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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2103 Session of  
2015

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INTRODUCED BY STURLA, HARKINS, THOMAS, D. COSTA, GERGELY, LEWIS,  
YOUNGBLOOD, COHEN, CONKLIN, RADER, DEAN, McNEILL, DRISCOLL,  
GOODMAN AND BOYLE, MAY 25, 2016

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
MAY 25, 2016

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AN ACT

1 Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated  
2 Statutes, providing for natural gas severance tax; and  
3 establishing the Severance Tax Restricted Account.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 58 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a part to read:

8 PART IV

9 TAXATION

10 Chapter

11 51. Natural Gas Severance Tax

12 53. Severance Tax Restricted Account and Distribution

13 CHAPTER 51

14 NATURAL GAS SEVERANCE TAX

15 Sec.

16 5101. Definitions.

17 5102. Imposition of tax.

1 5103. Calculation and publication of average market price.

2 5104. Meters.

3 5105. Administration.

4 5106. Assessments.

5 5107. Records.

6 5108. Rules and regulations.

7 5109. Penalties.

8 § 5101. Definitions.

9 The following words and phrases when used in this chapter  
10 shall have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Association." A partnership, limited partnership or any  
13 other form of unincorporated enterprise owned or conducted by  
14 two or more persons.

15 "Coal bed methane." Gas that can be produced from coal beds,  
16 coal seams, mined-out areas or gob wells.

17 "Corporation." A corporation, joint stock association,  
18 limited liability company, business trust or any other  
19 incorporated enterprise organized under the laws of the United  
20 States, this Commonwealth or any other state, territory or  
21 foreign country or dependency.

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

23 "Dry natural gas." Hydrocarbon gases, consisting mostly of  
24 methane, that remain after the natural gas liquid portion of the  
25 natural gas stream has been removed and any volume of  
26 nonhydrocarbon gases have been removed in sufficient quantity to  
27 render the gas marketable. The term includes consumer-grade  
28 natural gas or pipeline-quality natural gas.

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

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

4       (2) In the absence of a sale, gross proceeds of the  
5 property transferred may not be less than the fair market  
6 value of similar grade and quality property.

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

11       (4) Under no circumstance shall the gross proceeds be  
12 less than \$20 per barrel.

13       "Market value." The producer's proceeds from the sale of gas  
14 at arm's-length terms to the first purchaser less any payment  
15 made to lessors holding a royalty interest and less the costs to  
16 the producer of gathering, separating, processing,  
17 fractionating, dehydrating, treating, compressing, marketing and  
18 delivering the gas to the first purchaser. For purposes of  
19 calculating the costs to the producer where costs are incurred  
20 with an entity affiliated with the producer, the affiliated  
21 entity may not charge more for the costs than the amount that  
22 would be reasonably incurred in an arm's-length transaction with  
23 a third party for the activities on a volumetric basis.

24       "Natural gas." A fossil fuel consisting of a mixture of  
25 hydrocarbon gases, including methane, ethane, propane, butane,  
26 carbon dioxide, oxygen, nitrogen and hydrogen sulfide and other  
27 gas species. The term includes natural gas from oil fields known  
28 as associated gas or casing head gas, natural gas fields known  
29 as nonassociated gas, shale beds and other formations. The term  
30 includes natural gas liquids and dry natural gas. The term does

1 not include coal bed methane.

2 "Natural gas liquids." Hydrocarbons including ethane,  
3 propane, butane, isobutane and pentane that are separated from  
4 natural gas as liquids through the process of absorption,  
5 condensation, adsorption, cooling in gas separators, gas  
6 processing or cycling plants.

7 "Person." A corporation, partnership, limited liability  
8 company, business trust, other association, government entity  
9 other than the Commonwealth, estate, trust, foundation or  
10 natural person.

11 "Post-production costs." Include all of the following:

12 (1) Losses of produced volumes, whether by use as fuel,  
13 line loss, flaring, venting or otherwise.

