

TECHNICAL ASSISTANCE ADVISORY 97-004

SUBJECT: SEVERANCE TAX -- Reduced Tax Rate -- W. Va. Code § 11-13A-3(f)(ii), allowing a reduced severance tax rate for the underground mine production of coal seams forty-five inches thick or less in the one hundred and eighty days immediately preceding April 11, 1997. The reduced tax shall apply at the beginning of the tax reporting year which first commences subsequent to April 11, 1997.

This is in response to your letter on behalf of your clients, ABC Coal Company (hereinafter referred to as the "Company"), for issuance of a technical assistance advisory under W. Va. Code § 11-10-5q, regarding when would your company be first entitled to the reduced severance tax rate of 1% of the gross value of coal produced, as outlined in Senate Bill 142, now codified in W. Va. Code § 11-13A-3. In support of this ruling request, the following facts and representations were submitted. Company is the lessee of a seam of coal in West Virginia which has an average thickness of less than thirty-seven inches. This coal had been mined five years in the past, but the opportunity for a reduced severance tax rate has resulted in current plans to reopen mines. Further, there has been no mining or coal production at these mines for more than 180 days as of April 11, 1997.

Company intends to open these mines and begin production assuming it will qualify for the reduced rate of severance tax.

DISCUSSION

Senate Bill 142 amended W. Va. Code § 11-13A-3 to allow a reduced severance tax rate for coal mined by underground methods from seams with an average thickness of forty-five inches or less. The seam thickness of thirty-seven inches to forty-five inches would be subject to a rate of 2% of the gross value of coal produced. For coal mined by underground methods from seams with an average thickness of less than thirty-seven inches, the rate is 1% of the gross value of coal produced. Currently, the severance tax rate for coal produced by underground methods is 5% of the gross value of coal produced, without regard to the thickness of the seam.

West Virginia Code § 11-13A-3(f) states:

(f) Reduction of severance tax rate. -- For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section, shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

...

West Virginia Code § 11-13A-3(f)(ii) also provides:

This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less

than forty-five inches in average thickness or any existing mine that has not produced coal from seams forty-five inches or less in thickness in the one hundred and eighty days immediately preceding the effective date of this subsection.

It is assumed by the Company that all of the provisions necessary to qualify for the reduced rate of severance tax will be satisfied. This technical assistance advisory makes no conclusions, observations or judgments with respect to the qualifications of the Company for the reduced severance tax.¹

The issue of when the Company may first be entitled to the reduced severance tax shall be governed by the accounting periods and methods of accounting as described in W. Va. Code § 11-13A-7.

- (a.) General Rule - For purposes of the taxes imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer's taxable year under this article.

RULING

After consideration of the facts and representations submitted for the purposes of this advisory and application of current law we make the following ruling:

Company will first be entitled to the reduced severance tax rate as provided in W. Va. Code § 11-13A-3(f) for Company's taxable year beginning after the effective date of the amendment, April 11, 1997. For example, if Company is a calendar year taxpayer, then the reduced rate would apply for the tax year commencing January 1, 1998.

The conclusion reached in this technical assistance advisory is based upon the facts and representations submitted by Applicant and application of current law. In the event there is a material change in the facts, or if it is determined that material facts were omitted or are materially different from those furnished to us for purposes of this ruling, or there is a material change in the applicable law, the conclusions reached in this advisory may no longer apply.

Precedential Value. -- Under W. Va. Code § 11-10-5r(b), a technical assistance advisory has no precedential value except to the taxpayer who requests the advisory, unless the Tax Commissioner specifically states that it has precedential value. This technical assistance advisory may not be used or cited as precedent.

Publication. -- Under W. Va. Code § 11-10-5r(e), the Tax Commissioner is required to release technical assistance advisories to the public after they are modified to delete identifying characteristics, unless the taxpayer waives its right to confidentiality. This technical assistance advisory will be released as Technical Assistance Advisory 97-004.

If you have any question about this advisory, please contact this office.

Issued: June 30, 1997

Rich Boyle
State Tax Commissioner

¹The Tax Division of the Department of Tax and Revenue will provide general advice and guidance to taxpayers concerning the administration of eligibility requirements for the reduced severance tax in the immediate future.