

SENATE 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) "Department" means the department of treasury.

3 (c) "Mineral" means a naturally occurring solid substance that
4 is extracted from the earth in this state primarily for its
5 nonferrous metallic mineral content for commercial, industrial, or
6 construction purposes. Mineral does not include gypsum, lime,
7 limestone, salt, dolomite, basalt, granite, sandstone, shale, clay,
8 stone, gravel, marl, peat, sand, gemstones, coal, substances
9 extracted from potable water or brine, substances extracted from
10 oil or natural gas, low-grade iron ore that is defined and taxed
11 under 1951 PA 77, MCL 211.621 to 211.626, any property that is
12 defined and taxed under 1963 PA 68, MCL 207.271 to 207.279, or any
13 other substance not extracted primarily for its nonferrous metallic
14 mineral content.

15 (d) "Mineral-producing property" means real and personal
16 property in this state that is part of a producing mine or utilized
17 directly in association with a producing mine on a parcel on which
18 the shaft, incline, or adit is located, or a parcel contiguous or
19 appurtenant to a parcel on which the shaft, incline, or adit is
20 located. As used in this section, contiguity is not broken by a
21 road, an easement, a right-of-way, or property occupied by power
22 transmission lines or buffer zones. Mineral-producing property also
23 includes all the following within this state:

24 (i) Mineral rights in mineral-producing property.

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

27 (iii) Mineral stockpiles and mineral inventories that are owned,

1 leased, or controlled by a taxpayer.

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

4 (v) Buffer lands that are owned, leased, or controlled by a
5 taxpayer and are appurtenant to mineral-producing property. For
6 purposes of determining appurtenance to mineral-producing property
7 for buffer lands owned, leased, or controlled by a taxpayer, there
8 is a rebuttable presumption that all of the following apply:

9 (A) Land that is no more than 1/4 mile from nonbuffer land
10 mineral-producing property, is held by the taxpayer for use as
11 buffer land.

12 (B) Land that is more than 1/4 mile from nonbuffer land
13 mineral-producing property and that a taxpayer is required to own,
14 lease, or control due to requirements imposed by federal, state, or
15 local law, is held by the taxpayer for use as buffer land.

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

21 (vii) Property owned and primarily used by the taxpayer in the
22 transportation of minerals from a producing mine to the point where
23 beneficiation activities begin.

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

26 (e) "Mineral-producing property" does not include real and
27 personal property that is used for transportation of minerals

1 between any locations, unless it is specifically described in
2 subdivision (d). Also, mineral-producing property does not include
3 real property owned, leased, or controlled by a taxpayer that is
4 used as residential real property.

5 (f) "Minerals severance tax" or "severance tax" means the
6 specific tax levied under section 4.

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

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

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

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

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

26 (l) "Taxable mineral value" means the total value received by a
27 taxpayer for the sale or transfer of taxable minerals, whether or

1 not in a beneficiated state, including premiums, bonuses,
2 subsidies, or noncash consideration, with no deductions. There is a
3 rebuttable presumption that the purchase price of a taxable mineral
4 under a bona fide arm's-length contract of sale or transfer between
5 unrelated persons reflects the taxable mineral value. In
6 determining the taxable mineral value of a taxable mineral for
7 contracts of sale or transfer between related persons, there is a
8 rebuttable presumption that taxable mineral value for related party
9 sales or transfers shall be based on the average daily price of the
10 mineral as quoted on published market indices as of the date of
11 sale or transfer. The taxable mineral value of taxable minerals
12 sold or transferred by a taxpayer following beneficiation shall
13 reflect the total value of the taxable mineral in its beneficiated
14 state. For taxable minerals which are to be shipped or transported
15 outside this state for beneficiation outside this state or
16 otherwise removed by a taxpayer from this state and which are
17 considered to have been sold as provided in section 4(1), the
18 taxable mineral value shall reflect the total value of the minerals
19 immediately prior to the shipment or removal based on the average
20 daily price of the mineral as quoted on published market indices as
21 determined by the department.

