

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Terry G. Kilgore

2. **Bill Number** HB 1771

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Local Gas Severance Taxes

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would allow taxpayers to appeal additional assessments of local severance taxes for license years 2011 through 2013, which are made on or after January 1, 2014, for coal or gas severed from the earth prior to July 1, 2013. The bill authorizes the administrative or judicial appeals to be filed with the commissioner of the revenue or the circuit court within one year from the last day of the license year for which such assessment is made, or within one year from the date of the assessment or increase in the assessment, whichever is later.

Legislation enacted in the 2012 General Assembly Session provided that any person assessed with a severance tax for license years 2008 through 2013 may file an administrative appeal with the local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Additionally, collection activity is suspended on the assessment of severance taxes for license years 2008 through 2011 until July 1, 2013. Collection activity for the license years 2012 and 2013 is also suspended until July 1, 2013 provided that the person filing the return for such taxes included with the return a good faith payment of the tax due or a good faith report of the tax due. Collection activity is not suspended if collection of any tax, interest, or penalty is jeopardized by delay, nor is collection activity suspended for any amount of unpaid license tax reported by a person as due in filing a severance tax return.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

This bill would have no impact on state or local revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation
Localities imposing gas severance taxes

10. Technical amendment necessary: No.

11. Other comments:

BPOL Tax Uniform Ordinance Provisions

The Business, Professional and Occupational License (BPOL) tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business. The BPOL tax is a tax on gross receipts, not net income.

Virginia Code § 58.1-3703.1 provides uniform ordinance provisions for the BPOL tax. *Virginia Code* § 58.1-3703.1(A) sets forth the limitations and requirements of the BPOL tax, including provisions for license requirements, due dates and penalties, situs of gross receipts, limitations and extensions, administrative appeals, judicial review, and rulings. Ordinances levying a license tax must include provisions substantially similar to *Va. Code* § 58.1-3703.1(A) to be valid.

Local Severance Taxes

Under current law, localities are generally prohibited from imposing a license tax or fee on any person engaged in the business of severing minerals from the earth for the privilege of selling the severed minerals at wholesale at the place of severance.

However, localities are authorized to levy a severance tax that is capped at one percent of the gross receipts from the sale of coal or gases severed within such county. The gross receipts are the fair market value measured at the time the coal or gases are utilized or sold for utilization in the locality or at the time they are placed in transit for shipment from the locality. 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 is permitted to take any deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees and personal property taxes. The City of Norton and the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise all impose the severance tax at a rate of one percent.

Those localities that comprise the Virginia Coalfield Economic Development Authority may also impose a local coal and gas road improvement tax that is capped at a rate of one percent of the gross receipts from the sale of coal and gases severed within the locality. The revenues generated from this tax are allocated as follows: 75% are paid into a special fund in each locality called the Coal and Gas Road Improvement Fund, where at least 50% are spent on road improvements and 25% may be spent on new water and sewer systems within the locality; and the remaining 25% of the revenue is paid to the Virginia Coalfield Economic Development Fund. The Virginia Coalfield Economic

Development Authority is comprised of the City of Norton, and the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise.

In addition, a county or city may allocate 25% of the revenue in the Coal and Gas Road Improvement Fund to the construction, repair, or enhancement of water and sewer systems; however, if this option is initiated by the county or city, it must develop and adopt by resolution an annual plan for such projects and their funding. 2004 House Bill 1426 (Chapter 871, 2004 Acts of Assembly) provided that any revenues dedicated for water and sewer systems would be distributed directly to the local public service authority.

A county or city may also levy an additional license tax on every person engaging in the business of severing gases from the earth at a rate not to exceed one percent of the gross receipts from the sale of gases severed within such locality. The revenue received from the tax is paid into the general fund, except for the localities that comprise the Virginia Coalfield Economic Development Authority. In those localities, 50% of the revenues are paid to the Virginia Coalfield Economic Development Fund.

According to the Auditor of Public Account's Comparative Report of Local Government Revenues and Expenditures, local revenues from the coal, oil, and gas taxes totaled \$51.2 million in Fiscal Year 2009, \$43.3 million in Fiscal Year 2010, and \$59.8 million in Fiscal Year 2011.

Suspension of Collection Activity and Administrative Appeals

Legislation in the 2012 General Assembly Session provided that any person assessed with a severance tax for license years 2008 through 2013 is allowed to file an administrative appeal to the local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Additionally, collection activity is suspended on the assessment of severance taxes for license years 2008 through 2011 until July 1, 2013. Collection activity for the license years 2012 and 2013 is also suspended until July 1, 2013 provided that the person filing the return for such taxes included with the return a good faith payment of the tax due or a good faith report of the tax due. Collection activity is not suspended if collection of any tax, interest, or penalty is jeopardized by delay, nor is collection activity suspended for any amount of unpaid license tax reported by a person as due in filing a severance tax return.

The legislation also required the Tax Commissioner to convene a working group consisting of representatives of the localities levying severance taxes and the coal and gas companies subject to the tax. The working group reviewed the methodology for determining gross receipts subject to the severance taxes and such other issues related to the imposition of severance taxes. The Tax Commissioner was also given the discretion to review with the working group such other tax issues as may be in dispute between the localities and the industry representatives. The working group was asked to identify any changes to current law, regulation, or policy that it considers desirable when addressing the issues. During the study, representatives of the coal industry and local governments reached an agreement regarding the valuation of coal and the imposition of the local coal severance taxes. Legislation has been introduced to codify the terms of the agreement. Representative of local governments and the gas industry have not been able to reach an agreement.

Lawsuits were filed by a gas company in both Wise County Circuit Court and Dickenson County Circuit Court in December of 2011 regarding local severance tax assessments. Neither case has been heard.

Proposal

This bill would allow taxpayers to appeal additional assessments of local severance taxes for license years 2011 through 2013, which are made on or after January 1, 2014, for coal or gas severed from the earth prior to July 1, 2013. The bill authorizes the administrative or judicial appeals to be filed with the commissioner of the revenue or the circuit court within one year from the last day of the license year for which such assessment is made, or within one year from the date of the assessment or increase in the assessment, whichever is later.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1111 is identical to this bill.

House Bill 2100 and **Senate Bill 918** would reduce the rates of the local coal severance tax on coal and the local coal road improvement tax severed from the earth by small mines from one percent to 0.75 percent. The bills would also provide that gross receipts for the purpose of the local coal severance taxes is defined as the purchase price received by a producer for the sale of coal to an unaffiliated purchaser in an arm's length transaction.

cc : Secretary of Finance

Date: 2/15/2013 AM
DLAS File Name: HB1771FER161