

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1086 Session of 2017

INTRODUCED BY THOMAS, APRIL 7, 2017

REFERRED TO COMMITTEE ON FINANCE, APRIL 7, 2017

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, is amended to read:

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

1 (1) During taxable years beginning before January 1, 2017, a  
2 rate of three and seven hundredths per cent.

3 (2) During taxable years beginning on January 1, 2017, and  
4 ending on December 31, 2019, a rate of three and seven-tenths  
5 per cent.

6 (3) During taxable years beginning on or after January 1,  
7 2020, a rate of three and seven hundredths per cent.

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

15 (1) During taxable years beginning before January 1, 2017, a  
16 rate of three and seven hundredths per cent.

17 (2) During taxable years beginning on January 1, 2017, and  
18 ending on December 31, 2019, a rate of three and seven-tenths  
19 per cent.

20 (3) During taxable years beginning on or after January 1,  
21 2020, a rate of three and seven hundredths per cent.

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

23 ARTICLE XI-E

24 SEVERANCE TAX

25 Section 1101-E. Definitions.

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

29 "Association." A partnership, limited partnership or any  
30 other form of unincorporated enterprise owned or conducted by

1 two or more persons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           "Producing site." A point of severance, including a well and  
29 its associated zones and multilateral well bores, that is  
30 capable of producing natural gas from an unconventional

1 formation.

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

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

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

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

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

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

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

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

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

1 or other techniques to expose more of the formation to the well  
2 bore.

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  
8 therefrom as 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 the 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 Section 1102-E. Imposition of tax.

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

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

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

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

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

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

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

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

29 (3) Natural gas, dry natural gas or natural gas liquids  
30 severed from a storage field.

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

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

12 Section 1104-E. Prohibition.

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

19 Section 1104.1-E. Existing agreements.

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

24 Section 1104.2-E. Future agreements.

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

28 Section 1105-E. Return and payment.

29 (a) Return.--Each producer is required to file a return with  
30 the department, on a form to be prescribed by the department,



1 reporting all severed natural gas per reporting period and the  
2 tax due as imposed under section 1102-E.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 Section 1107-E. Meters.

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

4 Section 1108-E. Administration of tax.

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

7 Section 1109-E. Records.

8 A producer shall maintain the following records:

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

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

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

19 Section 1110-E. Enforcement of article.

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

23 Section 1111-E. Use of revenue.

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

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

28 (2) Forty percent shall be deposited into a restricted  
29 account within the General Fund for distribution to  
30 municipalities in which natural gas is severed.

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

3 Section 1112-E. Expiration.

4           The tax imposed by this article may not be levied on natural  
5 gas severed after December 31, 2019.

6           Section 3. The addition of sections 1103-E and 1106-E of the  
7 act shall be retroactive to July 1, 2017.

8           Section 4. This act shall take effect immediately.