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

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

27 Sec. 3. Beginning December 31, 2012, any mineral and any

1 right, claim, lease, or option in or of any mineral is exempt and
2 any shaft, incline, adit, or value of overburden stripping located
3 at an open mine is exempt under section 7pp of the general property
4 tax act, 1893 PA 206, MCL 211.7pp.

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

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

19 (b) The tax levied under part 2 of the income tax act of 1967,
20 1967 PA 281, MCL 206.601 to 206.699, as provided in sections 31b
21 and 623 of the income tax act of 1967, 1967 PA 281, MCL 206.31b and
22 206.623.

23 (c) The tax levied under the general sales tax act, 1933 PA
24 167, MCL 205.51 to 205.78, as provided in section 4dd of the
25 general sales tax act, 1933 PA 167, MCL 205.54dd.

26 (d) The tax levied under the use tax act, 1937 PA 94, MCL
27 205.91 to 205.111, as provided in section 4aa of the use tax act,

1 1937 PA 94, MCL 205.94aa.

2 (2) The minerals severance tax required to be paid by each
3 taxpayer each year shall be 2.75% of the taxable mineral value.

4 (3) The taxable mineral value of all minerals shall be
5 computed as of the time of sale or transfer. Each taxpayer shall
6 pay the minerals severance tax to the local tax collecting unit on
7 or before February 15 beginning on February 15 in the calendar year
8 immediately following the year in which the department declares the
9 property to be mineral-producing property under section 6.

10 (4) If a taxpayer sells or transfers the minerals to another
11 taxpayer, the seller or transferor shall add to the sales price, or
12 to the value of the consideration with respect to a transfer, any
13 minerals severance tax the seller or transferor paid under this act
14 for those minerals and itemize the minerals severance tax paid
15 under this act on the invoice.

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

21 (6) For open mines opened at any time between January 1, 2011
22 and June 30, 2013, for the first 5 years in which that open mine is
23 a producing mine and is subject to the minerals severance tax, the
24 taxpayer may claim a credit of not more than 20% of the amount of
25 the ad valorem property tax levied on that open mine in 2012
26 attributable to those minerals valued by the state geologist under
27 section 24(2) of the general property tax act, 1893 PA 206, MCL

1 211.24, in 2012.

2 (7) In the first year that a minerals severance tax is levied
3 on a taxpayer under this act, the minerals severance tax for that
4 year is equal to the greater of the following:

5 (a) The minerals severance tax calculated under subsection
6 (2).

7 (b) The amount of general ad valorem property tax that was
8 paid on the mineral-producing property for that year.

9 Sec. 5. Each year, a taxpayer shall prepare and submit to the
10 department and to the local tax collecting unit a report in the
11 time, form, and manner required by the department, showing the
12 total amount of minerals sold, transferred, or beneficiated during
13 the preceding year, the taxable mineral value of the minerals sold,
14 transferred, or beneficiated, and any other information required by
15 the department for valuation purposes.

16 Sec. 6. (1) The department shall determine when property is
17 classified under this act as mineral-producing property. A taxpayer
18 shall notify the department within 30 days of beginning operation
19 of a producing mine. Upon making this determination, the department
20 shall notify all local assessing authorities of those properties
21 that are classified as a mineral-producing property and are subject
22 to the minerals severance tax under this act. Beginning on December
23 31 in the calendar year in which property is determined by the
24 department to be mineral-producing property, that property is
25 exempt from taxes collected under the general property tax act,
26 1893 PA 206, MCL 211.1 to 211.155. The property shall be subject to
27 the minerals severance tax when the property is determined to be

1 mineral-producing property by the department. Beginning on the date
2 an open mine becomes a producing mine, the mineral-producing
3 property is exempt from the taxes set forth in section 4(1)(b),
4 (c), and (d) as provided in this act.

5 (2) If the department determines that property previously
6 determined to be a mineral-producing property is no longer mineral-
7 producing property, the department shall notify the taxpayer and
8 the local assessing authorities that the property is no longer
9 subject to the minerals severance tax under this act beginning
10 December 31 in the year that determination is made and that
11 property shall be subject to the collection of taxes under the
12 general property tax act, 1893 PA 206, MCL 211.1 to 211.155. The
13 local tax collecting unit in which the property is located is
14 responsible for assessment of that property as of the date of the
15 department's notification to the local assessing authority. Ten
16 days after the date of the department's notification to the
17 taxpayer shall be the date on which the minerals severance tax
18 shall cease and all related tax exemptions described in section
19 4(1)(b), (c), and (d) shall cease.

