

VIRGINIA ACTS OF ASSEMBLY -- 2021 RECONVENED SPECIAL SESSION I

CHAPTER 553

An Act 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.

[H 1899]

Approved April 15, 2021

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 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 2022, 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, *but before January 1, 2022*, 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 Virginia Coalfield Economic Development Authority to be used for regional economic diversification in accordance with guidelines developed by the 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.

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

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

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

C. ~~{Expired.}~~

2. That if tax credits were earned under the provisions of § 58.1-433.1 of the Code of Virginia prior to January 1, 2022, such credits may continue to be claimed on a return for taxable years on and after January 1, 2022, but only pursuant to the applicable carryover period specified in § 58.1-433.1 of the Code of Virginia. A taxpayer claiming credits pursuant to the provisions of this enactment shall not claim more than \$1 million in credits for a single taxable year. No taxpayer shall amend a return for a taxable year prior to January 1, 2022, to claim more in credits earned under the provisions of § 58.1-433.1 of the Code of Virginia than such taxpayer stated on such return before amending it.

3. That the Department of Mines, Minerals and Energy, in coordination with the Virginia Coalfield Economic Development Authority, the Virginia Economic Development Partnership Authority, the Virginia Employment Commission, the Southwest Virginia Workforce Development Board, and the Council on Environmental Justice, shall convene a stakeholder process, which shall

include public meetings and public comment opportunities, and provide an interim report to the General Assembly no later than September 1, 2021, and a final report on December 1, 2021, on recommendations for how the Commonwealth can provide economic transition support to the coalfield region, with a particular focus on workforce redevelopment, economic diversification, reclamation of coal-impacted lands and brownfields, community revitalization, infrastructure improvements, and clean energy development.