

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #5

**FILED**

SEP 17 1 33 PM '97

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY: W.Va. Code § 11-10-5

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE \_\_\_\_\_  
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_, NO X

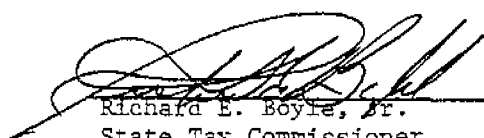
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 13AB

TITLE OF RULE BEING ADOPTED: Reduced Severance Tax Rates For Thin  
Seams of Coal

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS October 15, 1997

  
Richard E. Boyle, Jr.  
State Tax Commissioner

\$3.00

FILED

TITLE 110

INTERPRETIVE RULE  
WEST VIRGINIA DEPARTMENT OF TAX AND REVENUE

SEP 17 1 39 PM '97

SERIES 13AB  
REDUCED SEVERANCE TAX RATES FOR THIN SEAMS OF COAL

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§ 110-13AB-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.** --

**§ 110-13AB-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.

**§ 110-13AB-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. (Contour lines).

3.2.1 Thickness of the coal seam shall be the actual measurement of coal being mined. 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 not include the 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.

**§ 110-13AB-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.

4.1.2 If a coal processor purchases coal from a qualified thin seam mine, the additional processing activities associated with such coal would be subject to the same reduced tax rate as applicable to the initial severance activity. However, such processors must maintain a log with records of the following information: mine name, operator's name, mine permit number, dates purchased and sold, and qualified tons and receipts subject to alternative tax rates.

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.

4.2.1 Isopach maps must be of a scale of 1" = 100' to 1" = 400'.

4.2.2 Isopach maps must show actual mine works and mining advance during the Severance Tax reporting year. All coal measurement data points must be posted on the map showing the mine works, in their proper location. Isopach maps must contain 36 inch and 45 inch contour lines if applicable and contour lines at three inch intervals, for all areas mined, unless all coal measurements are less than 37", in which case no contours are required.

4.2.3 Coal measurement data points must be located at intervals of 200 feet or less along the direction of mining advance. Coal measurement data points must show the actual section being mined, including any rock such as: roof rock, 2.5 inches/ coal, 10 inches/ bone, 2 inches/ shale, 3.8 inches/ coal, 26 inches/ floor rock, 2 inches.

4.2.4 Maps must be submitted on paper.

4.2.5 Maps must be certified by a professional engineer.

4.2.6 The following formula will be used for calculating average coal seam thickness:

$$\text{Ave. Coal Seam Thickness} = \frac{Aa + Bb + Cc \dots + Nn}{A + B + C \dots + N}$$

when A, B and C are areas between two contiguous isopach lines (planimeter blocks), 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 = 39", average thickness = 40.5") and N and n are subsequent items (if any) in the series.

For example, where the thicknesses of a seam of coal are a = 28.5 in., b = 31.5 in. and c = 39.5 in., and the corresponding areas are A = 100,000 in<sup>2</sup>, B = 100,000 in<sup>2</sup>, and C = 50,000 in<sup>2</sup>,

$$\begin{aligned} \text{Ave. coal seam thickness} &= \frac{100,000 \text{ in.}^2 \times 28.5 \text{ in.} + 100,000 \text{ in.}^2 \times 31.5 \text{ in.} + 50,000 \text{ in.}^2 \times 34.5 \text{ in.}}{100,000 \text{ in.}^2 + 100,000 \text{ in.}^2 + 50,000 \text{ in.}^2} \\ &= \frac{2,850,000 \text{ in.}^3 + 3,150,000 \text{ in.}^3 + 1,725,000 \text{ in.}^3}{250,000 \text{ in.}^2} = \frac{7,725,000 \text{ in.}^3}{250,000 \text{ in.}^2} \end{aligned}$$

= 30.9 in., which is taxable at the 1% rate.

Planimeter blocks should be numbered to correlate with the block numbers provided on the supporting tax schedule.

4.2.7 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 39 in.,

$$\frac{\text{line 1} - \text{line 2}}{4} = \frac{42 \text{ in.} - 39 \text{ in.}}{4} = 0.75 \text{ in.}$$

$$\text{Ave. coal seam thickness} = 42 \text{ in.} - 0.75 \text{ in.} = 41.25 \text{ in.}$$

4.3 Reduced Severance Tax rates for thin seams of coal are allowed only if the eligible taxpayer submits with its annual 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.

