
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1624 Session of
2017

INTRODUCED BY DEAN, SIMS, KINSEY, V. BROWN, FRANKEL, RABB, MURT,
PASHINSKI, STURLA, DAVIS, McNEILL AND DONATUCCI,
JUNE 26, 2017

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
JUNE 26, 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," providing for education reinvestment severance
11 tax, for minimum royalty for unconventional oil or gas well
12 products and for remedy for failure to pay the minimum
13 royalty on unconventional oil or gas wells; and making a
14 related repeal.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
18 the Tax Reform Code of 1971, is amended by adding an article to
19 read:

20 ARTICLE XI-E

21 EDUCATION REINVESTMENT

22 SEVERANCE TAX

23 SUBARTICLE A

OIL AND GAS

Section 1101-E. Definitions.

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

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

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

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

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

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

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

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

(3) In a transaction where property is transferred for the purpose of processing and resale, gross proceeds of the property transferred may not be less than the fair market

1 value of similar grade and quality property.

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

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

12 "Natural gas liquids." Hydrocarbons, including ethane,
13 propane, butane, isobutane and pentane that are separated from
14 natural gas severed from unconventional formations as liquids
15 through the process of absorption, condensation, adsorption,
16 cooling in gas separators, gas processing or cycling plants or
17 condensate at the well head.

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

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

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

29 "Related parties." Two or more people, organizations or
30 businesses owned or controlled directly or indirectly by the

1 same interests. Control exists if a contract or lease, either
2 written or oral, is entered into where one party severs or
3 processes natural gas owned or held by another party and the
4 owner or lessor participates in the severing, processing or
5 marketing of the natural gas or receives any value other than an
6 arm's-length passive royalty interest.

7 "Reporting period." A calendar month in which natural gas is
8 severed.

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

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

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." A producing site that is incapable of
17 producing more than 50 units of natural gas each day in a
18 calendar month.

19 "Tax." The tax imposed under this subarticle.

20 "Taxpayer." A person subject to the tax imposed by this
21 subarticle.

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

30 "Unit." A thousand cubic feet (Mcf) of natural gas at a

1 temperature of 60 degrees Fahrenheit and an absolute pressure of
2 14.73 pounds per square inch, in accordance with American Gas
3 Association (AGA) standards and according to Boyle's law for the
4 measurement of gas under varying pressures with deviations
5 therefrom as follows:

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

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

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

25 (4) The deviation of the natural gas from Boyle's law
26 shall be determined by tests annually or at other shorter
27 intervals as are found necessary in practice. The apparatus
28 and the method to be used in making the tests shall be in
29 accordance with recommendations of the National Bureau of
30 Standards of the Department of Commerce, or Report No. 3 of

1 the Gas Measurement Committee of the American Gas
2 Association, or any amendments thereof. The results of the
3 tests shall be used in computing the volume of gas delivered.
4 "Wellhead meter." A meter placed at a producing site to
5 measure the actual volume of natural gas severed.

6 Section 1102-E. Imposition of tax.

7 (a) Imposition.--There is levied a privilege tax on every
8 producer.

9 (b) Rate.--The tax imposed under subsection (a) shall be
10 imposed as follows:

11 (1) Six and one-half percent of the gross value of the
12 dry natural gas derived from the natural gas severed in this
13 Commonwealth received by a producer.

14 (2) Six and one-half percent of the gross value of the
15 natural gas liquids derived from the natural gas severed in
16 this Commonwealth received by the producer.

17 (c) Exemptions.--The tax imposed under subsection (a) shall
18 not be imposed upon a producer with respect to the following:

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

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

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

26 (4) Natural gas, dry natural gas or natural gas liquids
27 severed, sold and delivered at or within five miles of a
28 producing site for the processing or manufacturing of
29 tangible personal property, as defined in section 201, within
30 this Commonwealth.

1 Section 1103-E. Impact fee.

2 (a) Credits.--Unconventional gas well fees timely paid by a
3 producer for the prior calendar year under 58 Pa.C.S. Ch. 23
4 (relating to unconventional gas well fee) shall be allowed as
5 credit against the tax imposed under this subarticle.

6 (b) Limitations.--The following shall apply:

7 (1) A credit may be first taken on the return due under
8 this subarticle on April 20, 2018.

9 (2) The initial credit under paragraph (1) shall be
10 based on one-half of the unconventional gas well fee paid by
11 a producer before April 1, 2018, for the 2017 calendar year.
12 Thereafter, the credit shall be based on the entire
13 unconventional gas well fee paid by a producer on or before
14 April 1 for the preceding calendar year.

