



Waste Coal and Severance Tax

This publication provides general information regarding the application of severance tax on waste coal. It is not a substitute for tax laws or regulations.

Waste Coal

Coal wastes are a material by-product of coal cleaning operations and are deposited in a refuse or gob pile, slurry pond, fines pond or other depository.

The relevant language of Section 11-13A-3e of West Virginia Code states that waste coal tax is imposed on "the privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal."

Application of the 2 cent per ton and 14 cent per ton coal taxes

Waste coal produced in West Virginia is subject to the 2 cents per ton special tax on coal production under W. Va. Code §22-3-32, and the (currently) 14 cents per ton special coal reclamation tax under Section 22-3-11 of the W. Va. Code.

Tax imposed only where Taxpayer is doing both (1) extracting and (2) processing

The waste coal tax applies to all persons extracting and recovering material from refuse, gob piles or other sources of waste coal located in this state, and subsequently processing, washing and preparing this extracted and recovered material to produce coal for sale, profit or commercial use, and the tax is in addition to all other taxes imposed by law.

Extracting without processing

If gob is extracted and not processed by the severor, and then sold to another, either for further processing or not for further processing, the **gob** sold is taxed as an "other natural resource" if it is **not** predominantly coal. If it is predominantly coal, then it is taxed as run of mine coal at the regular coal severance tax rate.

Processing without extracting

If a Taxpayer bought uncleaned, unprocessed gob extracted by another, and then washed and processed the material and prepared it for sale as coal, that Taxpayer would **not** be subject to the lower waste coal tax rate. The Taxpayer would be a processor who purchased either "other natural resources" or run of mine coal, and processed the material purchased into processed coal. The coal resulting from the processing would be subject to the regular coal severance tax rate.

No tax on gob not sold

Under Section 11-13A-2(c)(5) of the W. Va. Code, if it is gob not sold, it is not taxable. The waste coal tax does not apply to any electrical power co-generation plant burning material from its wholly owned refuse or gob pile.

Annual returns and quarterly estimates for waste coal tax

For waste coal produced or processed for tax years beginning on or after April 13, 2001, the applicable tax is two and one-half percent (2.5%) of gross receipts, and the **tax is paid and returns are filed annually** on form WV/SEV-401W, to report the total tons of waste coal produced, the county in which the waste coal is recovered, and the total gross income received from the sale of the waste coal. Quarterly estimate returns (form WV/SEV-400W) are required for reporting the two and one-half percent (2.5%) tax on the production of waste coal.

Waste coal tax is in lieu of two severance taxes

The West Virginia Code section 11-13A-3 five percent (5%) coal severance tax and the West Virginia Code section 11-12B-3 seventy-five cents (\$0.75) (i.e. 75 ¢) per ton minimum coal severance tax are **not** imposed on waste coal that is taxed under the two and one half percent (2.5%) waste coal tax of West Virginia Code section 11-13A-3e.

Regular tax rate is applied to coal produced from gob prior to April 13, 2001

For waste coal produced or processed prior to tax years beginning on or after April 13, 2001, the applicable tax is the greater of (4.65%) of gross receipts, plus the **county share .035% additional tax or seventy-five cents (\$.75) per ton.**

Effective date, taxable activity, tax rate

For tax years beginning on or after **April 13, 2001**, the severance tax rate on coal produced from **(1)** the mining **and (2)** processing of material from refuse, gob piles, slurry ponds, pond fines or other sources of waste coal is **two and one-half percent (2.5%)** of the gross value of the coal so produced, as shown by the gross proceeds derived from the sale by the producer.

River Coal

Dredging of coal from a river will not be classified or treated as waste coal production for purposes of the waste coal severance tax under W. Va. Code §11-13A-3e. Production of river coal is subject to the regular coal severance tax or minimum coal severance tax, as applicable, and to other applicable taxes for coal production.

Coal that is dredged from rivers is typically coal that has been inadvertently spilled into the river from a barge or a barge loading facility or conveyor. A minor portion of river coal may be the result of alluvial deposits derived from coal stockpiles near rivers. Coal is not typically dredged from a river in order to extract coal from a natural coal seam that happens to run under a river bed.

River coal is not typically the by-product of coal preparation and cleaning. It is typically either “run of mine” coal or clean, post-processing coal spilled from a barge, dock or conveyor. It is not deliberately deposited in the river in the way coal waste is deposited in a gob pile, fines pond or other waste coal depository.

Because (1) it is not a by-product of processing, and (2) it is not extracted by the dredging operation from a gob pile or other depository of coal by-products, the Tax Department does not classify river coal as waste coal within the meaning of the statute.

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