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.

**PUBLIC COMMENTS AND RESPONSES**  
**110 C.S.R. 13AB**  
**REDUCED SEVERANCE TAX RATES FOR THIN SEAMS OF COAL**

Below are the public comments received from the West Virginia Coal Association concerning the above referenced rule during the public comment period (July 8, 1997 through August 7, 1997) followed by the Tax Division's responses to the comments. No other comments were received.

**COMMENT # 1.** The definition of the thickness of a coal seam is contained at Reg. § 110-13AB-3.2.1 which provides:  
(Summarized)

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.

W. Va. Code § 11-13A-3(f)(iii) specifically provides that: "seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine."

The Coal Association suggests that the last sentence of Reg. § 110-13AB-3.2.1 be changed to read as follows:

This measurement from the bottom to the top shall not include the thickness of any rock partings actually being mined.

**RESPONSE #1:** The suggested change has been made.

**COMMENT #2:** Reg. § 110-13AB-4.2 requires taxpayers computing their Severance Tax using the reduced Severance Tax rates to attach an isopach map to their Severance Tax return. This section should be clarified by explicitly providing that isopach maps are required to be submitted with "annual" Severance Tax returns and not with monthly estimated filings.

**RESPONSE #2:** The suggested change has been made.

**COMMENT #3:**

WVCA believes that additional guidance should be provided to taxpayers on the issue of the preparation of isopach maps. In February, 1997, the Virginia Department of Taxation published an administrative release (copy attached) providing taxpayers with information concerning the Coal Field Employment Enhancement Tax Credit. Pages 4 and 5 of the administrative release provides rules related to the preparation of isopach maps. WVCA believes that rules similar to these would provide appropriate guidance to West Virginia taxpayers. Accordingly, WVCA suggests the following language be inserted as new Reg. § 110-13AB-4.4 as follows:

4.4 Coal thickness isopach maps shall meet the following requirements:

4.4.1 Isopach maps must be of a scale of 1" = 100' to 1" = 400'.

4.4.2 Isopach maps must contain the 36 inch and 45 inch contour lines and contour lines at 3 inch intervals between these lines. If all coal is less than 36 inches, no contours are required. Contour lines will be used to evaluate the ratio of coal 36 inches or less in thickness to coal between 37 inches and 45 inches in thickness.

4.4.3 Coal cross-sections must be located on the map at intervals of 200 feet or less. The 200 foot spacing is to be measured longitudinally with the advancing section development. Other supporting evidence such as bore hole data may be included.

4.4.4 Maps must be submitted on paper or on computer disk in autocad DWG format.

4.4.5 Maps must be certified by a professional engineer.

**RESPONSE #3:**

Most of the suggested changes have been made, but worded and numbered differently in the rule. See new Sections 4.2.1 through 4.2.5. However, the suggestion in Section 4.4.4 that maps be submitted in autocad DWG format was not incorporated in the rule.

**COMMENT #4:**

To make the reduced Severance Tax rates apply uniformly between integrated and non-integrated producer/processors, third-parties who purchase raw thin seam coal for processing and resale should be required to pay the Severance Tax at the same rate at which the actual producer of that coal pays. Accordingly, WVCA suggests that the following sentence be added at the end of current Reg. § 110-13AB-4.4: "Taxpayers which purchase raw coal produced from thin seams for processing and resale shall also be eligible to pay the Severance Tax at the reduced rate available to the taxpayer which produced the coal."

**RESPONSE #4:**

The suggested change has been substantially adopted at Section 4.1.2. and documentation requirements have been added as well.

**COMMENT #5:**

Current Reg. § 110-13AB-4.6 states that "Taxpayers eligible for the reduced Severance Tax rate for thin seams of coal are also subject to the minimum Severance Tax on coal.". WVCA believes it was the intention of the West Virginia Legislature in enacting the reduced Severance Tax rate for coal produced from thin seams to require taxpayers to pay a maximum Severance Tax of 1% or 2% of the sales price of thin seam coal. W. Va. Code § 11-13A-3(f) was enacted subsequent to W. Va. Code § 11-12B-3 and should supersede the Minimum Severance Tax on Coal. It was not the intention of the legislature to require such taxpayers to pay the minimum tax of \$0.75 per ton of coal mined from thin seams regardless of the sales price of the coal. Accordingly, WVCA suggests that Reg. § 110-13AB-4.6 be amended to effectuate the intention of the legislature that the Minimum Severance Tax on Coal not apply where the regular Severance Tax is computed under W. Va. Code § 11-13A-3(f).

