

**SUBSTITUTE FOR
HOUSE BILL NO. 6008**

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:

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

3 Sec. 2. As used in this act:

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

1 transfer.

2 (b) "Deductible costs" means, subject to approval by the
3 department, for the first 3 years in which a producing mine is
4 subject to the minerals severance tax, not more than 40% of the
5 amount of the minerals severance tax levied in that year for
6 environmental obligations assumed by, or actual costs incurred by,
7 the taxpayer that would otherwise be incurred by this state or a
8 local governmental unit of this state in order to comply with state
9 or federal environmental laws or regulations. The deduction allowed
10 under this subdivision is limited to the obligations assumed or
11 actual costs incurred by the taxpayer in the 3 years immediately
12 preceding the year the producing mine became subject to the
13 minerals severance tax and the first 3 years that the producing
14 mine is subject to the minerals severance tax. The amount of the
15 obligations assumed or actual costs incurred that exceed the
16 allowable deduction in this subdivision may be carried forward only
17 for the first and second year in which a producing mine is subject
18 to the minerals severance tax. The deduction allowed under this
19 subdivision shall not be available to a taxpayer for any costs for
20 which the taxpayer has been reimbursed, for which the taxpayer is
21 entitled to claim a credit or other deduction against any other tax
22 levied by this state, or which have been paid for on behalf of the
23 taxpayer from any source other than the taxpayer.

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

25 (d) "Gross mineral value" means the total value received by a
26 taxpayer for the sale or transfer of taxable minerals, whether or
27 not in a beneficiated state, including premiums, bonuses,

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1 subsidies, or noncash consideration, with no deductions. There is a
2 rebuttable presumption that the purchase price of a taxable mineral
3 under a bona fide arm's-length contract of sale between unrelated
4 persons reflects the gross mineral value. In determining the gross
5 mineral value of a taxable mineral for contracts of sale or
6 transfer between related persons, there is a rebuttable presumption
7 that gross mineral value for related party sales shall be based on
8 the average daily price of the mineral as quoted on published
9 market indices. The gross mineral value of taxable minerals sold or
10 transferred by a taxpayer following beneficiation shall reflect the
11 total value of the taxable mineral in its beneficiated state. For
12 taxable minerals which are to be shipped or transported outside
13 this state for beneficiation outside this state or otherwise
14 removed by a taxpayer from this state and which are considered to
15 have been sold as provided in section 4(1), the gross mineral value
16 shall reflect the total value of the minerals immediately prior to
17 the shipment or removal based on the average daily price of the
18 mineral as quoted on published market indices in accordance with
19 rules promulgated by the department under section 8 or guidelines
20 published by the department.

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

23 (f) "Mineral" means a naturally occurring solid substance that
24 can be extracted from the earth in this state primarily for its
25 nonferrous metallic mineral content for commercial, industrial, or
26 construction purposes. Mineral does not include [gypsum, lime, limestone,
salt, dolomite, basalt, granite, sandstone, shale, clay, stone, gravel,
marl, peat, sand, gemstones, coal, substances extracted from potable
water or brine, substances extracted from oil or natural gas,] low-grade
iron ore

27 that is defined and taxed under 1951 PA 77, MCL 211.621 to 211.626,

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[] any property that is defined and taxed under 1963 PA 68, MCL 207.271 to 207.279[, or any other substance not extracted primarily for its nonferrous metallic mineral content].

(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. As used in this section, contiguity is not broken by a road, an easement, a right-of-way, or property occupied by power transmission lines or buffer zones. Mineral-producing property also includes all the following within this state:

(i) Mineral rights in mineral-producing property.

(ii) Mineral leases, options, and mining rights on mineral-producing property.

(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 that are owned, leased, or controlled by a taxpayer and are contiguous to mineral-producing 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

1 beneficiation activities begin.

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

4 (h) "Mineral-producing property" does not include real and
5 personal property that is used for transportation of minerals
6 between any locations, unless it is specifically described in
7 subdivision (g).

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

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

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

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

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

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

1 this state and a mineral which is otherwise taxable under this act.

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

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

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

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

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

19 (3) The amount of the interim minerals severance tax is equal
20 to 50% of the general ad valorem taxes levied on that open mine in
21 2012 attributable to those minerals valued by the state geologist
22 under section 24(2) of the general property tax act, 1893 PA 206,
23 MCL 211.24, for 2012. The interim minerals severance tax levied
24 under this section is in addition to any general ad valorem taxes
25 levied on the mine's surface property, surface improvements, and
26 personal property.

27 (4) Each year, the interim minerals severance tax shall be

1 paid in 2 installments. Fifty percent of the interim minerals
2 severance tax shall be paid when the summer levy is due and 50% of
3 the interim minerals severance tax shall be paid when the winter
4 levy is due under the general property tax act, 1893 PA 206, MCL
5 211.1 to 211.155.

6 (5) The local tax collecting unit shall collect the interim
7 minerals severance tax as provided in this section and collect the
8 same collection charges as general property taxes under the general
9 property tax act, 1893 PA 206, MCL 211.1 to 211.155. Minerals taxed
10 under this section shall be subject to return and sale for
11 nonpayment of taxes in the same manner, at the same time, and under
12 the same penalties as property returned and sold for nonpayment of
13 taxes levied under the general property tax act, 1893 PA 206, MCL
14 211.1 to 211.155.

