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SENATE BILL NO. 1252

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL to amend and reenact §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 of the Code of Virginia, relating to sunset of coal tax credits.*

Patrons—McPike; Delegate: Plum

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 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, *but before January 1, 2022*, 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 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 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 after January 1, 2006, *but before January 1, 2022*, 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 after January 1, 2006, ~~which~~ *but before January 1, 2022*, 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 after January 1, 2006, *but before January 1, 2022*, 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 shall expire for credits earned under this section on or after July 1, 2016.

§ 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~~ 2022, 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

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59 which the isopach mapping is based.

60 2. For metallurgical coal mined by surface mining methods, a credit in the amount of 40 cents
61 (\$0.40) per ton for coal sold in 1996, and each year thereafter.

62 B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1,
63 1996, but before January 1, 2023 2022, any person who is a producer of coalbed methane shall be
64 allowed a credit in the amount of one cent (\$0.01) per million BTUs of coalbed methane produced in
65 the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the
66 Commonwealth on such person.

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

71 D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable
72 by the Tax Commissioner on behalf of the Commonwealth for 90 percent of the face value within 90
73 days after filing the return; however, for credit earned in tax years beginning on and after January 1,
74 2002, *but before January 1, 2022*, such excess shall be redeemable by the Tax Commissioner on behalf
75 of the Commonwealth for 85 percent of the face value within 90 days after filing the return. The
76 remaining 10 or 15 percent of the value of the credit being redeemed, as applicable for such tax year,
77 shall be deposited by the Commissioner in a regional economic development fund administered by the
78 Virginia Coalfield Economic Development Authority to be used for regional economic diversification in
79 accordance with guidelines developed by the Virginia Coalfield Economic Development Authority and
80 the Virginia Economic Development Partnership.

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

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

94 G. The tax credit allowed under this section shall be claimed in the third taxable year following the
95 taxable year in which the credit was earned and allowed.

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

98 **§ 58.1-2626.1. The Virginia Coal Employment and Production Incentive Tax Credit.**

99 A. For the tax years beginning on and after January 1, 1988, *but before January 1, 2022*, every
100 corporation in the Commonwealth doing the business of furnishing water, heat, light, or power to the
101 Commonwealth or its citizens, whether by means of electricity, gas, or steam shall be allowed a credit
102 against the tax imposed by § 58.1-2626 in the following amount: ~~one dollar~~ \$1 per ton for each ton of
103 coal purchased and consumed by such corporation in excess of the number of tons of Virginia coal
104 purchased by such corporation in 1985, provided such coal was mined in Virginia as certified by the
105 producer of such coal. This credit shall be prorated equally against the corporation's estimated payments
106 made in September and December and the final payment.

107 B. For tax years beginning on and after January 1, 1989, *but before January 1, 2022*, every
108 corporation in the Commonwealth doing the business of furnishing water, heat, light, or power to the
109 Commonwealth or its citizens, whether by means of electricity, gas, or steam shall be allowed additional
110 credit against the tax imposed by § 58.1-2626 in the following amount: ~~one dollar~~ \$1 per ton for each
111 ton of coal purchased and consumed by such corporation, provided such coal was mined in Virginia as
112 certified by such seller. The credit shall be prorated equally against the corporation's estimated payments
113 made in September and December and the final payment.

114 C. ~~Expired.~~

115 2. That if tax credits were earned under the provisions of § 58.1-433.1, 58.1-439.2, or 58.1-2626.1
116 of the Code of Virginia prior to January 1, 2022, the taxpayer holding such credits as of
117 December 31, 2021, may claim such credits on a return for taxable years on and after January 1,
118 2022, but only pursuant to the applicable carryover or carryforward period specified in
119 § 58.1-433.1, 58.1-439.2, or 58.1-2626.1 of the Code of Virginia, prior to their amendment by this
120 act. A taxpayer claiming credits pursuant to the provisions of this enactment shall not claim more

121 than \$1 million in credits for a single taxable year, measured in the aggregate of all credits earned
122 under the provisions of §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 of the Code of Virginia. No
123 taxpayer shall amend a return for a taxable year prior to January 1, 2022, to claim more in
124 credits earned under the provisions of § 58.1-433.1, 58.1-439.2, or 58.1-2626.1 of the Code of
125 Virginia than such taxpayer stated on such return before amending it.

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