**RESPONSE #5:**

Nothing in the thin seam statute or the Minimum Severance Tax statute suggests that the Legislature intended for the lower rates for thin seam coal to supersede the Minimum Severance Tax on coal. The Minimum Severance Tax on coal is conceptually a separate tax from the regular Severance Tax. The rationale for a tax based on tonnage is considerably different from that for a tax based on value. If the language in W. Va. Code § 11-13A-3(f) implicitly repeals the Minimum Severance Tax on thin seam coal, then the virtually identical language in W. Va. Code § 11-13A-3(b) implicitly repeals the Minimum Severance Tax on all other coal as well. The Tax Division lacks the authority to amend the statute imposing the Minimum Severance Tax. If the Legislature were to amend the statute as suggested, the revenue neutrality objective of Enrolled Senate Bill 142

(1997 Regular Session), which enacted the lower rates for thin seam coal, would be undermined.

NOTE:

In addition, a technical correction was made to the notation used in the formula in Section 4.2 (now Section 4.2.6), and numbers in examples were changed to reflect adoption of three inch intervals for isopach maps as recommended in Comment #3.



97-194.KL

**WEST VIRGINIA COAL ASSOCIATION**

August 7, 1997

97 AUG 7 AM 11 01  
STATE TAX DEPT.  
LEGAL DIVISION

Robert Hoffman, Esq.  
Director, Legal Division  
West Virginia Department of Tax and Revenue  
P. O. Box 1005  
Charleston, WV 25324-1005

Re: Comments of the West Virginia Coal Association Regarding  
Proposed Interpretative Rule Title 110, Series 13A.1, Reduced  
Severance Rate for Thin Seams of Coal

Dear Mr. Hoffman:

On July 8, 1997, the West Virginia Department of Tax and Revenue ("Tax Department") filed Proposed Interpretative Rule Title 110, Series 13A.1, entitled Reduced Severance Tax Rates for Thin Seams of Coal (the "Proposed Regulations"). The West Virginia Coal Association ("WVCA"), a non-profit association representing the interests of West Virginia coal producers, offers the following comments concerning the Proposed Regulations.

1. The definition of the thickness of a coal seam is contained at Reg. §110-13A.1-3.2.1 which provides:

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.

For purposes of determining which taxpayers are entitled to Severance Tax rate reduction, the WVCA believes that the Legislature intended that the thickness of coal seams be measured without adding the thickness associated with any in-seam partings or bands of rock

1301 Laidley Tower • Charleston, West Virginia 25301 • Telephone (304) 342-4153

**WEST VIRGINIA COAL: MORE IMPORTANT THAN EVER**

## WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.  
August 7, 1997  
Page 2

lying between thin seams of coal. W.Va. Code §11-13A-3(f)(iii) specifically provides that: "seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine." This language clearly indicates that the Legislature intended that seam thickness include only the thickness of the coal itself.

The Commonwealth of Virginia has a similar statute (the "Coal Field Employment Enhancement Tax Credit") which provides Virginia producers with a tax credit for coal produced in Virginia. Senate Bill 142 was patterned after the Virginia statute. In fact, the language in the West Virginia statute equating seam thickness with actual coal thickness is identical to language in the Virginia tax credit. For Coal Field Employment Enhancement Tax Credit purposes, Virginia calculates thickness without including rock partings or rock bands lying between thin seams of coal. Because the legislature based the West Virginia statute on existing Virginia law, how Virginia interprets individual language in their statute provides additional evidence that the West Virginia Legislature did not intend to include rock partings in its calculation of thickness. For the above-stated reasons, the Coal Association suggests that the last sentence of Reg. § 110-13A.1-3.2.1 be changed to read as follows:

This measurement from the bottom to the top shall not include the thickness of any rock partings actually being mined.

2. Reg. §110-13A.1-4.2 requires taxpayers computing their Severance Tax using the reduced Severance Tax rates to attach an isopach map to their Severance Tax return. This section should be clarified by explicitly providing that isopach maps are required to be submitted with "annual" Severance Tax returns and not with monthly estimated filings.

