

HOUSE BILL No. 6008

November 8, 2012, Introduced by Rep. Huuki and referred to the Committee on Tax Policy.

A bill to levy specific taxes on certain nonferrous metallic minerals on certain taxpayers in this state; to provide for the levy, collection, and administration of the specific tax; to provide certain reporting requirements; to provide for certain penalties; to provide certain exemptions, credits, and refunds; and to provide for the distribution of the specific tax.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "nonferrous metallic minerals extraction severance tax act".

Sec. 2. As used in this act:

(a) "Beneficiation" means milling, processing, grinding, separating, concentrating, pelletizing, and other processes necessary to prepare nonferrous metallic mineral ore for sale or transfer.

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(b) "Deductible costs" means all of the following:

(i) Subject to approval by the department, for the first 3 years in which a producing mine is subject to the minerals severance tax, not more than 40% of the amount of the minerals severance tax levied in that year for exemptions awarded under PA 451 of 1994; PA 198 of 1974; PA 328 of 1998; PA 146 of 2000, and PA 451 of 1994, to reimburse the taxpayer for environmental obligations assumed by, or actual costs incurred by, the taxpayer that would otherwise be incurred by this state or a local governmental unit of this state in order to comply with state or federal environmental laws or regulations. The deduction allowed under this subparagraph is limited to the obligations assumed or actual costs incurred by the taxpayer in the 3 years immediately preceding the year the producing mine became subject to the minerals severance tax and the first 3 years that the producing mine is subject to the minerals severance tax. The amount of the obligations assumed or actual costs incurred that exceed the allowable deduction in this subparagraph may be carried forward only for the first and second year in which a producing mine is subject to the minerals severance tax. The deduction allowed under this subparagraph shall not be available to a taxpayer for any costs for which the taxpayer has been reimbursed, for which the taxpayer is entitled to claim a credit or other deduction against any other tax levied by this state, or which have been paid for on behalf of the taxpayer from any source other than the taxpayer.

(ii) ~~Those cash costs and nencash costs attributable to transportation of raw or beneficiated ore, or both, between the producing mine and the first point of sale or transfer.~~

(c) "Department" means the department of treasury.

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(d) "Gross mineral value" means the total value received by a taxpayer for the sale or transfer of taxable minerals, whether or not in a beneficiated state, including premiums, bonuses, subsidies, or noncash consideration, with no deductions. There is a rebuttable presumption that the purchase price of a taxable mineral under a bona fide arm's-length contract of sale between unrelated persons reflects the gross mineral value. In determining the gross mineral value of a taxable mineral for contracts of sale or transfer between related persons, there is a rebuttable presumption that gross mineral value for related party sales shall be based on the average daily price of the mineral as quoted on published market indices. The gross mineral value of taxable minerals sold or transferred by a taxpayer following beneficiation shall reflect the total value of the taxable mineral in its beneficiated state. For taxable minerals which are to be shipped or transported outside this state for beneficiation outside this state or otherwise removed by a taxpayer from this state and which are considered to have been sold as provided in section 4(1), the gross mineral value shall reflect the total value of the minerals immediately prior to the shipment or removal in accordance with rules promulgated by the department under section 8 or guidelines published by the department.

(e) "Interim minerals severance tax" means the interim minerals severance tax imposed under section 3.

(f) "Mineral" means a naturally occurring solid substance that can be extracted from the earth in this state primarily for its nonferrous metallic mineral content for commercial, industrial, or construction purposes. Mineral does not include gypsum, limestone, salt, low-grade iron ore that is defined and taxed under 1951 PA 77, MCL 211.621 to 211.626, or any property that is defined and taxed under 1963 PA 68, MCL 207.271 to 207.279.

(g) "Mineral-producing property" means real and personal property in this state that is part of a producing mine or utilized directly in association with a producing mine on a parcel on which the shaft, incline, or adit is located, or a parcel contiguous or appurtenant to a parcel on which the shaft, incline, or adit is located. Contiguity is not broken by a road, a right-of-way, or property purchased or taken under condemnation proceedings by a public utility for power transmission lines if the 2 parcels separated by the purchase or condemned property were a single parcel prior to the sale or condemnation. Mineral-producing property also includes all the following within this state:

(i) Fee land and mineral rights that are mineral producing property and on which the mine and ore body is located, ~~s that are mineral bearing property.~~

(ii) ~~Mineral leases, options, and mining rights on mineral bearing property.~~

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(iii) Mineral stockpiles and mineral inventories that are owned, leased, or controlled by a taxpayer.

(iv) Leach pads, waste rock repositories, and tailings impounds that are owned, leased, or controlled by a taxpayer.

(v) Buffer lands located within one-quarter mile of the producing mine that are owned, leased, or controlled by a taxpayer and are contiguous to mineral-bearing property.

