

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUL 8 9 44 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Interpretive; CITE AUTHORITY W. Va. Code § 11-10-5

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13A.1

TITLE OF RULE BEING PROPOSED: Reduced Severance Tax Rates For Thin
Seams Of Coal

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON August 7, 1997 AT 5:00 p.m.
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.


Legal Division

State Tax Division

P.O. Box 1005

Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Richard E. Boyle, Jr.
State Tax Commissioner

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

\$3.40

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Reduced Severance Tax Rates For Thin Seams Of Coal

Type of Rule: ☐ Legislative ☒ Interpretive ☐ Procedural

Agency: State Tax Division
 Address: P.O. Box 1005
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no change in the costs resulting from this rule.

3. Objectives of these rules:

This rule explains and clarifies the reduction in Severance Tax rates for coal mined from seams of 45 inches or less.

Rule Title: Reduced Severance Tax Rates For Thin Seams Of Coal

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There may be a revenue increase because thin seam coal is not mined extensively.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The coal mining industry may commence mining thin seam coal.
There may be a small revenue increase for local governments.

C. Economic Impact on Citizens/Public at Large.

The overall general economic impact may be negligible.

Date: July 8, 1997

Signature of Agency Head or Authorized Representative



Richard E. Boyle, Jr.
State Tax Commissioner

FILED

PROPOSED
INTERPRETIVE RULE
WEST VIRGINIA DEPARTMENT OF TAX AND REVENUE

JUL 8 9 44 AM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 110
SERIES 13A.1

REDUCED SEVERANCE TAX RATES FOR THIN SEAMS OF COAL

§ 110-13A.1-1. General.

1.1 **Scope.** -- This interpretive rule explains and clarifies the reduction in Severance Tax rates for coal mined in West Virginia by underground methods for seams of forty-five inches or less, for tax years beginning after April 11, 1997.

1.2 **Authority.** -- W. Va. Code § 11-10-5.

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-13A.1-2. Interpretive Note.

This interpretive rule shall be read together with the Severance Tax statutes and legislative rules (110 C.S.R. 13A, § 1 et. seq.) previously promulgated by the Tax Commissioner. The definitions, policies and procedures provided in 110 C.S.R. 13A, § 1 et seq. are equally applicable to this interpretive rule. Should there be an inconsistency between the promulgated legislative rules and this interpretive rule, the legislative rules shall control, except to the extent the legislative rules do not reflect an amendment to the Severance Tax laws which is addressed in this or another rule promulgated by the Tax Commissioner as provided in Article 3, Chapter 29A of the West Virginia Code.

§ 110-13A.1-3. Definitions.

Unless a specific definition is provided in this section, terms used in this rule are defined as provided in legislative rule 110 C.S.R. 13A, § 1, et. seq., unless the context in which the term is used clearly requires a different meaning. The following terms shall have the meaning ascribed herein, and shall apply in the singular as well as in the plural.

3.1 **"Existing mine"** means an underground mine which produced coal on or before April 11, 1997. An existing mine could be a mine which was closed and not producing coal on April 11, 1997.

3.2 **"Isopach map"** means a map which shows the thickness of a coal seam by means of lines drawn through points of equal thickness of the coal seam.

3.2.1 Thickness of the coal seam shall be measured from the bottom of the lowest coal split actually being mined, to the top of the highest coal split actually being mined. This measurement from the bottom to the top shall include thickness of any rock partings actually being mined.

3.3 **"New underground mine"** means an underground mine which began producing coal for the first time after April 11, 1997.

3.4 **"Professional engineer"** means a civil or mining engineer who is registered and licensed as a professional engineer by the West Virginia State Board of Registration for Professional Engineers.

3.5 **"Underground mine"** means an underground excavation for coal which is not a "surface mine" as defined in W. Va. Code §§ 11-13C-3 and 22-3-3, and the area of which is the area for which a current mining permit has been issued.

§ 110-13A.1-4. Reduction of Severance Tax rates.

