

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2171 Session of 2015

INTRODUCED BY THOMAS, JUNE 16, 2016

REFERRED TO COMMITTEE ON FINANCE, JUNE 16, 2016

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
 2 act relating to tax reform and State taxation by codifying
 3 and enumerating certain subjects of taxation and imposing
 4 taxes thereon; providing procedures for the payment,
 5 collection, administration and enforcement thereof; providing
 6 for tax credits in certain cases; conferring powers and
 7 imposing duties upon the Department of Revenue, certain
 8 employers, fiduciaries, individuals, persons, corporations
 9 and other entities; prescribing crimes, offenses and
 10 penalties," in personal income tax, further providing for
 11 imposition of tax; and providing for imposition of severance
 12 tax.

13 The General Assembly of the Commonwealth of Pennsylvania
 14 hereby enacts as follows:

15 Section 1. Section 302 of the act of March 4, 1971 (P.L.6,
 16 No.2), known as the Tax Reform Code of 1971, amended December
 17 23, 2003 (P.L.250, No.46), is amended to read:

18 Section 302. Imposition of Tax.--(a) Every resident
 19 individual, estate or trust shall be subject to, and shall pay
 20 for the privilege of receiving each of the classes of income
 21 hereinafter enumerated in section 303, a tax upon each dollar of
 22 income received by that resident [during that resident's taxable
 23 year at the rate of three and seven hundredths per cent.] as

1 follows:

2 (1) During taxable years beginning before January 1, 2015, a
3 rate of three and seven hundredths per cent.

4 (2) During taxable years beginning on January 1, 2015, and
5 ending on December 31, 2017, a rate of three and seven-tenths
6 per cent.

7 (3) During taxable years beginning on or after January 1,
8 2018, a rate of three and seven hundredths per cent.

9 (b) Every nonresident individual, estate or trust shall be
10 subject to, and shall pay for the privilege of receiving each of
11 the classes of income hereinafter enumerated in section 303 from
12 sources within this Commonwealth, a tax upon each dollar of
13 income received by that nonresident [during that nonresident's
14 taxable year at the rate of three and seven hundredths per
15 cent.] as follows:

16 (1) During taxable years beginning before January 1, 2015, a
17 rate of three and seven hundredths per cent.

18 (2) During taxable years beginning on January 1, 2015, and
19 ending on December 31, 2017, a rate of three and seven-tenths
20 per cent.

21 (3) During taxable years beginning on or after January 1,
22 2018, a rate of three and seven hundredths per cent.

23 Section 2. The act is amended by adding an article to read:

24 ARTICLE XI-E

25 SEVERANCE TAX

26 Section 1101-E. Definitions.

27 The following words and phrases when used in this article
28 shall have the meanings given to them in this section unless the
29 context clearly indicates otherwise:

30 "Association." A partnership, limited partnership or any

1 other form of unincorporated enterprise owned or conducted by
2 two or more persons.

3 "Barrel." Forty-two United States gallons at an atmospheric
4 pressure of 231 cubic inches of liquid at a standard temperature
5 of 60 degrees Fahrenheit.

6 "Coal bed methane." Gas which can be produced from coal
7 beds, coal seams, mined-out areas or gob wells.

8 "Corporation." A corporation, joint stock association,
9 limited liability company, business trust or any other
10 incorporated enterprise organized under the laws of the United
11 States, this Commonwealth or any other state, territory or
12 foreign country or dependency.

13 "Department." The Department of Revenue of the Commonwealth.

14 "Dry natural gas." Hydrocarbon gases, consisting mostly of
15 methane, that remain after the natural gas liquid portion of the
16 natural gas stream has been removed and any volume of
17 nonhydrocarbon gases have been removed in sufficient quantity to
18 render the gas marketable. The term includes consumer-grade
19 natural gas or pipeline-quality natural gas.

20 "Gross proceeds." The value, whether in money or other
21 property, actually proceeding from the sale of property, without
22 a deduction for the cost of property sold or expenses of any
23 kind.

24 "Gross value." The gross proceeds received or receivable for
25 property transferred, except as follows:

26 (1) In a transaction involving related parties, gross
27 proceeds of the property transferred may not be less than the
28 fair market value of similar grade and quality property.

29 (2) In the absence of a sale, gross proceeds of the
30 property transferred may not be less than the fair market

1 value of similar grade and quality property.

2 (3) In a transaction where property is transferred for
3 the purpose of processing and resale, gross proceeds of the
4 property transferred may not be less than the fair market
5 value of similar grade and quality property.