(vi) Buildings, improvements, fixtures, and nonmobile equipment located upon, beneath, or appurtenant to a mine, including administrative and support facilities appurtenant to a mine provided that such property is located upon, beneath, or on a parcel that is a mineral-producing property.

~~(vii) Property owned and primarily used by the taxpayer in the transportation of minerals from a producing mine to the point where milling, processing, or other beneficiation activities begin.~~

~~(viii) Property used for beneficiation of extracted minerals if the person that owns or controls the property is a taxpayer.~~

(h) "Mineral-producing property" does not include real and personal property that is 1 or more of the following:

(i) Used for transportation of minerals between any locations, unless it is specifically described in subdivision (g).

(ii) Located on parcels that do not contain the shaft, incline, or adit and are not contiguous with the parcel containing the shaft, incline, or adit. This subparagraph does not apply to real or personal property that is used for beneficiation of extracted minerals.

(i) "Minerals severance tax" or "severance tax" means the specific tax levied under section 4.

(j) "Open mine" means a mine at which a shaft, incline, or adit has been started or overburden has been stripped.

(k) "Person" means an individual, firm, limited partnership, limited liability partnership, copartnership, partnership, joint venture, corporation, association, subchapter S corporation, limited liability company, receiver, estate, trust, or any other legal entity or combination of legal entities acting as a unit.

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(l) "Producing mine" means a mineral mine in this state at which a taxpayer is producing 1 or more minerals. Producing mine does not include a mine operated primarily for tourism purposes or a mine in which the minerals produced are used for artistic purposes and are incidental to the business operation of the owner.

(m) "Rural development fund" means the rural development fund created in section 5 of the rural development fund act.

(n) "Taxable mineral" means the first marketable mineral or mineral product sold or transferred by the taxpayer that is taxable under this act. Taxable mineral also includes a mineral which has been sold or transferred by a taxpayer following beneficiation in this state and a mineral which is otherwise taxable under this act.

(o) "Taxable mineral value" means gross mineral value less deductible costs.

(p) "Taxpayer" means a person subject to a specific tax levied under this act.

(q) "Transfer" means an in-kind exchange or other disposition of an interest in minerals, whether or not beneficiated, other than through a sale.

Sec. 3. (1) Beginning December 31, 2012, minerals located at an open mine are exempt under section 7pp of the general property tax act, 1893 PA 206, MCL 211.7pp.

(2) Beginning January 1, 2013 and through December 31 in a year in which the department declares property at that open mine to be mineral-producing property, an interim minerals severance tax is levied on all minerals that were valued by the state geologist under section 24(2) of the general property tax act, 1893 PA 206, MCL 211.24, for open mines opened beginning January 1, 2011 through June 30, 2013.

(3) The amount of the interim minerals severance tax is equal to ~~50% of the~~ general ad valorem taxes levied on that open mine in 2012 attributable to those minerals valued by the state geologist under section 24(2) of the general property tax act, 1893 PA 206, MCL 211.24, for 2012. The interim minerals severance tax levied under this section is in addition to any general ad valorem taxes levied on the mine's surface property, surface improvements, and personal property and a 1% administrative fee.

(4) Each year, the interim minerals severance tax shall be paid in 2 installments. ~~Fifty percent of the~~The interim minerals severance tax shall be paid when the summer levy is due and 50% of the interim minerals severance tax shall be paid when the winter levy is due under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

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(5) The local tax collecting unit shall collect the interim minerals severance tax as provided in this section and collect the same collection charges as general property taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. Minerals taxed under this section shall be subject to return and sale for nonpayment of taxes in the same manner, at the same time, and under the same penalties as property returned and sold for nonpayment of taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(6) If minerals taxed under this section are located in more than 1 local tax collecting unit, the department, or a person designated by the department, shall determine the portion attributable to each local tax collecting unit.

(7) Except as provided in subsection (9), sums collected under this section shall be distributed by the local tax collecting unit to school districts, this state, and local governmental units in the same proportion as the general ad valorem property taxes are distributed. The amounts distributed may be used by the receiving entities for any use for which such entity is permitted to use general ad valorem property tax revenues.

(8) Except for a district that does not receive any state portion of its foundation allowance, as calculated under section 20(4) of the school aid act of 1979, 1979 PA 94, MCL 388.1620, for interim minerals severance taxes spread for school operating purposes, the amount that would otherwise be disbursed to a local school district shall be paid by the local tax collecting unit instead of to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963. For a district that does not receive any state portion of its foundation allowance, as calculated under section 20(4) of the school aid act of 1979, 1979 PA 94, MCL 388.1620, the amount disbursed shall be determined as provided in subsection (5).

