

SENATE BILL NO. 509
INTRODUCED BY K. GEBHARDT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT COSTS OF WASHING AND CLEANING OF COAL MINED FROM AN UNDERGROUND MINE ARE NOT INCLUDED IN THE CONTRACT SALES PRICE OF COAL; REVISING WHEN THE DEPARTMENT MAY IMPUTE THE VALUE OF COAL; AMENDING SECTIONS 15-23-701, 15-23-703, 15-35-102, AND 15-35-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-23-701, MCA, is amended to read:

"15-23-701. Reporting gross yield from coal. ~~(1)~~ Each person engaged in mining coal must, on or before March 31 each year, file with the department of revenue a statement of the gross yield from each coal mine owned or worked by ~~such~~ the person in the preceding calendar year and the value ~~thereof of the coal~~. The statement ~~shall~~ must be in the form prescribed by the department, which may be coordinated with the form used under 15-35-104 and must be verified by an officer of the firm. The statement ~~shall~~ must include:

- ~~(a)~~(1) the name and address of the owner or lessee or operator of the mine;
- ~~(b)~~(2) the location of the mine;
- ~~(c)~~(3) the tons of coal extracted, treated, and sold from the mine during the taxable tax period;
- ~~(d)~~(4) the gross yield or value in dollars and cents derived from the contract sales price as defined in 15-35-102.

~~—(2) Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under this section."~~

Section 2. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds -- taxable value for county classification and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701~~(1)(d)~~(4). The county treasurer shall give full notice

to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 3. Section 15-35-102, MCA, is amended to read:

"15-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Coal washing" means any treatment to remove impurities from underground mined coal. Coal washing may include but is not limited to operations such as flotation, air, water, or heavy media separation, drying, and related handling.

(5)(6) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes 15 cents per ton. Contract sales price does not include the costs specific to the act of coal washing.

(6)(7) "Department" means the department of revenue.

(7)(8) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

(8)(9) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(10) "Prepared for shipment" includes but is not limited to services such as in-mine movement, crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal for disposition.

(9)(11)(10) "Produced" means severed from the earth.

(10)(12)(11) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11)(13)(12) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a

purchaser is not a qualified purchaser.

~~(12)(14)~~(13) "Strip mining" is defined in 82-4-203 and includes "surface mining".

~~(13)(15)~~(14) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

~~(14)(16)~~(15) "Ton" means 2,000 pounds.

~~(15)(17)~~(16) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 4. Section 15-35-107, MCA, is amended to read:

"15-35-107. When value of coal may be imputed -- procedure. (1) The department may ~~or shall at the request of the taxpayer~~ impute a value to the coal ~~which~~ that approximates market value f.o.b. mine in a case where:

(a) the operator of a coal mine is using the produced coal in an energy-conversion or other manufacturing process; or

~~(b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal;~~

~~(c)~~(b) a person sells coal under a contract ~~which~~ that is not an arm's-length agreement; ~~or~~

~~(d) a person neglects or refuses to file a statement under 15-23-701 or a statement and tax return under this chapter.~~

(2) For purposes of subsection (1)(b), "market value f.o.b. mine" means the value of the coal subsequent to primary and secondary crushing ~~being prepared for shipment on the mode of transportation taken to its final destination~~ PRIMARY AND SECONDARY CRUSHING but prior to drying, cleaning, or other processing.

(3) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. 613, or that provision as it may be labeled or amended, in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Applicability.** [This act] applies to coal mined after June 30, 2009.

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