15 (3) A credit under this section may not be carried back
16 or carried forward beyond 12 months after payment of the
17 unconventional gas well fee that is sold, assigned or
18 refunded.

19 (c) Stripper wells.--Notwithstanding the definition of
20 stripper well in 58 Pa.C.S. § 2301 (relating to definitions) or
21 any other provision of 58 Pa.C.S. Ch. 23 to the contrary, a
22 stripper well shall only be exempt from the payment of the
23 unconventional gas well fee due under 58 Pa.C.S. Ch. 23 if the
24 stripper well was incapable of producing more than 90 units of
25 natural gas each day of every calendar month in a calendar year.

26 Section 1104-E. Prohibition.

27 A producer may not make the tax imposed under section 1102-E
28 on natural gas severed under a natural gas lease, an obligation,
29 indebtedness or liability of a landowner, leaseholder or other
30 person in possession of real property upon which the removal or

1 extraction occurs and shall not otherwise require the landowner
2 to pay or reimburse the producer for the amount of the tax.

3 Section 1105-E. Future agreements.

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

7 Section 1106-E. Return and payment.

8 (a) Return.--Each producer is required to file a return with
9 the department, on a form to be prescribed by the department,
10 reporting all severed natural gas per reporting period and the
11 tax due as imposed under section 1102-E.

12 (b) Filing.--The return required by subsection (a) must be
13 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 tax imposed under section 1102-E is due
16 on the day the return is required to be filed and becomes
17 delinquent if not remitted to the department by that date.

18 Section 1107-E. Natural gas severance tax licensing.

19 (a) License required.--Each producer must apply to the
20 department for a severance tax license before severing natural
21 gas from this Commonwealth. Producers who have been severing
22 natural gas from this Commonwealth prior to the effective date
23 of this subarticle must obtain a license from the department
24 within six months from the effective date of this section. All
25 other producers must obtain a license before severing natural
26 gas from this Commonwealth. A producer is liable for the tax
27 imposed by this subarticle without regard to whether the
28 producer obtains a license.

29 (b) Fee.--The department may charge an application fee to
30 cover the administrative costs associated with the application

1 and licensing process. If the department charges an application
2 fee, the department may not issue a license until the producer
3 has paid the application fee.

4 (c) Declaration.--As part of the application for a license,
5 the producer shall provide a declaration of all sites in this
6 Commonwealth used by the producer for the severance of natural
7 gas. The declaration shall include all producing sites and shall
8 specify which sites include stripper wells. The producer shall
9 update the declaration when the producer adds or removes a
10 producing site in this Commonwealth or when there is a change in
11 the status of a producing site. The producer shall update the
12 declaration within 30 days after any calendar month in which a
13 change in the information contained in the declaration occurs.

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

24 (e) State taxes.--If an applicant for a license or a
25 licensee has not filed all required State tax reports and paid
26 any State taxes not subject to a timely perfected administrative
27 or judicial appeal or subject to a duly authorized deferred
28 payment plan, the department may refuse to issue, suspend or
29 revoke the license. The department shall send a notice by first
30 class mail to the applicant or licensee of the refusal,

1 suspension or revocation which shall contain a statement that
2 the refusal, suspension or revocation may be made public. An
3 applicant or licensee aggrieved by the determination of the
4 department may file an appeal of the determination in the same
5 manner as provided for reassessments of tax under section 1109-
6 E. In the case of a suspension or revocation which is appealed,
7 the license shall remain valid pending a final outcome of the
8 appeal. Notwithstanding any other provision of law to the
9 contrary, if no appeal is taken or if an appeal is taken and
10 denied at the conclusion of the appeal process, the department
11 may disclose, by publication or otherwise, the identity of an
12 applicant or licensee whose license has been refused, suspended
13 or revoked under this subsection. Disclosure may include the
14 basis for refusal, suspension or revocation.

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

29 (g) Liability.--Failure to obtain a license does not relieve
30 a person from liability for the tax imposed by this subarticle.

1 (h) Civil penalty.--In addition to any tax, interest or
2 other penalty due under this subarticle, the department shall
3 impose a civil penalty of 10¢ per unit severed during the period
4 a producer is required to and does not have a license. The
5 penalty shall be assessed and collected under this subarticle.
6 Section 1108-E. Meters.

7 A producer shall provide for and maintain discrete wellhead
8 and sales meters. A producer shall ensure that all meters are
9 maintained according to industry standards.

10 Section 1109-E. Administration of tax.

11 Unless otherwise noted to the contrary, Chapters IV, V, VI,
12 VII and VIII of Part VI of Article II shall apply to this
13 subarticle.

14 Section 1110-E. Records.

15 A producer shall maintain the following records:

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

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

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

26 Section 1111-E. Enforcement of subarticle.

27 The department and the Department of Environmental Protection
28 shall have the ability to inspect records and locations to
29 ensure compliance with this subarticle.

30 Section 1112-E. Use of revenue.

1 Revenue collected under this subarticle shall be used for
2 education.

3 SUBARTICLE B

4 MINIMUM ROYALTY FOR

5 UNCONVENTIONAL OIL OR GAS WELL PRODUCTS

6 Section 1121-E. Definitions.

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

10 "Gross proceeds." Money generated from the sale by a lessee
11 of oil, natural gas or gas of any other designation or their
12 constituents removed or recovered under a lease in an arm's-
13 length transaction designated and fixed at the actual point of
14 sale.

15 "Lease." An agreement conveying to a lessee the right to
16 remove or recover oil, natural gas or gas of any other
17 designation from land of the lessor.

18 "Royalty payment." A payment made by a lessee to a lessor
19 under a lease.

20 Section 1122-E. Minimum royalty.

21 (a) Amount.--

22 (1) The minimum royalty payment made under the act of
23 July 20, 1979 (P.L.183, No.60), known as the Oil and Gas
24 Lease Act, to a lessor for the removal or recovery of oil,
25 natural gas or gas of any other designation under a lease may
26 not be less than one-eighth of the gross proceeds received by
27 the lessee.

28 (2) No deduction or allocation of costs, expenses or
29 other adjustments may be taken or made to gross proceeds
30 before calculating the amount of a royalty payment due to a

1 lessor under paragraph (1).

2 (b) Applicability.--The requirement to pay a minimum royalty
3 as provided in subsection (a) shall only apply to oil, natural
4 gas or gas of any other designation sold by a lessee after the
5 effective date of this section.

6 Section 1123-E. Remedy for failure to make minimum royalty
7 payment.

8 (a) Civil action and venue.--A lessor who is party to a
9 lease may file an action for failure of the lessee to pay the
10 minimum royalty under this subarticle in the court of common
11 pleas of the county where the land of the lessor is located or
12 the county in this Commonwealth in which the lessor resides.

13 (b) Burden of proof.--

14 (1) Demonstration by a lessor who is party to a lease
15 that the lessee has made a royalty payment which is less than
16 the amount required under section 1122-E(a) shall create a
17 presumption that a violation of this subarticle has occurred.

18 (2) The presumption in paragraph (1) may be rebutted if
19 the lessee presents clear and convincing evidence that the
20 required minimum royalty payment was made.

21 (c) Effect of notice and failure to cure.--In an action in
22 which a court finds that the lessee who is party to a lease has
23 violated the terms of this subarticle, the lessor shall be
24 entitled to the remedies specified in subsections (d) and (e)
25 if, before filing suit, the lessor gave to the lessee 30 days'
26 written notice by certified mail of the deficiency and the
27 lessee failed to cure the deficiency.

28 (d) Additional remedies.--In addition to actual damages and
29 any other remedy deemed appropriate by the court, the court
30 shall award reasonable attorney fees and costs in bringing the

1 action, including expert witness fees, to the lessor.

2 (e) Treble damages.--In cases where the court finds that the
3 lessee acted willfully in failing to make the minimum royalty
4 payment due or where a lessee has been previously found to have
5 failed to make the minimum royalty payment, the court may award
6 treble damages.

7 (f) Other remedies not precluded.--The remedies provided in
8 this section are not exclusive of, do not require exhaustion of
9 and shall be in addition to any other remedies provided by the
10 lease, by law or in equity.

11 Section 2. Repeals are as follows:

12 (1) The General Assembly declares that the repeal under
13 paragraph (2) is necessary to effectuate the addition of
14 Article XI-E of the act.

15 (2) 58 Pa.C.S. § 2318 is repealed.

16 Section 3. This act shall take effect as follows:

17 (1) The addition of Subarticle B of Article XI-E of the
18 act shall take effect in 60 days.

19 (2) The remainder of this act shall take effect
20 immediately.