14 (2) Costs actually incurred by the lessee from and after  
15 the wellhead to the point of sale, including, without  
16 limitation, gathering, dehydration, compression, treatment,  
17 processing, marketing and transportation costs incurred in  
18 connection with the sale of such production.

19 "Producer." A person or its subsidiary, affiliate or holding  
20 company that engages in the business of severing natural gas for  
21 sale, profit or commercial use from an unconventional gas well  
22 in this Commonwealth. The term does not include a producer that  
23 severs natural gas from a site used to store natural gas that  
24 did not originate from the site.

25 "Reporting period." A calendar month in which a producer  
26 sells natural gas.

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

29 "Secretary." The Secretary of the Department of Revenue of  
30 the Commonwealth.

1 "Sever." Natural gas taken or removed for commercial  
2 purposes from the soil or water. The term does not apply to:

3 (1) natural gas returned to a formation, in recycling,  
4 repressuring, pressure maintenance operation or other  
5 operation for the production of oil or other liquid  
6 hydrocarbon; or

7 (2) hydrocarbons in gaseous or liquid form that are  
8 burned, used, consumed or otherwise employed in oil and gas  
9 operations, including, but not limited to, storage, secondary  
10 recovery operations and fuel for equipment.

11 "Severance tax." The tax imposed under section 5102  
12 (relating to imposition of tax).

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

16 "Stripper well." An unconventional gas well incapable of  
17 producing more than 2,700,000 cubic feet of gas per month during  
18 a calendar month, including production from the zones and  
19 multilateral well bores at a single well, without regard to  
20 whether the production is separately metered.

21 "Unconventional gas formation." A geological shale formation  
22 existing below the base of the Elk Sandstone or its geologic  
23 equivalent stratigraphic interval where natural gas generally  
24 cannot be produced at economic flow rates or in economic volumes  
25 except by vertical or horizontal well bores stimulated by  
26 hydraulic fracture treatments or using multilateral well bores  
27 or other techniques to expose more of the formation to the well  
28 bore.

29 "Unconventional gas well." A bore hole drilled or being  
30 drilled for the purpose of or to be used for the production of

1 natural gas from an unconventional gas formation. The term does  
2 not include a vertical gas well.

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

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

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

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

28 (4) The deviation of the natural gas from Boyle's Law  
29 shall be determined by tests annually or at other shorter  
30 intervals as are found necessary in practice. The apparatus

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

9 § 5102. Imposition of tax.

10 (a) Establishment.--Beginning July 1, 2016, a natural gas  
11 severance tax shall be levied on every producer.

12 (b) Rate.--The severance tax shall be imposed as follows  
13 upon the market value of natural gas sold during a reporting  
14 period:

15 (1) Four percent when the average market price of  
16 natural gas is between \$0 per unit and \$0.99 per unit,  
17 inclusive;

18 (2) Five percent when the average market price of  
19 natural gas is between \$1 per unit and \$1.99 per unit,  
20 inclusive;

21 (3) Six percent when the average market price of natural  
22 gas is between \$2 per unit and \$2.99 per unit, inclusive;

23 (4) Seven percent when the average market price of  
24 natural gas is between \$3 per unit and \$3.99 per unit,  
25 inclusive;

26 (5) Eight percent when the average market price of  
27 natural gas is between \$4 per unit and \$4.99 per unit,  
28 inclusive;

29 (6) Nine percent when the average market price of  
30 natural gas is \$5 per unit or more.

1 (c) Impact fee liability credit.--A credit against the  
2 severance tax shall be allowed in the amount of the  
3 unconventional gas well fee paid under section 2302 (relating to  
4 unconventional gas well fee).

5 (d) Post-production cost deduction.--A producer may apply  
6 against the market value of the natural gas sold during a  
7 reporting period a deduction equal to the amount of post-  
8 production costs charged to a landowner not affiliated with the  
9 producer. The producer agrees to void the provisions that  
10 required the landowner to pay post-production costs of the  
11 lease.