6 (4) Under no circumstance shall the gross proceeds be
7 less than \$20.00 per barrel.

8 "Meter." A device to measure the passage of volumes of gases
9 or liquids past a certain point.

10 "Natural gas." A fossil fuel consisting of a mixture of
11 hydrocarbon gases, including methane, ethane, propane, butane,
12 carbon dioxide, oxygen, nitrogen and hydrogen sulfide and other
13 gas species. The term includes natural gas from oil fields known
14 as associated gas or casing head gas, natural gas fields known
15 as nonassociated gas, shale beds and other formations. The term
16 does not include coal bed methane.

17 "Natural gas liquids." Hydrocarbons including ethane,
18 propane, butane, isobutane and pentane that are separated from
19 natural gas as liquids through the process of absorption,
20 condensation, adsorption, cooling in gas separators, gas
21 processing or cycling plants.

22 "Person." Includes a corporation, partnership, limited
23 liability company, business trust, other association, a
24 government entity other than the Commonwealth, estate, trust,
25 foundation or natural person.

26 "Producer." A person who engages or continues within this
27 Commonwealth in the business of severing natural gas from
28 unconventional formations for sale, profit or commercial use.

29 "Producing site." A point of severance, including a well and
30 its associated zones and multilateral well bores, that is

1 capable of producing natural gas from an unconventional
2 formation.

3 "Related parties." Two or more people, organizations or
4 businesses owned or controlled directly or indirectly by the
5 same interests. Control exists if a contract or lease, either
6 written or oral, is entered into where one party severs or
7 processes natural gas owned or held by another party and the
8 owner or lessor participates in the severing, processing or
9 marketing of the natural gas or receives any value other than an
10 arm's-length passive royalty interest.

11 "Reporting period." A calendar month in which natural gas is
12 severed.

13 "Sales meter." A meter at the point where natural gas is
14 sold or transported to a purchaser or the market.

15 "Sever." The extraction or other removal of natural gas from
16 an unconventional formation in this Commonwealth.

17 "Storage field." A natural formation or other site that is
18 used to store natural gas that did not originate from and has
19 been transplanted into such formation or site.

20 "Stripper well." A producing site that produced an average
21 of less than 50 units of natural gas per day during the calendar
22 year immediately preceding a reporting period.

23 "Tax." The tax imposed under this article.

24 "Taxpayer." A person subject to the tax imposed by this
25 article.

26 "Unconventional formation." A geological shale formation
27 existing below the base of the Elk Sandstone or its geologic
28 equivalent stratigraphic interval where natural gas generally
29 cannot be produced at economic flow rates or in economic volumes
30 except by vertical or horizontal well bores stimulated by

1 hydraulic fracture treatments or using multilateral well bores
2 or other techniques to expose more of the formation to the well
3 bore.

4 "Unit." A thousand cubic feet (Mcf) of natural gas at a
5 temperature of 60 degrees Fahrenheit and an absolute pressure of
6 14.73 pounds per square inch, in accordance with American Gas
7 Association (AGA) standards and according to Boyle's law for the
8 measurement of gas under varying pressures with deviations
9 therefrom as follows:

10 (1) The average absolute atmospheric pressure shall be
11 assumed to be 14.4 pounds to the square inch, regardless of
12 actual elevation or location of point of delivery above sea
13 level or variations in such atmospheric pressure from time to
14 time.

15 (2) The temperature of the gas passing the meters shall
16 be determined by the continuous use of a recording
17 thermometer installed so that the thermometer may properly
18 record the temperature of the gas flowing through the meters.
19 The arithmetic average of the temperature recorded each 24-
20 hour day shall be used in computing gas volumes. If a
21 recording thermometer is not installed, or if installed and
22 not operating properly, an average flowing temperature of 60
23 degrees Fahrenheit shall be used in computing gas volume.

24 (3) The specific gravity of the gas shall be determined
25 by tests made by the use of an Edwards or Acme gravity
26 balance, annually, or at intervals as are found necessary in
27 practice. Specific gravity shall be used in computing gas
28 volumes.

29 (4) The deviation of the natural gas from Boyle's law
30 shall be determined by tests annually or at other shorter

1 intervals as are found necessary in practice. The apparatus
2 and the method to be used in making the tests shall be in
3 accordance with recommendations of the Natural Bureau of
4 Standards of the Department of Commerce, or Report No. 3 of
5 the Gas Measurement Committee of the American Gas
6 Association, or any amendments thereof. The results of the
7 tests shall be used in computing the volume of gas delivered.
8 "Wellhead meter." A meter placed at a producing site to
9 measure the actual volume of natural gas severed.

