

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Terry G. Kilgore

3. **Committee** Senate Finance

4. **Title** Local Coal Severance Taxes

2. **Bill Number** HB 2100

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill 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 of the gross receipts from the sale or use of such coal. "Small mine" would be defined as a mine that sells less than 10,000 tons of coal per month. This bill 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. The cost of transporting the coal to the unaffiliated purchaser would be excluded from gross receipts. Costs incurred transporting coal to another county for processing and the costs of processing it in the other county would be allowed to be deducted from gross receipts. No other deductions would be authorized. The bill would also clarify that any person who only receives royalty payments would not be considered to have an economic interest in the coal and would not be subject to the taxes. The provisions of the bill would be effective for coal sold or utilized on or after July 1, 2013.

The bill provides that no provision shall change or affect, invalidate, or interfere with any agreement regarding coal severance license taxes entered into between a taxpayer and Commissioner of Revenue. The bill would also require localities imposing a coal severance license tax as of January 1, 2013, to amend its ordinance effective July 1, 2013, to be consistent with the bill.

Under current law, *Va. Code* § 58.1-3703.1 provides uniform ordinance provisions for the BPOL tax. The statute includes provisions for license requirements, due dates and penalties, situs of gross receipts, limitations and extensions, administrative appeals, judicial review, and rulings. Currently, ordinances levying a license tax must include provisions substantially similar to *Va. Code* § 58.1-3703.1(A) to be valid.

This bill contains an emergency clause and would be in force from its passage, except that the provisions changing the imposition of the local coal severance license taxes would become effective July 1, 2013.

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 revenues. To the extent that the bill would reduce the rate of the coal severance taxes on coal sold or utilized by small mines, exclude transportation costs to an unaffiliated purchaser from gross receipts, and only allow deductions for the cost of transporting and processing the coal in another county, this bill would have an unknown negative revenue impact on local revenues. However, as the bill contains several provisions to clarify the law that may impact local revenues, the net revenue impact of this bill is unknown. 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.

9. Specific agency or political subdivisions affected:

Department of Taxation
Localities imposing 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.

Proposal

This bill 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 of the gross receipts from the sale or use of such coal. "Small mine" would be defined as a mine that sells less than 10,000 tons of coal per month.

The bill 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. In circumstances where the coal is used by the producer or related party or sold to a related party, gross receipts would be determined by multiplying the volume of coal used or sold by 1) the average sale price received by the coal producer in arms-length transactions during the same time frame of coal reasonably deemed by the Commissioner of the Revenue to be of comparable quality; or, if no such sales are available, 2) the sale price of coal reasonably deemed by the Commissioner of the Revenue to be of comparable quality sold by other producers during the same time frame.

The cost of transporting the coal to the unaffiliated purchaser would be excluded from gross receipts. Costs incurred transporting coal to another county for processing and the costs of processing it in the other county would be allowed to be deducted from gross receipts. No other deductions would be authorized. The bill would also clarify that any person who only receives royalty payments would not be considered to have an economic interest in the coal and would not be subject to the taxes. The provisions of the bill would be effective for coal sold or utilized on or after July 1, 2013.

The bill provides that no provision shall change or affect, invalidate, or interfere with any agreement regarding coal severance license taxes entered into between a taxpayer and Commissioner of Revenue. The bill would also require localities imposing a coal severance license tax as of January 1, 2013, to amend its ordinance effective July 1, 2013, to be consistent with the bill.

Legislation in the 2012 General Assembly Session 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. This bill represents an agreement reached by local governments and coal producers as a result of this working group.

This bill contains an emergency clause and would be in force from its passage, except that the provisions changing the imposition of the local coal severance license taxes would become effective July 1, 2013.

Similar Legislation

Senate Bill 918 is identical to this bill.

House Bill 1771 and **Senate Bill 1111** 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.

cc : Secretary of Finance

Date: 2/11/2013 AM
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