3. WVCA believes that additional guidance should be provided to taxpayers on the issue of the preparation of isopach maps. In February, 1997, the Virginia Department of Taxation published an administrative release (copy attached) providing taxpayers with information concerning the Coal Field Employment Enhancement Tax Credit. Pages 4 and 5 of the administrative release provides rules related to the preparation of isopach maps. WVCA believes that rules similar to these would provide appropriate guidance to West Virginia taxpayers. Accordingly, WVCA suggests the following language be inserted as new Reg. §110-13A.1-4.4 as follows:

4.4 Coal thickness isopach maps shall meet the following requirements:

## WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.  
August 7, 1997  
Page 3

4.4.1 Isopach maps must be of a scale of 1" = 100' to 1" = 400'.

4.4.2 Isopach maps must contain the 36 inch and 45 inch contour lines and contour lines at 3 inch intervals between these lines. If all coal is less than 36 inches, no contours are required. Contour lines will be used to evaluate the ratio of coal 36 inches or less in thickness to coal between 37 inches and 45 inches in thickness.

4.4.3 Coal cross-sections must be located on the map at intervals of 200 feet or less. The 200 foot spacing is to be measured longitudinally with the advancing section development. Other supporting evidence such as bore hole data may be included.

4.4.4 Maps must be submitted on paper or on computer disk in autocad DWG format.

4.4.5 Maps must be certified by a professional engineer.

All paragraphs subsequent to 4.4. in the Proposed Regulations should be renumbered to reflect the insertion of this new paragraph.

4. To make the reduced Severance Tax rates apply uniformly between integrated and non-integrated producer/processors, third-parties who purchase raw thin seam coal for processing and resale should be required to pay the Severance Tax at the same rate at which the actual producer of that coal pays. Accordingly, WVCA suggests that the following sentence be added at the end of current Reg. § 110-13A.1-4.4: "Taxpayers which purchase raw coal produced from thin seams for processing and resale shall also be eligible to pay the Severance Tax at the reduced rate available to the taxpayer which produced the coal."

5. Current Reg. § 110-13A.1-4.6. states that "Taxpayers eligible for the reduced Severance Tax rate for thin seams of coal are also subject to the minimum Severance Tax on coal,". WVCA believes it was the intention of the West Virginia Legislature in enacting the reduced Severance Tax rate for coal produced from thin seams to require

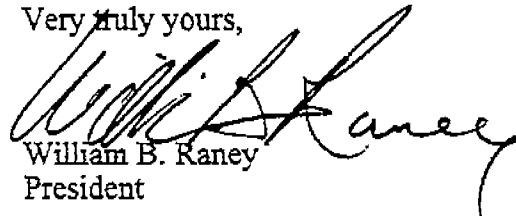
**WEST VIRGINIA COAL ASSOCIATION**

Robert Hoffman, Esq.  
August 7, 1997  
Page 4

taxpayers to pay a maximum Severance Tax of 1% or 2% of the sales price of thin seam coal. W.Va. Code § 11-13A-3(f) was enacted subsequent to W.Va. Code § 11-12B-3 and should supersede the Minimum Severance Tax on Coal. It was not the intention of the legislature to require such taxpayers to pay the minimum tax of \$0.75 per ton of coal mined from thin seams regardless of the sales price of the coal. Accordingly, WVCA suggests that Reg. § 110-13A.I-4.6. be amended to effectuate the intention of the legislature that the Minimum Severance Tax on Coal not apply where the regular Severance Tax is computed under W.Va. Code § 11-13A-3(f).

WVCA appreciates this opportunity to comment on the Proposed Regulations and respectfully urges the Tax Department to adopt WVCA's recommended changes and to incorporate them into the revised version of the regulations. If you have any questions or need additional information, we will be glad to try to accommodate.

Very truly yours,



William B. Raney  
President

WBR/mb/CHASFS3:102185  
Enclosure

# Virginia Tax Bulletin

Virginia Department of Taxation

February 18, 1997

97-1

## COALFIELD EMPLOYMENT ENHANCEMENT TAX CREDIT

### Generally

The Coalfield Employment Enhancement Tax Credit was enacted by the 1995 General Assembly for taxable years beginning on or after January 1, 1996, but before January 1, 2001. The credit was amended by the 1996 General Assembly to extend the sunset provision by one year, substantially increase the amount of the credit for both surface and underground mining, modify seam thickness requirements, eliminate the General Fund surplus contingency requirement, link the credit to employment levels, and make the redemption of excess credits mandatory. The credit is applicable to all taxes imposed by the Commonwealth of Virginia. Any person with an economic interest in coal mined in Virginia is eligible.