10 Section 1102-E. Imposition of tax.

11 (a) Imposition.--There is hereby levied a privilege tax on
12 every producer.

13 (b) Rate.--The tax imposed under subsection (a) shall be the
14 sum of the following:

15 (1) Four and seven tenths cents for each unit of natural
16 gas severed measured at the wellhead meter.

17 (2) Five percent of the average market price as
18 calculated under section 1103-E of each unit of the dry
19 natural gas derived from the natural gas severed.

20 (3) Five percent of the gross value of the natural gas
21 liquids derived from the natural gas severed as shown by the
22 gross proceeds derived from the sale by the producer.

23 (c) Exemptions.--The tax imposed under subsection (a) shall
24 not be imposed upon the following:

25 (1) Natural gas, dry natural gas or natural gas liquids
26 severed under a natural gas lease and provided to a lessor
27 for no consideration for the lessor's own use.

28 (2) Natural gas, dry natural gas or natural gas liquids
29 severed from a stripper well.

30 (3) Natural gas, dry natural gas or natural gas liquids

1 severed from a storage field.

2 Section 1103-E. Calculation and publication of average market
3 price.

4 The department shall calculate the average market price per
5 unit of dry natural gas for each calendar quarter. The average
6 market price shall be the weighted average price per unit for
7 all major Commonwealth distribution hubs on the interstate
8 natural gas pipeline system for the three months prior to the
9 calendar quarter. The department shall publish a notice of the
10 average market price which shall be at least \$2.97 per unit for
11 each calendar quarter in the Pennsylvania Bulletin not later
12 than within 30 days of the beginning of each calendar quarter.

13 Section 1104-E. Prohibition.

14 A producer that severs natural gas under a natural gas lease
15 may not make the tax imposed under section 1102-E an obligation,
16 indebtedness or liability of a landowner, leaseholder or other
17 person in possession of real property upon which the removal or
18 extraction occurs and shall not otherwise require the landowner
19 to pay or reimburse the producer for the amount of the tax.

20 Section 1104.1-E. Existing agreements.

21 A provision of an agreement in existence prior to the
22 effective date of this section which violates section 1104-E is
23 declared to be illegal, contrary to public policy and null and
24 void.

25 Section 1104.2-E. Future agreements.

26 On or after the effective date of this section, a provision
27 of an agreement in violation of section 1104-E is declared to be
28 illegal, contrary to public policy and null and void.

29 Section 1105-E. Return and payment.

30 (a) Return.--Each producer is required to file a return with

1 the department, on a form to be prescribed by the department,
2 reporting all severed natural gas per reporting period and the
3 tax due as imposed under section 1102-E.

4 (b) Filing.--The return required by subsection (a) must be
5 filed with the department on or before the 20th day of the
6 fourth calendar month after a reporting period.

7 (c) Due date.--The tax imposed under section 1102-E is due
8 on the day the return is required to be filed and becomes
9 delinquent if not remitted to the department by that date.

10 Section 1106-E. Natural gas severance tax licensing.

11 (a) License required.--Each producer subject to tax under
12 this part must apply to the department for a severance tax
13 license before severing natural gas from this Commonwealth.
14 Producers who have been severing natural gas from this
15 Commonwealth prior to the effective date of this part must
16 obtain a license from the department within six months from the
17 effective date of this section. All other producers must obtain
18 a license before severing natural gas from this Commonwealth. A
19 producer is liable for the tax imposed by this article without
20 regard to whether the producer obtains or is required to obtain
21 a license.

22 (b) Fee.--The department may charge an application fee to
23 cover the administrative costs associated with the application
24 and licensing process. If the department charges an application
25 fee, the department may not issue a license until the producer
26 has paid the application fee.

27 (c) Declaration.--As part of the application for a license,
28 the producer shall provide a declaration of all sites in this
29 Commonwealth used by the producer for the severance of natural
30 gas. The declaration shall include all producing sites and sites

1 which are stripper wells. The producer shall update the
2 declaration when the producer adds or removes a producing site
3 in this Commonwealth or when there is a change in the status of
4 a producing site. The producer shall update the declaration
5 within 30 days after any calendar month in which a change in the
6 information contained in the declaration occurs.