4.1 Coal mined in compliance with W. Va. Code § 11-13A-3(f) and this rule shall be allowed a reduced tax rate according to average coal seam thickness as follows:

37 inches to 45 inches (inclusive)	- 2% of gross value of coal produced from the seam
less than 37 inches	- 1% of gross value of coal produced from the seam

4.1.1 The reduced tax rate includes the .35% Severance Tax for Counties and Municipalities.

4.2 Average coal seam thickness shall be determined by a professional engineer using isopach maps developed in accordance with generally accepted standards and techniques of the geological and/or engineering profession and the formula

$$\begin{array}{l} \text{Ave. Coal Seam} = \frac{Aa + Bb + Cc \dots + Nn}{\text{Thickness} \quad \dots a + b + c \dots + n} \end{array}$$

when A, B and C are areas between two contiguous isopach lines, and a, b, and c are the corresponding arithmetic average thicknesses (in inches) of the coal seam between two such lines (for instance,

isopach line 1 = 42", isopach line 2 = 36", average thickness = 39") and N and n are subsequent items (if any) in the series.

For example, where the thicknesses of a seam of coal are a = 28 in., b = 30 in. and c = 40 in., and the corresponding areas are A = 100,000 in.², B = 100,000 in.² and C = 50,000 in.²,

Ave. coal seam

$$\text{thickness} = \frac{100,000 \text{ in.}^2 \times 28 \text{ in.} + 100,000 \text{ in.}^2 \times 30 \text{ in.} + 50,000 \text{ in.}^2 \times 40 \text{ in.}}{100,000 \text{ in.}^2 + 100,000 \text{ in.}^2 + 50,000 \text{ in.}^2}$$

$$= \frac{2,800,000 \text{ in.}^3 + 3,000,000 \text{ in.}^3 + 2,000,000 \text{ in.}^3}{250,000 \text{ in.}^2} = \frac{7,800,000 \text{ in.}^3}{250,000 \text{ in.}^2}$$

= 31.2 in., which is taxable at the 1% rate.

4.2.1 If an area of coal which is mined terminates less than halfway between two contiguous isopach lines, the average thickness shall be calculated by subtracting the difference between the two contiguous lines, dividing that difference by four, and subtracting that value from the value of the isopach line in the direction from which the mining area proceeded. For instance, if mining from isopach line 1 which is 42 in. and mining toward isopach line 2 which is 26 in.,

$$\frac{\text{line 1} - \text{line 2}}{4} = \frac{42 \text{ in.} - 26 \text{ in.}}{4} = 4 \text{ in., therefore}$$

$$\text{Ave. coal seam thickness} = 42 \text{ in.} - 4 \text{ in.} = 38 \text{ in.}$$

4.3 Reduced Severance Tax rates for thin seams of coal are allowed only if the eligible taxpayer submits with its Severance Tax return a copy of a signed and dated professional engineer's report stamped with the "registered professional engineer" seal. The report shall certify the accuracy of the average coal seam thickness(es) of the mine from which coal is severed during the tax year of the return, and shall include the figures, the calculations and the isopach map(s) upon which such figures and calculations are based.

4.4 Taxpayers eligible for the reduced Severance Tax rates for thin seams of coal are those producing coal from (1) one or more new underground mines, or (2) from one or more existing mine(s) that did not produce coal from a thin seam of coal between October 14, 1996 and April 11, 1997, inclusive, or from both new underground mines and existing underground mines that did not produce coal from a thin seam of coal during that period of time.

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4.5 Taxpayers eligible for the reduced Severance Tax rates are allowed those rates for their Severance Tax years which begin after April 11, 1997.

4.6 Taxpayers eligible for the reduced Severance Tax rates for thin seams of coal are also subject to the Minimum Severance Tax on Coal, and are subject to the regular State Severance Tax on coal for any coal mined which is not eligible for the reduced Severance Tax rates, so these taxpayers must separately account for coal receipts at all of the tax rates which are applicable. Failure to adequately document coal receipts at the lower rate for thin seams of coal will result in all gross receipts from coal being taxed at the regular Severance Tax rate.



CECIL H. UNDERWOOD
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
TAX DIVISION
P. O. Box 2389
Charleston, West Virginia 25328-2389

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JUL 8 9 44 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
ROBIN C. CAPEHART
SECRETARY

CONSENT TO FILE RULE

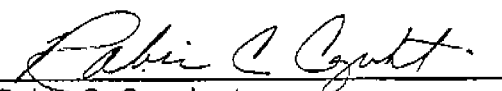
July 8, 1997

To Whom It May Concern:

Title of Rule: Reduced Severance Tax Rates For Thin Seams Of Coal
Title Number: 110
Series Number: 13A.1

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 8th day of July, 1997.


Robin C. Capehart
Secretary, Tax and Revenue

"AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER"