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**COAL SEVERANCE TAX**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gene Davis**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to the mining severance tax and imposes a severance tax on coal.

**Highlighted Provisions:**

This bill:

- ▶ imposes a severance tax on coal; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on January 1, 2010.

**Utah Code Sections Affected:**

AMENDS:

**59-5-201**, as last amended by Laws of Utah 1990, Chapter 287

**59-5-202**, as last amended by Laws of Utah 1990, Chapter 295

**59-5-204**, as last amended by Laws of Utah 2008, Chapter 382

**59-5-207**, as last amended by Laws of Utah 1995, Chapter 228

**59-5-208**, as enacted by Laws of Utah 1988, Chapter 4

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*Be it enacted by the Legislature of the state of Utah:*



28 Section 1. Section **59-5-201** is amended to read:

29 **59-5-201. Definitions.**

30 As used in this part:

31 (1) (a) "Metalliferous minerals" includes any ore, metal, or other substance containing  
32 the following:

- 33 (i) aluminum;
- 34 (ii) antimony;
- 35 (iii) arsenic;
- 36 (iv) barium;
- 37 (v) beryllium;
- 38 (vi) bismuth;
- 39 (vii) boron;
- 40 (viii) cadmium;
- 41 (ix) calcium;
- 42 (x) cerium;
- 43 (xi) cesium;
- 44 (xii) chromium;
- 45 (xiii) cobalt;
- 46 (xiv) columbium;
- 47 (xv) copper;
- 48 (xvi) gallium;
- 49 (xvii) germanium;
- 50 (xviii) gold;
- 51 (xix) hafnium;
- 52 (xx) indium;
- 53 (xxi) iridium;
- 54 (xxii) iron;
- 55 (xxiii) lanthanum;
- 56 (xxiv) lead;
- 57 (xxv) lithium;
- 58 (xxvi) manganese;

- 59 (xxvii) mercury;
- 60 (xxviii) molybdenum;
- 61 (xxix) nickel;
- 62 (xxx) osmium;
- 63 (xxxix) palladium;
- 64 (xxxii) platinum;
- 65 (xxxiii) praseodymium;
- 66 (xxxiv) rare earth metals;
- 67 (xxxv) rhenium;
- 68 (xxxvi) rhodium;
- 69 (xxxvii) rubidium;
- 70 (xxxviii) ruthenium;
- 71 (xxxix) samarium;
- 72 (xl) scandium;
- 73 (xli) selenium;
- 74 (xlii) silicon;
- 75 (xliii) silver;
- 76 (xliv) sodium;
- 77 (xlv) strontium;
- 78 (xlvi) tantalum;
- 79 (xlvii) tellurium;
- 80 (xlviii) thallium;
- 81 (xlix) thorium;
- 82 (l) tin;
- 83 (li) titanium;
- 84 (lii) tungsten;
- 85 (liii) uranium;
- 86 (liv) vanadium;
- 87 (lv) yttrium;
- 88 (lvi) zinc; or
- 89 (lvii) zirconium.

90 (b) "Metalliferous minerals" does not include:

91 (i) chloride compounds or salts;

92 (ii) potash;

93 (iii) rock, sand, gravel, and stone products;

94 (iv) gypsum;

95 (v) sulfur or sulfuric acid;

96 (vi) gem stones;

97 (vii) ammonium nitrate;

98 (viii) carbon dioxide;

99 (ix) oil, gas, coal, and all carboniferous materials; or

100 (x) phosphate.

101 (2) "Mine" means an operation for extracting coal or minerals and includes any deposit  
102 of coal or valuable metalliferous minerals that are being extracted from a natural deposit, or a  
103 secondary source including tails, slag, waste dumps, or other similar secondary source, whether  
104 in solution or otherwise.

105 (3) (a) "Mining" means the act, process, or work of extracting coal or minerals from  
106 their natural occurring environment or from a mine, and transporting or moving those minerals  
107 to the point of processing, use, or sale.

108 (b) "Mining" includes the process of leaching minerals from their naturally occurring  
109 deposit.

110 (4) (a) "Ore" means raw materials in their natural state or condition prior to  
111 beneficiation or processing, and includes mined raw materials extracted prior to further  
112 processing.

113 (b) "Ore" includes any metalliferous material whose metal content is less than 15% and  
114 does not include any material whose metal content is 15% or greater.

115 Section 2. Section **59-5-202** is amended to read:

116 **59-5-202. Severance tax -- Rate -- Computation -- Annual exemption.**

117 (1) ~~Every~~ A person engaged in the business of mining or extracting metalliferous  
118 minerals or coal in this state shall pay to the state a severance tax equal to:

119 (a) 2.6% of the taxable value of all metals or metalliferous minerals sold or otherwise  
120 disposed of[-]; and

121 (b) \$0.50 per ton of coal produced, used, sold, or otherwise disposed of.

122 (2) (a) If the coal, metals, or metalliferous minerals are shipped outside the state, this  
123 constitutes a sale, and the coal, finished metals, or the recoverable units of finished metals from  
124 the metalliferous minerals shipped are subject to the severance tax. [Hf]

125 (b) Except as provide in Subsection (2)(e), if the coal, metals, or metalliferous minerals  
126 are stockpiled, the tax is not applicable until [they are]:

127 (i) the metals or metalliferous minerals are sold or shipped out of state[-]; and

128 (ii) the coal is used, sold, shipped out of state, or otherwise disposed of.

129 (c) For purposes of the tax imposed by this chapter, uranium concentrates [shall be  
130 considered to be] are finished metals. [The]

131 (d) An owner of [the] coal, metals, or metalliferous minerals that are stockpiled shall  
132 report to the commission annually, in a form acceptable to the commission, the amount of coal  
133 or metalliferous minerals so stockpiled. [Metals]

134 (e) Coal, metal, or metalliferous minerals that are stockpiled for more than two years[-;  
135 however,] are subject to the severance tax.

136 (3) An annual exemption from the payment of the tax imposed by this chapter upon the  
137 first \$50,000 in gross value of the metalliferous [~~mineral~~] minerals is allowed to each mine.

138 (4) [~~These taxes~~] Taxes imposed under this chapter are in addition to all other taxes  
139 provided by law and are delinquent, unless otherwise deferred, on the June 1 [next succeeding  
140 the] of the calendar year following the calendar year [when] in which the coal or metalliferous  
141 mineral is produced and sold or delivered.

142 Section 3. Section **59-5-204** is amended to read:

143 **59-5-204. Statements filed -- Contents -- Verification -- Falsification as perjury.**

144 (1) Every person engaged in the business of mining or extracting coal or metalliferous  
145 minerals shall make and file with the commission, on or before June 1 of each year on forms  
146 furnished by the commission, a statement containing:

147 (a) the name, description, and location of the mine owned and operated by the person  
148 during the preceding calendar year;

149 (b) the number of tons of coal or mineral mined during the preceding calendar year and  
150 the disposition of the mineral;

151 (c) the total amount received during the preceding calendar year from the sale of

152 minerals; and

153 (d) such other reasonable and necessary information as the commission may require for  
154 the proper enforcement of this chapter as specified in a rule adopted under Title 63G, Chapter  
155 3, the Administrative Rulemaking Act.

156 (2) The owner of the mine shall be responsible for the statement or report required by  
157 this section, but the principal lessee, contractor, or operator may, with the consent of the  
158 commission, report and pay the tax as agent for the owner. The owner shall be entitled to  
159 deduct and remit to the commission any tax chargeable upon the operations conducted by the  
160 lessees or other parties.

