18104623D

HOUSE BILL NO. 665

House Amendments in [ ] — February 12, 2018

A BILL to amend and reenact §§ 58.1-433.1 and 58.1-439.2 of the Code of Virginia, relating to coal tax credits.

Patron Prior to Engrossment—Delegate Kilgore

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-433.1 and 58.1-439.2 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-433.1. Virginia Coal Employment and Production Incentive Tax Credit.

A. For taxable years beginning on and after January 1, 2001, every electricity generator in the Commonwealth shall be allowed a ~~three-dollar-per-ton~~ *$3-per-ton* credit against the tax imposed by § 58.1-400 or ~~§~~ 58.1-400.2 for each ton of coal purchased and consumed by such electricity generator, provided such coal was mined in Virginia as certified by such seller. Notwithstanding any other provision of law, no electricity generator shall be allowed more than a ~~three-dollar-per-ton~~ *$3-per-ton* coal tax credit, and *each electricity generator* shall be subject to all limitations set forth in § 58.1-400.2. In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next ~~10~~ *seven* succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this section, "electricity generator" means any person who produces electricity for self-consumption or for sale.

B. For each such ton of coal described in subsection A that is purchased on ~~or~~ *and* after January 1, 2006, from any person with an economic interest in coal as defined under § 58.1-439.2, the $3-per-ton credit allowed under subsection A may be allocated between such electricity generator and such person with an economic interest in coal. The allocation of the $3-per-ton credit may be provided in the contract between such parties for the sale of such coal. Such allocation may be amended by the execution of a written instrument by the parties prior to December 31 of the year of purchase of such coal. Such contracts and written instruments shall be subject to audit by the Department of Taxation to ensure the proper application of credits.

In no case shall the credit allocated for each such ton of coal among such electricity generators and such persons with an economic interest in coal exceed $3 per ton.

All credits earned on ~~or~~ *and* after January 1, 2006 [~~*, but before July 1, 2016, or on and after January 1, 2018*~~] , ~~which~~ *that* are allocated to persons with an economic interest in coal as provided under this subsection may be used as tax credits by such persons against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth. If the credits earned on ~~or~~ *and* after January 1, 2006, exceed the state tax liability for the applicable taxable year of such person with an economic interest in coal, the excess shall be redeemable by the Tax Commissioner as set forth in subsection D of § 58.1-439.2, provided that the ability of persons with an economic interest in coal to redeem with the Tax Commissioner credits received pursuant to an allocation under this section *before July 1, 2016,* shall expire for credits earned under this section on ~~or~~ *and* after July 1, 2016*; the ability of persons with an economic interest in coal to redeem with the Tax Commissioner credits received pursuant to an allocation under this section on and after January 1, 2018, shall expire for credits earned under this section on and after July 1, 2023. Any tax credit not usable for the taxable year by persons with an economic interest in coal may be carried over to the extent usable for the next seven succeeding taxable years or until the full credit is utilized, whichever is sooner*.

C. The aggregate amount of credits that may be allocated pursuant to subsection B or claimed by all electricity generators in each fiscal year of the Commonwealth shall not exceed $7.3 million. No electricity generator shall allocate or claim any tax credit in the relevant fiscal year until it has filed an application with the Department, which shall determine and approve the amount of tax credits that each electricity generator may allocate or claim during the Commonwealth's fiscal year. In the event that approved applications for the relevant fiscal year exceed $7.3 million in tax credits, the Department shall apportion the $7.3 million in tax credits (i) first, on the basis of tax credits that have been earned by each electricity generator during its current taxable year, including any such credits that may be allocated pursuant to subsection B; however, if such tax credits earned during current taxable years exceed $7.3 million, the tax credits shall be apportioned pro rata; and (ii) next, for the remaining balance of tax credits, if any, pro rata on the basis of tax credits earned in prior taxable years,

ENGROSSED

HB665E

7/28/22 21:14

including any such credits that may be allocated pursuant to subsection B, that are being carried forward by electricity generators.

§ 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 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.

2. That the Department of Taxation shall develop and make [~~publically~~ 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).