12 (e) Exemptions.--The severance tax may not be imposed upon  
13 the following:

14 (1) natural gas severed from a stripper well;

15 (2) natural gas severed from a storage field;

16 (3) natural gas severed, sold and delivered by a  
17 producer at or within five miles of the producing site for  
18 the processing or manufacture of tangible personal property  
19 as defined under section 201 of the act of March 4, 1971  
20 (P.L.6, No.2), known as the Tax Reform Code of 1971; or

21 (4) natural gas provided free of charge to the owner of  
22 the surface under which the gas is severed if the surface  
23 owner is the end user of the gas.

24 § 5103. Calculation and publication of average market price.

25 The department shall calculate the average market price per  
26 unit of dry natural gas for each calendar quarter. The average  
27 market price shall be the weighted average price per unit for  
28 all major Commonwealth distribution hubs on the interstate  
29 natural gas pipeline system for the three months prior to the  
30 calendar quarter. The department shall publish a notice of the

1 average market price in the Pennsylvania Bulletin not later than  
2 30 days of the beginning of each calendar quarter.

3 § 5104. Meters.

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

7 § 5105. Administration.

8 (a) Returns.--A producer shall file a return with the  
9 department, on a form to be prescribed by the department,  
10 reporting all severed natural gas per reporting period and the  
11 severance tax due.

12 (b) Filing.--The return required under subsection (a) must  
13 be filed with the department on or before the 20th day of the  
14 fourth calendar month after a reporting period.

15 (c) Due date.--The severance tax is due on the day the  
16 return is required to be filed and becomes delinquent if not  
17 remitted to the department by that date.

18 (d) Interest.--The department shall assess interest on any  
19 delinquent tax at the rate prescribed under section 806 of the  
20 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal  
21 Code.

22 (e) Liens.--The provisions of section 242 of the Tax Reform  
23 Code of 1971 shall apply to liens for the severance tax.

24 § 5106. Assessments.

25 (a) Authorization and requirement.--The department is  
26 authorized and shall make inquiries, determinations and  
27 assessments of the severance tax, including interest, additions  
28 and penalties imposed under this chapter.

29 (b) Notice.--The notice of assessment and demand for payment  
30 shall be mailed to the taxpayer. The notice shall set forth the

1 basis of the assessment. The department shall send the notice of  
2 assessment to the taxpayer at its registered address via  
3 certified mail if the assessment increases the taxpayer's tax  
4 liability by \$300. Otherwise, the notice of assessment may be  
5 sent via regular mail.

6 (c) Time for assessment.--An assessment shall be made within  
7 three years after the date when the return provided for under  
8 section 5105 (relating to administration) is filed or the end of  
9 the year in which the tax liability arises, whichever shall  
10 occur last. For the purposes of this subsection, a return filed  
11 before the last day prescribed for the filing period shall be  
12 considered as filed on the last day. This limitation is subject  
13 to the following exceptions:

14 (1) If the taxpayer underpays the correct amount of the  
15 tax due by 25% or more, the tax may be assessed within six  
16 years after the date the return was filed.

17 (2) Where no return is filed or where the taxpayer files  
18 a false or fraudulent return with intent to evade the tax  
19 imposed by this chapter, the assessment may be made at any  
20 time.

21 (d) Erroneous credit or refund.--Within three years of the  
22 granting of a refund or credit or within the period in which an  
23 assessment or reassessment may have been issued by the  
24 department for the taxable period for which the refund was  
25 granted, whichever period shall occur last, the department may  
26 issue an assessment to recover a refund or credit made or  
27 allowed erroneously.

28 (e) Extension of assessment period.--Notwithstanding the  
29 provisions of this chapter, the assessment period may be  
30 extended in the event a taxpayer has provided written consent

1 before the expiration of the period provided in subsection (c)  
2 for a tax assessment. The amount of tax due may be assessed at  
3 any time within the extended period. The period may be extended  
4 further by subsequent written consents made before the  
5 expiration of the extended period.

6 (f) Reassessments.--A taxpayer against whom an assessment is  
7 made may petition the department for a reassessment under  
8 Article XXVII of the act of March 4, 1971 (P.L.6, No.2), known  
9 as the Tax Reform Code of 1971.

10 § 5107. Records.

11 (a) Recordkeeping.--A producer shall maintain the following  
12 records:

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

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

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

23 (b) Examinations.--The department shall have the ability to  
24 inspect records and locations to ensure compliance with this  
25 part.

26 (c) Unauthorized disclosure.--Any information gained by the  
27 department as a result of any return, examination,  
28 investigation, hearing or verification required or authorized by  
29 this chapter shall be confidential except for official purposes  
30 and except in accordance with proper judicial order or as

1 otherwise provided by law, and any person unlawfully divulging  
2 the information shall be guilty of a misdemeanor and shall, upon  
3 conviction, be sentenced to pay a fine of not more than \$1,000  
4 and costs of prosecution or to imprisonment for not more than  
5 one year, or both.

6 § 5108. Rules and regulations.

7 The department is charged with the enforcement of the  
8 provisions of this chapter and is authorized and empowered to  
9 prescribe, adopt, promulgate and enforce rules and regulations  
10 not inconsistent with the provisions of this chapter relating to  
11 any matter or thing pertaining to the administration and  
12 enforcement of the provisions of this chapter and the collection  
13 of taxes, penalties and interest imposed by this chapter. The  
14 department may prescribe the extent, if any, to which any of the  
15 rules and regulations shall be applied without retroactive  
16 effect.

17 § 5109. Penalties.

18 The department shall enforce the following penalties:

19 (1) A penalty against a producer for failure to timely  
20 file a return as required under section 5105 (relating to  
21 administration). The penalty shall be 5% of the tax liability  
22 to be reported on the return for each day beyond the due date  
23 that the return is not filed.

24 (2) In addition to the penalty under paragraph (1), a  
25 penalty against the producer for a willful failure to timely  
26 file a return. The penalty shall be 200% of the tax liability  
27 required to be reported on the return.

28 (3) A penalty against a producer for failure to timely  
29 pay the tax as required under section 5105(b). The penalty  
30 shall be 5% of the amount of tax due for each day beyond the

1 payment date that the tax is not paid.

2 CHAPTER 53

3 SEVERANCE TAX RESTRICTED ACCOUNT AND DISTRIBUTION

4 Sec.

5 5301. Definitions.

6 5302. Establishment of account.

7 5303. Distributions.

8 § 5301. Definitions.

9 The following words and phrases when used in this chapter  
10 shall have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Account." The Severance Tax Restricted Account established  
13 under this chapter.

14 "PSERS." The Pennsylvania Public School Employees'  
15 Retirement System.

16 "SERS." The Pennsylvania State Employees' Retirement System.

17 "Severance tax." The natural gas severance tax imposed under  
18 section 5102 (relating to imposition of tax).

19 § 5302. Establishment of account.

20 The Severance Tax Restricted Account is established in the  
21 State Treasury. The money received by the Commonwealth under the  
22 severance tax shall be deposited into the account.

23 § 5303. Distributions.

24 Taxes, additions to severance tax, penalties and interest  
25 imposed and collected under this part shall be deposited into  
26 the account and distributed for the purposes set forth in this  
27 section:

28 (1) The department shall transfer to PSERS the amount  
29 necessary to fund the unfunded liability of school districts  
30 for obligations incurred prior to July 1, 2011.

1           (2) After the distributions required under subsection  
2 (a) are made, the department shall transfer to PSERS the  
3 amount necessary to fund the unfunded liability of the  
4 Commonwealth for obligations incurred prior to July 1, 2011.

5           (3) Any money remaining after the distributions required  
6 under subsections (a) and (b) are made shall be distributed  
7 in accordance with the Basic Education Funding Commission  
8 formula developed under section 123(h) of the act of March  
9 10, 1949 (P.L.30, No.14), known as the Public School Code of  
10 1949.

11 Section 2. This act shall take effect in 60 days.