161 (3) The statements or reports required to be filed with the commission shall be signed  
162 and sworn to by the person required to file the statements or reports, by a partner if a  
163 partnership, or by the president, secretary, or managing officer, if a corporation. Any willful  
164 false swearing as to the purported material facts set out in this report constitutes the crime of  
165 perjury and shall be punished as such under Title 76, the Utah Criminal Code.

166 Section 4. Section **59-5-207** is amended to read:

167 **59-5-207. Date tax due -- Extensions -- Installment payments -- Penalty on**  
168 **delinquencies -- Audit.**

169 (1) The tax imposed by this chapter is due and payable on or before June 1 of the year  
170 next succeeding the calendar year;

171 (a) for a metalliferous mineral, when the mineral is produced and sold or delivered[-];

172 and

173 (b) for coal, when the coal is produced, used, sold, or otherwise disposed of.

174 (2) The commission may, for good cause shown upon a written application by the  
175 taxpayer, extend the time of payment of the whole or any part of the tax for a period not to  
176 exceed six months. If an extension is granted, interest at the rate and in the manner prescribed  
177 in Section 59-1-402 shall be charged and added to the amount of the deferred payment of the  
178 tax.

179 (3) (a) ~~Every~~ A taxpayer subject to this chapter whose total tax obligation for the  
180 preceding calendar year was \$3,000 or more shall pay the taxes assessed under this chapter in  
181 quarterly installments.

182 (b) Each quarterly installment shall be based on:

183           (i) for metalliferous minerals, the estimated gross value received by the taxpayer during  
184 the quarter preceding the date on which the installment is due[-]; and

185           (ii) for coal, the estimated tonnage produced, used, sold, or otherwise disposed of by  
186 the taxpayer during the quarter preceding the date on which the installment is due.

187           (4) The quarterly installments are due as follows:

188           (a) for January 1 through March 31, on or before June 1;

189           (b) for April 1 through June 30, on or before September 1;

190           (c) for July 1 through September 30, on or before December 1; and

191           (d) for October 1 through December 31, on or before March 1 of the next year.

192           (5) (a) If [~~the~~] a taxpayer fails to report and pay any tax when due, the taxpayer is  
193 subject to the penalties provided under Section 59-1-401, unless otherwise provided in  
194 Subsection (6).

195           (b) An underpayment exists if less than 80% of the tax due for a quarter is paid.

196           (6) The penalty for failure to pay the tax due or underpayment of tax may not be  
197 assessed if the taxpayer's quarterly tax installment payment equals 25% of the tax reported and  
198 paid by the taxpayer for the preceding taxable year.

199           (7) There shall be no interest added to any estimated tax payments subject to a penalty  
200 under this section.

201           (8) The commission may conduct audits to determine whether any tax is owed under  
202 this section.

203           Section 5. Section **59-5-208** is amended to read:

204           **59-5-208. Tax as lien.**

205           (1) The tax imposed by this chapter, together with penalties and interest, is and shall  
206 remain a lien upon the mine or mining claim from which the coal or mineral is extracted, until  
207 the tax is paid.

208           (2) In the case of unpatented claims or leases on unpatented ground, the lien shall be  
209 upon the mining rights.

210           Section 6. **Effective date.**

211           This bill takes effect on January 1, 2010.

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**Legislative Review Note**  
as of 2-20-09 10:17 AM

**Office of Legislative Research and General Counsel**

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**S.B. 238 - Coal Severance Tax**

**Fiscal Note**

2009 General Session  
State of Utah

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**State Impact**

Enactment of this bill increases revenue to the General Fund by \$3,000,000 in FY 2010 and \$12,000,000 in FY 2011.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$12,000,000	\$12,000,000
General Fund, One-Time	\$0	\$0	\$0	\$0	(\$9,000,000)	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$3,000,000</b>	<b>\$12,000,000</b>

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**Individual, Business and/or Local Impact**

Coal producers will experience an increase in the tax on coal. Depending upon the ability to pass-through the tax, individuals and other businesses may experience an increase in tax of \$12,000,000 annually. Local entities are likely unaffected.