Sec. 4. (1) The minerals severance tax is levied on taxable minerals that a taxpayer extracts from the earth in this state or that a taxpayer beneficiates in this state. A mineral extracted from the earth in this state by a taxpayer which is shipped outside this state for beneficiation outside this state or otherwise removed from this state prior to actual sale or transfer is considered to have been sold by the taxpayer immediately prior to the shipment or removal and is subject to the minerals severance tax levied under this section. A taxpayer subject to the minerals severance tax is exempt from all of the following as provided in this act:

(a) The ~~collection of taxes levied~~ under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, as

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provided in section 7qq of the general property tax act, 1893 PA 206, MCL 211.7qq.

(b) The tax levied under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699, as provided in sections 31b and 623 of the income tax act of 1967, 1967 PA 281, MCL 206.31b and 206.623.

(c) The tax levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, as provided in section 4dd of the general sales tax act, 1933 PA 167, MCL 205.54dd.

(d) The tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, as provided in section 4aa of the use tax act, 1937 PA 94, MCL 205.94aa.

(2) Except as otherwise provided in this section, the minerals severance tax required to be paid by each taxpayer each year shall be 2.75% of the taxable mineral value for the immediately preceding calendar year.

(3) The taxable mineral value of all minerals shall be computed as of the time of sale or transfer. Except as otherwise provided in this subsection, each taxpayer shall pay the minerals severance tax to the local tax collecting unit on or before February 15 beginning on February 15 in the calendar year immediately following the second year in which the department declares the property to be mineral-producing property under section 6. In the first calendar year immediately following the year in which the department determines the property is mineral-producing property under section 6, the taxpayer shall pay not later than July 15 a ~~partial~~ minimum mineral severance tax equal to the ~~summer~~ levy of the ad valorem taxes levied on that mineral-producing property in the immediately preceding calendar year under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, plus the 1% administrative fee.

(4) If a taxpayer sells the minerals to another taxpayer, the seller shall add to the sales price, or to the value of the consideration with respect to a transfer, the minerals severance tax the seller paid under this act and itemize the minerals severance tax paid under this act on the invoice.

(5) A taxpayer that purchases taxable minerals from another taxpayer may claim a credit against the minerals severance tax imposed under this act for the minerals severance tax paid under this act by the seller that is itemized on the invoice.

~~(6) If a producing mine begins operation in 2014 or 2015, then, for the first 5 years in which the producing mine is subject to the minerals severance tax, the taxpayer may claim a credit of not more than 20% of the amount of the ad valorem property tax levied on that open mine in 2012 attributable to those minerals valued by the state geologist under section 24(2)~~

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~~of the general property tax act, 1893 PA 206, MCL 211.24, in 2012 plus the amount of the interim minerals severance tax paid for each year through the end of the year in which the department determines the property to be mineral producing property plus interest. Interest shall accrue to the taxpayer at the rate provided for in section 37 of the tax tribunal act, 1973 PA 186, MCL 205.737. However, if the taxpayer is delinquent on any ad valorem property taxes on the producing mine, then the taxpayer is not eligible to claim a credit under this subsection.~~

~~(7) In the first year that a minerals severance tax is levied on a taxpayer under this act, the The minimum total minerals severance tax for that year is shall be equal to the greater of the following less the amount of the partial minerals severance tax described in subsection (3) that was paid by the taxpayer:~~

~~(a) The minerals severance tax calculated under subsection (2).~~

~~(b) The amount of general ad valorem property tax that was levied on the mineral-producing property in the immediately preceding year plus the 1% administrative fee.~~

Sec. 5. Each year, a taxpayer shall prepare and submit to the department and to the local tax collecting unit a report in the time, form, and manner required by the department, showing the total amount of minerals sold, transferred, or beneficiated during the preceding year, the taxable mineral value of the minerals sold, transferred, or beneficiated, a schedule of all deductible costs, and any other information required by the department for valuation purposes and to substantiate a taxpayer's deductible costs.

Sec. 6. (1) The department shall determine when property is classified under this act as mineral-producing property. Upon making this determination, the department shall notify all local assessing authorities of those properties that are classified as a mineral-producing property and are subject to the minerals severance tax under this act. Beginning on December 31 in the calendar year in which property is determined by the department to be mineral-producing property, that property is exempt from ~~taxes collected levied~~ under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. The property shall be subject to the minerals severance tax beginning January 1, the calendar year immediately following in which the property is determined to be mineral-producing property by the department.