The credit is based upon the number of tons of coal sold during the taxable year which were mined in Virginia, multiplied by an employment factor. The amount of the credit varies according to seam thickness for coal mined by underground methods. The credit is also available for surface mined coal, as well as coalbed methane gas.

The credit is earned during taxable years beginning on or after January 1, 1996, but is applied according to a deferral schedule. The first time the credit can be applied is for tax liabilities for the 1999 taxable year. If the applied credit exceeds a person's liability for all state imposed taxes which were incurred during the taxable year, then the excess is refundable up to ninety percent of the credit claimed in that year. The remaining ten percent will be deposited in a regional fund administered by the Coalfields Economic Development Authority.

### Definitions

**Economic interest:** An economic interest for purposes of this credit will be the same as the economic ownership interest required by § 611 of the Internal Revenue Code as of December 31, 1977, in order to claim the depletion deduction. A person who receives only an arm's length royalty will not be considered as having an economic interest in coal mined in Virginia.

**Coal mined in Virginia:** Coal mined by underground methods will be considered "mined in Virginia" if the portal through which the coal is brought to the surface is located in Virginia. Coal mined by surface mining methods will be considered "mined in Virginia" if mined from within the boundaries of the permit area as defined in Code of Virginia § 45.1-229.

**Ton:** The credit is based in part on the number of tons sold. Therefore, the definition of ton for credit purposes will be the same as customarily used in transactions between a knowledgeable buyer and seller.

**Number of Virginia coal mining jobs:** A Virginia coal mining job will be considered to be any job required to be reported on the Mine Safety and Health Administration (MSHA) Form 7000-2 pursuant

to 30 CFR Part 50 as of January 1, 1995, and for which wages are properly reported on Form VEC-FC-20 pursuant to the Virginia Unemployment Compensation Act (Code of Virginia § 60.1-1 et seq.) The total hours worked at these jobs during each quarter, calculated in accordance with 30 CFR Part 50 and reported on the Virginia Department of Mines, Minerals & Energy (DMME) tonnage report (Form DM-CM2), will be aggregated for the calendar year. (A Form DM-CM2 is attached). The total hours from all tonnage reports filed by the entity will be divided by 1,920 equivalent hours per job to derive the number of coal mining jobs for the employment factor computation.

A taxpayer with facilities that do not have an assigned Mine Index Number from the DMME such as stand alone preparation plants, coal handling facilities, shops, or administrative or engineering facilities, and who wishes to file employment data from these facilities for the purpose of calculating the employment factor, may;

1. File a separate annual tonnage report (Form DM-CM-2) with the Division of Mines. Insert "none" in the space where the Mine Index Number is located and leave the tonnage spaces blank.
2. Allocate coal mining jobs among various contractors. (Attach an explanation to Form DM-CM-2.)
3. Allocate coal mining jobs to one contractor. (Attach an explanation to Form DM-CM-2.)

Coalbed Methane Producer: The person issued a permit by DMME to operate a coalbed methane well.

#### Computing the Credit

The credit is equal to the number of tons of coal sold during the taxable year which were mined in Virginia, multiplied by the following rates:

\$2 per ton for coal mined from a seam thickness of 36" or less;

\$1 per ton for coal mined from a seam thickness of greater than 36";

\$0.40 per ton for coal mined using surface mining methods.

This amount is then multiplied by an employment factor, which is a ratio that cannot exceed 1.0. The credit for coalbed methane gas, which is \$0.01 per million BTUs of Virginia coalbed methane sold during the taxable year, is then added to this result. The total is the maximum credit allowable for the taxable year.

Each ton of Virginia-mined coal sold will be eligible for only one of the Virginia coal credits (Coalfield Employment Enhancement, Qualifying Steam Producers, Coal Employment and Production Incentive, Qualifying Cogenerators and Small Power Producers). Under no circumstances will a buyer and seller be permitted to claim credits for the same ton of coal.