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

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

25 Sec. 4. (1) The minerals severance tax is levied on taxable
26 minerals that a taxpayer extracts from the earth in this state or
27 that a taxpayer beneficiates in this state. A mineral extracted

1 from the earth in this state by a taxpayer which is shipped outside
2 this state for beneficiation outside this state or otherwise
3 removed from this state prior to actual sale or transfer is
4 considered to have been sold by the taxpayer immediately prior to
5 the shipment or removal and is subject to the minerals severance
6 tax levied under this section. A taxpayer subject to the minerals
7 severance tax is exempt from all of the following as provided in
8 this act:

9 (a) The collection of taxes under the general property tax
10 act, 1893 PA 206, MCL 211.1 to 211.155, as provided in section 7qq
11 of the general property tax act, 1893 PA 206, MCL 211.7qq.

12 (b) The tax levied under part 2 of the income tax act of 1967,
13 1967 PA 281, MCL 206.601 to 206.699, as provided in sections 31b
14 and 623 of the income tax act of 1967, 1967 PA 281, MCL 206.31b and
15 206.623.

16 (c) The tax levied under the general sales tax act, 1933 PA
17 167, MCL 205.51 to 205.78, as provided in section 4dd of the
18 general sales tax act, 1933 PA 167, MCL 205.54dd.

19 (d) The tax levied under the use tax act, 1937 PA 94, MCL
20 205.91 to 205.111, as provided in section 4aa of the use tax act,
21 1937 PA 94, MCL 205.94aa.

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

26 (3) The taxable mineral value of all minerals shall be
27 computed as of the time of sale or transfer. Except as otherwise

1 provided in this subsection, each taxpayer shall pay the minerals
2 severance tax to the local tax collecting unit on or before
3 February 15 beginning on February 15 in the calendar year
4 immediately following the second year in which the department
5 declares the property to be mineral-producing property under
6 section 6. In the first calendar year immediately following the
7 year in which the department determines the property is mineral-
8 producing property under section 6, the taxpayer shall pay not
9 later than July 15 a partial mineral severance tax equal to the
10 summer levy of the ad valorem taxes levied on that mineral-
11 producing property in the immediately preceding calendar year under
12 the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

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

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

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

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

10 (7) In the first year that a minerals severance tax is levied
11 on a taxpayer under this act, the total minerals severance tax for
12 that year is equal to the greater of the following less the amount
13 of the partial minerals severance tax described in subsection (3)
14 that was paid by the taxpayer:

15 (a) The minerals severance tax calculated under subsection
16 (2).

17 (b) The amount of general ad valorem property tax that was
18 levied on the mineral-producing property in the immediately
19 preceding year.

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

1 Sec. 6. (1) The department shall determine when property is
2 classified under this act as mineral-producing property. Upon
3 making this determination, the department shall notify all local
4 assessing authorities of those properties that are classified as a
5 mineral-producing property and are subject to the minerals
6 severance tax under this act. Beginning on December 31 in the
7 calendar year in which property is determined by the department to
8 be mineral-producing property, that property is exempt from taxes
9 collected under the general property tax act, 1893 PA 206, MCL
10 211.1 to 211.155. The property shall be subject to the minerals
11 severance tax beginning January 1, the calendar year immediately
12 following in which the property is determined to be mineral-
13 producing property by the department.

14 (2) If the department determines that property previously
15 determined to be a mineral-producing property is no longer mineral-
16 producing property, the department shall notify the taxpayer and
17 the local assessing authorities that the property is no longer
18 subject to the minerals severance tax under this act beginning
19 December 31 in the year that determination is made and that
20 property shall be subject to the collection of taxes under the
21 general property tax act, 1893 PA 206, MCL 211.1 to 211.155. The
22 local tax collecting unit in which the property is located is
23 responsible for assessment of that property as of the date of the
24 department's notification to the local assessing authority. Ten
25 days after the date of the department's notification to the
26 taxpayer shall be the date on which the minerals severance tax
27 shall cease and all related tax exemptions described in section 4

1 shall cease.

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

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

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

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

15 Sec. 8. The department may promulgate rules to implement this
16 act pursuant to the administrative procedures act of 1969, 1969 PA
17 306, MCL 24.201 to 24.328.

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

1 PA 206, MCL 211.1 to 211.155.

2 (2) If mineral-producing property is located in more than 1
3 local tax collecting unit, the department, or a person designated
4 by the department, shall determine the portion attributable to each
5 local tax collecting unit.

6 (3) Except as provided in subsections (5) and (6), the
7 minerals severance tax collected under this act shall be
8 distributed as follows:

9 (a) 65% by the local tax collecting unit to school districts,
10 this state, and local governmental units in the same proportion as
11 the general ad valorem property taxes are distributed. The amounts
12 distributed may be used by the receiving entities for any use for
13 which such entity is permitted to use general ad valorem property
14 tax revenues.

15 (b) 35% to the department for deposit into the rural
16 development fund.

17 (4) The local tax collecting unit shall report all collections
18 and distributions under this act to and remit the portion of the
19 minerals severance tax described in subsection (3)(b) to the
20 department for deposit in the rural development fund no later than
21 30 days after a payment is received from the taxpayer. If the local
22 tax collecting unit fails to make any distribution or remittance
23 required under this act to another entity, the department shall
24 deduct an equivalent amount from any revenues the local tax
25 collecting unit would otherwise be entitled to receive under the
26 Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL
27 141.901 to 141.921, and distribute the amount deducted to those

1 entities entitled to receive that distribution under this act.

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

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

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

19 Sec. 11. The specific taxes levied under this act shall be
20 administered by the department pursuant to 1941 PA 122, MCL 205.1
21 to 205.31, and this act. If the provisions of 1941 PA 122, MCL
22 205.1 to 205.31, and this act conflict, the provisions of this act
23 shall control.

24 Enacting section 1. This act does not take effect unless House
25 Bill No. 6007 of the 96th Legislature is enacted into law.