(2) If the department determines that property previously determined to be a mineral-producing property is no longer mineral-producing property, the department shall notify the taxpayer and the local assessing authorities that the property is no longer subject to the minerals severance tax under this act beginning December 31 in the year that determination is made and

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that property shall be subject to the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. ~~The On December 31 in the year in which the department determines that the property is no longer mineral-producing property, the local taxing units and the Department shall petition the Michigan Tax Tribunal to approve of a new assessed value x collecting unit in which the property is located is responsible for assessment of that the property and the local tax collecting unit shall assess the property under the general property tax act. The property shall thereafter no longer be subject to the minerals severance tax, as of the date of the department's notification to the local assessing authority. Ten days after the date of the department's notification to the taxpayer shall be the date on which the minerals severance tax shall cease and all other related tax exemptions described in section 4 shall cease.~~

(3) On or before February 10 of each year, the state geologist shall provide a list of all mineral-producing properties as of the end of the previous calendar year to the department.

(4) If a taxpayer ceases operation of a producing mine for 30 or more consecutive days, the taxpayer shall notify the department, in writing, that it has ceased operations within 7 business days.

Sec. 7. (1) Each taxpayer shall prepare, keep, and preserve a full and complete record for each tax year of all minerals extracted from the earth in this state or benefited in this state, and that record shall be open at all times to the inspection of the department.

(2) Annually, the department shall publish the value of all minerals reported under this act.

Sec. 8. The department may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 9. (1) The department shall allocate the minerals severance tax and determine all authorized and allowable deductible costs against the property, and the local tax collecting unit shall collect the minerals severance tax as provided in this act and collect the same collection charges as general property taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. Property listed and taxed under this act shall be subject to return and sale for nonpayment of taxes in the same manner, at the same time, and under the same penalties as property returned and sold for nonpayment of taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(2) If mineral-producing property is located in more than 1 local tax collecting unit, the department, or a person designated

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by the department, shall determine the portion attributable to each local tax collecting unit.

(3) Except as provided in subsections (4), (6), and (7), the minerals severance tax collected under this act shall be distributed as follows:

(a) the minimum severance tax and any additional severance tax not to exceed 60% by the local tax collecting unit to school districts, this state, and local governmental units in the same proportion as the general ad valorem property taxes are distributed. The amounts distributed may be used by the receiving entities for any use for which such entity is permitted to use general ad valorem property tax revenues.

(b) the remaining severance tax after distribution to the local tax collecting units and any additional severance tax not to exceed 40% to the department for deposit into the rural development fund.

(4) Except for a district that does not receive any state portion of its foundation allowance, as calculated under section 20(4) of the school aid act of 1979, 1979 PA 94, MCL 388.1620, for minerals severance taxes spread for school operating purposes, the amount that would otherwise be disbursed to a local school district shall be paid by the local tax collecting unit instead to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963. For a district that does not receive any state portion of its foundation allowance, as calculated under section 20(4) of the school aid act of 1979, 1979 PA 94, MCL 388.1620, the amount disbursed shall be determined as provided in subsection (1).

(5) The local tax collecting unit shall report all collections and distributions under this act to and remit the portion of the minerals severance tax described in subsection (3)(b) to the department for deposit in the rural development fund no later than 30 days after a payment is received from the taxpayer. If the local tax collecting unit fails to make any distribution or remittance required under this act to another entity, the department shall deduct an equivalent amount from any revenues the local tax collecting unit would otherwise be entitled to receive under the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921, and distribute the amount deducted to those entities entitled to receive that distribution under this act.

~~(6) In determining the distribution under subsection (3), the department shall modify the distributions so all minerals severance tax revenue lost due to the deduction of deductible costs does not reduce the distributions to local units of government under subsection (3)(a).~~

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~~(7) In determining the distribution under subsection (3), the department shall modify the distributions so all minerals severance tax revenue lost due to the credit described in section 4(6) does not reduce the distributions to the rural development fund under subsection (3)(b).~~

Sec. 10. Upon an action being filed under the direction of the attorney general in the circuit court for the county of Ingham, that court shall have power to restrain by injunction any taxpayer or person that has failed to comply with this act and in the same manner to restrain any taxpayer or person from continuing to extract minerals while delinquent in the filing of any report or the paying of any tax, penalty, or cost required under this act.

Sec. 11. The specific taxes levied under this act shall be collected and enforced by local tax collecting units under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. The act shall administered by the department pursuant to 1941 PA 122, MCL 205.1 to 205.31, and this act. The valuation of the property shall be set for property tax purposes by petition of the tax collection unit and the department by the Michigan Tax Tribunal pursuant to 1973 PA 186, MCL 205.701 to 205.800. Collection of delinquencies shall be enforced to 1941 PA 122, MCL 205.1 to 205.31, and this act. If the provisions of 1941 PA 122, MCL 205.1 to 205.31, or the provisions of 1893 PA 206, MCL 211.1 to 211.155 and this act conflict, the provisions of this act shall control.

Enacting section 1. This act does not take effect unless Senate Bill No. _____ or House Bill No. 6007 (request no. 03102'11 **) of the 96th Legislature is enacted into law.

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