#### Example 1

Company A is a calendar year filer. In the 1997 taxable year, Company A sold 250,000 tons of coal mined in Virginia. All coal was mined from seam thicknesses greater than 36". Of the 250,000

total tons sold, Company A sold 35,000 tons to Company Z, a corporation subject to the annual license tax on companies furnishing water, heat, light or power. Company A provides certification to Company Z that the coal sold was mined in Virginia, in accordance with Code of Virginia § 58.1-2626.1, and is therefore aware that Company Z intends on claiming the Virginia Coal Employment and Production Incentive Tax Credit. Assuming no change in the number of Virginia coal mining jobs for the years ended December 31, 1997 and 1996, Company A's credit is calculated as follows:

$$(250,000 \text{ tons} - 35,000 \text{ tons}) \times \$1/\text{ton} \times 1.0 \text{ employment factor} = \$215,000$$

#### Employment Factor

The employment factor is the ratio of the number of Virginia coal mining jobs for the calendar year ending during the taxable year in which the credit is earned to the number of Virginia coal mining jobs for the prior calendar year.

The employment factor is calculated using each filing entity's aggregate number of Virginia coal mining jobs and not on a per mine basis. When determining the number of coal mining jobs, always round up.

The jobs of Virginia coal mining contract operators of the person claiming the credit must be included in the entity's employment factor. The person claiming the credit is responsible for obtaining the contractor's annual tonnage reports filed with DMME.

Taxpayers who file consolidated or combined returns will calculate the employment factor and corresponding credit on a separate company basis.

#### Example 2

Assume that Company A is a fiscal year filer with a taxable year beginning August 1, 1996. Company A will compute its employment factor based on the ratio of the number of coal mining jobs for the year ended December 31, 1996, to the number of Virginia coal mining jobs for the year ended December 31, 1995.

#### Example 3

Assume that Company B files the following tonnage reports:

<u>Mine</u>	<u>Total hours (12/31/96)</u>	<u>Total hours (12/31/95)</u>
A	133,250	131,900
B	78,390	86,525
C	212,500	225,650
D	0	53,250
Totals	424,140	497,325

Number of coal mining jobs, 12/31/96: 424,140 hours/1,920 hours per coal mining job = 220.9, rounding up we get the result of 221 coal mining jobs

Virginia Tax Bulletin 97-1  
Page 4

Number of coal mining jobs, 12/31/95: 497,325 hours/1,920 hours per coal mining job = 259.02, rounding up, results in 260 coal mining jobs

Employment factor =  $221/260 = 0.85$

#### Example 4

Assume four affiliated coal companies with the following facts:

<u>Company</u>	<u>Seam Thickness</u>	<u>Tons Sold (Net of tons used for other credits)</u>	<u>VA Coal Mining Jobs (Current Year)</u>	<u>VA Coal Mining Jobs (Prior Year)</u>
1	25"	100,000	1,500	1,000
2	40"	500,000	750	1,000
3	45"	200,000	2,000	1,000
4	20"	<u>400,000</u>	<u>500</u>	<u>1,000</u>
Totals		1,200,000	4,750	4,000

The credit is calculated as follows:

Co.1 (\$2/ton x 100,000 tons) x (1,000/1,000) =	\$ 200,000
Co.2 (\$1/ton x 500,000 tons) x (750/1,000) =	375,000
Co.3 (\$1/ton x 200,000 tons) x (1,000/1,000) =	200,000
Co.4 (\$2/ton x 400,000 tons) x (500/1,000) =	<u>400,000</u>
Total credit	\$ 1,175,000

Note that the employment factors for Co. 1 and Co. 3 are capped at 1.0

#### **Isopach Mapping**

Operators must submit a coal thickness isopach map when they are claiming any tax credit for coal mined that is 36 inches and under. Operators who are not claiming any tax credit for coal 36" and under do not have to submit a map (all coal mined is greater than 36").

Coal isopach maps shall be submitted to the Department of Mines, Minerals and Energy, Division of Mines, P.O. Box 900, Big Stone Gap, VA 24219. The certification of the weighted average isopach mapping of actual coal thickness and volume ratio of 36" and under coal to above 36" coal shall be attached.

Maps shall be submitted by April 1 of the year immediately following the year in which the tax credit is earned or within three months after the end of the operator's fiscal year.