7 (d) Department duties.--The department shall, after the
8 receipt of an application, issue the license applied for under
9 subsection (a), if the applicant filed all required State tax
10 reports and paid any State taxes not subject to a timely
11 perfected administrative or judicial appeal or subject to a duly
12 authorized deferred payment plan. The license shall be
13 nonassignable. Each producer shall be required to renew the
14 license on a staggered renewal system established by the
15 department. After the initial staggered period, a license issued
16 shall be valid for a period of five years.

17 (e) State taxes.--If an applicant for a license or a person
18 holding a license has not filed all required State tax reports
19 and paid any State taxes not subject to a timely perfected
20 administrative or judicial appeal or subject to a duly
21 authorized deferred payment plan, the department may refuse to
22 issue, suspend or revoke the license. The department shall
23 notify the applicant or licensee of a refusal, suspension or
24 revocation. The notice shall contain a statement that the
25 refusal, suspension or revocation may be made public. The notice
26 shall be made by first class mail. An applicant or licensee
27 aggrieved by the determination of the department may file an
28 appeal of the determination in the same manner as provided for
29 reassessments of tax under section 1108-E. In the case of a
30 suspension or revocation which is appealed, the license shall

1 remain valid pending a final outcome of the appeal.
2 Notwithstanding any other provision of law to the contrary, if
3 no appeal is taken or if an appeal is taken and denied at the
4 conclusion of the appeal process, the department may disclose,
5 by publication or otherwise, the identity of a person whose
6 license has been refused, suspended or revoked under this
7 subsection. Disclosure may include the basis for refusal,
8 suspension or revocation.

9 (f) Severing without a license.--A person that severs
10 natural gas in this Commonwealth without holding a valid license
11 under this section shall be guilty of a summary offense and,
12 upon conviction thereof, be sentenced to pay a fine of not less
13 than \$300 nor more than \$1,500 and, in default thereof, to
14 undergo imprisonment of not less than five days nor more than 30
15 days. The penalties imposed by this subsection shall be in
16 addition to any other penalties imposed by law. For purposes of
17 this subsection, the severing of natural gas during any calendar
18 day shall constitute a separate violation. The Secretary of
19 Revenue may designate employees of the department to enforce the
20 provisions of this subsection. The employees shall exhibit proof
21 of and be within the scope of the designation when instituting
22 proceedings as provided by the Pennsylvania Rules of Criminal
23 Procedure.

24 (g) Liability.--Failure to obtain a license does not relieve
25 a person from liability for the tax imposed by this part.

26 (h) Civil penalty.--In addition to any tax, interest or
27 other penalty due under this article, the department shall
28 impose a civil penalty of 10¢ per unit severed during the period
29 a producer is required to and does not have a license. The
30 penalty shall be assessed and collected under this part.

1 Section 1107-E. Meters.

2 A producer shall provide for and maintain discrete wellhead
3 and sales meters. A producer shall ensure that all meters are
4 maintained according to industry standards.

5 Section 1108-E. Administration of tax.

6 Unless otherwise noted to the contrary, Article II, Part VI,
7 Chapters IV-VIII shall apply to this article.

8 Section 1109-E. Records.

9 A producer shall maintain the following records:

10 (1) Wellhead and sales meter charts for each reporting
11 period and the meter calibration and maintenance records. If
12 turbine meters are in use, the maintenance records will be
13 made available to the department upon request.

14 (2) All records, statements, and other instruments
15 furnished to a producer by any person to whom the producer
16 delivers for sale, transport or other delivery of any natural
17 gas.

18 (3) Records, statements and other instruments as the
19 department may prescribe by regulation.

20 Section 1110-E. Enforcement of article.

21 The department and the Department of Environmental Protection
22 shall have the ability to inspect records and locations to
23 ensure compliance with this article.

24 Section 1111-E. Use of revenue.

25 The revenue collected under this article shall be deposited
26 as follows:

27 (1) Twenty percent shall be deposited into the Marcellus
28 Legacy Fund.

29 (2) Forty percent shall be deposited into a restricted
30 account within the General Fund for distribution to

1 municipalities in which natural gas is severed.

2 (3) Forty percent shall be deposited into the General
3 Fund.

4 Section 1112-E. Expiration.

5 The tax imposed by this article may not be levied on natural
6 gas severed after December 31, 2017.

7 Section 3. This act shall apply as follows:

8 (1) The addition of sections 1103-E and 1106-E of the
9 act shall be retroactive to July 1, 2015.

10 (2) The amendment of section 302 of the act shall apply
11 to taxable years commencing after December 31, 2015.

12 Section 4. This act shall take effect immediately.