement tax credit.

[H 665]

Approved May 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.2 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.2. Coalfield employment enhancement tax credit.

A. For tax years beginning on and after January 1, 1996, but before January 1, 2017, *and on and after January 1, 2018, but before January 1, 2023*, any person who has an economic interest in coal mined in the Commonwealth shall be allowed a credit against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth in accordance with the following:

1. For *metallurgical* coal mined by underground methods, the credit amount shall be based on the seam thickness as follows:

Seam Thickness	Credit per Ton
36" and under	\$2.00
Above 36"	\$1.00

The seam thickness shall be based on the weighted average isopach mapping of actual *metallurgical* coal thickness by mine as certified by a professional engineer. Copies of such certification shall be maintained by the person qualifying for the credit under this section for a period of three years after the credit is applied for and received and shall be available for inspection by the Department of Taxation. The Department of Mines, Minerals and Energy is hereby authorized to audit all information upon which the isopach mapping is based.

2. For *metallurgical* coal mined by surface mining methods, a credit in the amount of 40 cents (\$0.40) per ton for coal sold in 1996, and each year thereafter.

B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1, 1996, *but before January 1, 2023*, any person who is a producer of coalbed methane shall be allowed a credit in the amount of one cent (\$0.01) per million BTUs of coalbed methane produced in the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth on such person.

C. For purposes of this section, economic interest is the same as the economic ownership interest required by § 611 of the Internal Revenue Code which was in effect on December 31, 1977. A party who only receives an arm's length royalty shall not be considered as having an economic interest in coal mined in the Commonwealth.

D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for 90 percent of the face value within 90 days after filing the return; however, for credit earned in tax years beginning on and after January 1, 2002, such excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for 85 percent of the face value within 90 days after filing the return. The remaining 10 or 15 percent of the value of the credit being redeemed, as applicable for such tax year, shall be deposited by the Commissioner in a regional economic development fund administered by the ~~Coalfields~~ *Virginia Coalfield* Economic Development Authority to be used for regional economic diversification in accordance with guidelines developed by the ~~Coalfields~~ *Virginia Coalfield* Economic Development Authority and the Virginia Economic Development Partnership.

E. No person may utilize more than one of the credits on a given ton of coal described in subsection A. No person may claim a credit pursuant to this section for any ton of coal for which a credit has been claimed under § 58.1-433.1 or 58.1-2626.1. Persons who qualify for the credit may not apply such credit to their tax returns prior to January 1, 1999, and only one year of credits shall be allowed annually beginning in 1999.

F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned multiplied by the person's employment factor. The person's employment factor shall be the percentage obtained by dividing the total number of coal mining jobs of the person filing the return, including the jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the Department of Mines, Minerals and Energy for the year in which the credit was earned by the total number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for the year immediately prior to the year in which the credit was earned. In no case shall the credit claimed exceed that amount set forth in subsection A.

G. The tax credit allowed under this section shall be claimed in the third taxable year following the

taxable year in which the credit was earned and allowed.

H. As used in this section, "metallurgical coal" means bituminous coal used for the manufacture of iron and steel with calorific value of 14,000 BTUs or greater on a moisture and ash free basis.

2. That the Department of Taxation shall develop and make publicly available guidelines implementing the provisions of this act. In developing such guidelines, the Department shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).