Coal thickness isopach maps shall meet the following requirements:

- a) must be of a scale 1" = 100' to 1" = 400'.
- b) must contain the 36" contour line and contour lines on 3 inch intervals unless all coal is less than 36". If all coal is less than 36", no contours are required. Contour lines will be used by the Division of Mines to evaluate the ratio of 36 inches and under coal to above 36 inch coal reported by the operator.
- c) coal sections must be located on the map at intervals of 200' or less. The 200' spacing is to be measured longitudinally with the advancing section development. Other supporting evidence such as borehole data may be included. Coal isopach maps submitted for the 1996 taxable year may have a coal section interval spacing of greater than 200' if they have not been measured at this frequent of an interval.
- d) maps must be submitted on paper or on computer disk in autocad DWG format.
- e) must be certified by a professional engineer.

The Division of Mines must evaluate the coal thickness maps and acknowledge to the operator that the maps were received and that no discrepancies were found. This acknowledgment will be sent to the operator by July 1 of the year the maps were submitted or within six months of the end of the operator's fiscal year unless the Division of Mines is granted an extension by the Department of Taxation. The operator shall submit a copy of this acknowledgment to the Department of Taxation with its tax return.

If the operator needs acknowledgment at an earlier date, the operator may contact the Division of Mines and arrange an earlier review. Otherwise, the taxpayer would need to file the appropriate tax return extension with the Department of Taxation.

Should a conflict arise between an operator and the Division of Mines regarding the coal thickness isopach map, an independent third-party shall be selected that is agreeable to both parties to evaluate the isopach maps. The operator will be responsible for all charges associated with third-party evaluation of isopach maps.

#### Reporting and Claiming the Credit

##### Filing Requirements

Corporations: Form 306 must be filed with the Form 500 or 500S for the year the credit is earned. Consequently, the deadlines and statute of limitations for filing the Form 500 and 500S are applicable to Form 306. Form 306 is required to be resubmitted when the credit is actually claimed. If a corporation acquires another entity with earned, but unapplied credits, then the acquiring entity is required to attach the acquired entity's Form 306 to the returns in which those credits are redeemed.

**Individuals:** Individuals who earn the credit either as sole proprietors or distributees of pass-through entities are also required to file Form 306 with their corresponding Forms 760, 760PY, or 763. If the individuals earn the credit via a pass-through entity, the pass-through entity should furnish the individual with a copy of the DMME acknowledgment, if applicable, as well as a copy of the pass-through entity's Form 306.

Pass-through entities must allocate the credit among distributees according to ownership interest.

Any person which grants certificates to purchasers certifying that the coal purchased is Virginia-mined coal for purposes of claiming one of the other coal related credits, and also claims the Coalfield Employment Enhancement Tax Credit, must attach a schedule of the certificates granted to Form 306. This schedule should, at a minimum, list the purchaser, the number of tons certified, certificate date, and invoice number for each transaction for which a certificate was issued.

#### Claiming the Credit

The credit is claimed according to a deferral schedule. This schedule is printed on Form 306. Since this a redeemable credit, there is no carryforward feature. The credit will be first applied against corporate income taxes and then against all other taxes imposed by the Commonwealth which were incurred by the taxpayer during the taxable year. The credit will be administered and redeemed only by the Department of Taxation.

Refunds for previously paid taxes imposed by the Commonwealth which were incurred during the taxable year will be refunded at 100% of face value up to the amount of the credit. If any credit remains, it will be refunded at 90% of face value.

The credit cannot be utilized to offset unpaid Virginia-imposed tax liabilities from prior years, nor can it be used to offset any addition to tax, penalty, or interest incurred for current year tax liabilities. However, any refund or overpayment will be subject to the provisions of the Virginia Setoff Debt Collection Act (Code of Virginia § 58.1-520 et seq.).

In the event a taxpayer claims other state income tax credits in addition to the Coalfield Employment Enhancement Credit, the credit ordering scheme as listed in Public Document 95-240, copy enclosed, will be applicable.

In instances where a combined or consolidated Virginia corporate income tax is filed which includes corporations which were not eligible to claim the credit, special rules apply. In such cases, the credit as calculated above is utilized to offset the combined or consolidated Virginia corporate income tax liability. Any remaining credit, however, can only be used to offset other state taxes incurred by the corporations in the consolidated or combined group which actually earned the credit.

#### Administrative Appeals

Any application for correction of an erroneous assessment pursuant to Code of Virginia § 58.1-1821 that is contingent upon the determination of the weighted average isopach mapping of actual coal thickness will be held without action until a final determination is made in accordance with the DMME isopach mapping section of this bulletin.

Any § 58.1-1821 application not contingent upon weighted average isopach mapping of actual coal thickness will be acted on by the Department of Taxation.

#### Record Retention Responsibilities

All information upon which the isopach mapping is based is available for audit by DMME within three years from the last day prescribed by law for the timely filing of the corresponding income tax return. The tonnage and employment factor will be subject to audit by the Department of Taxation within the same time period.

The correction of a mathematical error in the computation or application of the credit may be made by the Department of Taxation within three years of the date a credit is claimed.

#### Example 5

Company A is a coal mining company which operates four mines in Virginia. Company B is also a coal mining company, and operates two Virginia mines. Both A and B are wholly-owned subsidiaries of Company C. Company C is a holding company which owns several other companies, none of which earned the credit. The affiliated group files a consolidated return for both federal and Virginia purposes on a calendar year basis.

Assume the following facts:

In 1996, Company A sold 100,000 tons of coal which were mined in Virginia from seam thicknesses of 36" or less, and 250,000 tons from seam thicknesses more than 36".

In 1996, Company B sold 210,000 tons of surface mined coal.

Number of coal mining jobs for year ended 12/31/96: Company A = 1,500; Company B = 750

Number of coal mining jobs for year ended 12/31/95: Company A = 1,000; Company B = 1,000

In 1999, the following tax liabilities are incurred:

Virginia consolidated corporate income tax liability	\$ 93,000
Company A's other Virginia imposed taxes (Includes \$2,000 in various penalties)	37,000
Company B's other Virginia imposed taxes	57,500
Company C's other Virginia imposed taxes	29,000
Company C Virginia sales tax	6,250
Company A BPOL tax	2,950
Company B Wise County severance tax	7,211

The consolidated group also has an outstanding corporate income tax assessment from 1998 of \$17,500 in tax, penalty, and interest.

## Virginia Tax Bulletin 97-1

Page 8

The consolidated group made no Virginia estimated tax payments, since it was determined that the consolidated Virginia corporate income tax liability would not exceed the credit available. All other taxes were paid.

Computation of the credit earned in the 1996 tax year:

Company A  $[(100,000 \times \$2) + (250,000 \times \$1)] \times (1,500/1,000) = \$ 450,000$

Company B  $[(210,000 \times \$0.40)] \times (750/1,000) = 63,000$

Total credit = \$ 450,000 + 63,000 = \$ 513,000

Applying the credit in 1999:

1996 Credit earned	\$513,000
% per redemption schedule	50%
Credit available in 1999	256,500
Less: corporate income tax	93,000
Co. A's other Virginia imposed taxes	35,000
Co. B's other Virginia imposed taxes	57,500
Credit unapplied	71,000

Disposition of Unapplied Credit:

90% of unapplied credit redeemed to Taxpayer	63,900
--	--------

Deposit to Coalfields Authority	<u>7,100</u>
	71,000

Refunds of previously paid other Virginia imposed taxes:

Co. A's other Virginia imposed taxes	35,000
Co. B's other Virginia imposed taxes	<u>57,500</u>
	92,500

Total Refund to Taxpayer:

Redemption of Unapplied Credit	63,900
Refunds of Other Virginia imposed taxes	<u>92,500</u>
	156,400
Less refund match (outstanding assessment)	<u>17,500</u>
	\$138,900



FILED

SEP 17 1 33 PM '97

CECIL H. UNDERWOOD  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF TAX AND REVENUE

Charleston, West Virginia  
P. O. Box 963  
Charleston, WV 25324-0963  
Ph. (304) 558-0211 - Fax (304) 558-2324

ROBIN C. CAPEHART  
OFFICE OF THE  
SECRETARY OF STATE

September 15, 1997

Hand Delivered

The Honorable Richard E. Boyle  
Tax Commissioner  
P. O. Box 963  
Charleston, West Virginia 25324-0963

Re: Consent to Promulgate  
Interpretive Rule 110 C.S.R. 13AB

Dear Commissioner Boyle:

This office reviewed changes made by the Tax Division in its proposed interpretive rule pertaining to reduced severance tax rates for thin seams of coal, title 110, series 13AB, in response to public comments and consents to those changes.

Please take appropriate steps to promulgate this amended proposed interpretive rule.

Sincerely,

Robin C. Capehart  
Cabinet Secretary

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

JAN CASTO  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900

*No Response  
From Agency  
Dec '97 Supplement*



STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

TO: JOHN MONTGOMERY

AGENCY: TAX

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 24, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 13AB TITLE: 110 TAX

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.