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

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

26 Sec. 7. (1) Each taxpayer shall prepare, keep, and preserve a
27 full and complete record for each tax year of all minerals

1 extracted from the earth in this state or benefited in this
2 state, and that record shall be open at all times to the inspection
3 of the department.

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

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

9 Sec. 9. (1) The department shall allocate the minerals
10 severance tax and the local tax collecting unit shall collect the
11 minerals severance tax as provided in this act and collect the same
12 collection charges as general property taxes under the general
13 property tax act, 1893 PA 206, MCL 211.1 to 211.155. Property
14 listed and taxed under this act shall be subject to return and sale
15 for nonpayment of taxes in the same manner, at the same time, and
16 under the same penalties as property returned and sold for
17 nonpayment of taxes levied under the general property tax act, 1893
18 PA 206, MCL 211.1 to 211.155.

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

23 (3) Except as provided in subsection (5), the minerals
24 severance tax collected under this act shall be distributed as
25 follows:

26 (a) 65% by the local tax collecting unit to school districts,
27 this state, and local governmental units in the same proportion as

1 the general ad valorem property taxes are distributed. The amounts
2 distributed may be used by the receiving entities for any use for
3 which such entity is permitted to use general ad valorem property
4 tax revenues.

5 (b) 35% to the department for deposit into the rural
6 development fund.

7 (4) The local tax collecting unit shall report all collections
8 and distributions under this act to and remit the portion of the
9 minerals severance tax described in subsection (3)(b) to the
10 department for deposit in the rural development fund no later than
11 30 days after a payment is received from the taxpayer. If a local
12 tax collecting unit fails to make any distribution or remittance
13 required under this act to another entity, the department shall
14 deduct an equivalent amount from any revenues the local tax
15 collecting unit would otherwise be entitled to receive under the
16 Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL
17 141.901 to 141.921, and distribute the amount deducted to those
18 entities entitled to receive that distribution under this act.

19 (5) In determining the distribution under subsection (3), the
20 department shall modify the distributions so all minerals severance
21 tax revenue lost due to the credit described in section 4(6) does
22 not reduce the distributions to school districts, this state, and
23 local governmental units under subsection (3)(a).

24 (6) For open mines opened at any time between January 1, 2011
25 and June 30, 2013, all of the following apply:

26 (a) For the first 5 years in which that open mine is a
27 producing mine and is subject to the minerals severance tax, if the

1 amount distributed under subsection (3)(a) is less than
2 \$3,500,000.00, the taxpayer shall, in addition to the amount
3 distributed under subsection (3)(a), pay the difference between
4 \$3,500,00.00 and the amount distributed under subsection (3)(a),
5 which additional amount shall be distributed to the school
6 districts, this state, and local governmental units in the
7 proportion provided in subsection (3)(a).

8 (b) For the sixth and seventh years in which that open mine is
9 a producing mine and is subject to the minerals severance tax, if
10 the amount distributed under subsection (3)(a) is less than
11 \$1,600,000.00, the taxpayer shall, in addition to the amount
12 distributed under subsection (3)(a), pay the difference between
13 \$1,600,000.00 and the amount distributed under subsection (3)(a),
14 which additional amount shall be distributed to the school
15 districts, this state, and local governmental units in the manner
16 provided in subsection (3)(a).

17 (c) If the taxpayer makes any additional payments as provided
18 under this subsection in addition to the amount distributed under
19 subsection (3)(a), the amount of that additional payment shall be
20 recovered as a credit, without interest, by the taxpayer against
21 subsequent payments made under this act and distributed under
22 subsection (3)(a) until the taxpayer has been reimbursed in full,
23 provided that in no case shall this credit cause the distribution
24 made under subsection (3)(a) in that year to fall below the minimum
25 amounts provided in subdivision (a) or (b) for that year. The
26 credit shall be cumulative and shall not expire until the taxpayer
27 has been fully reimbursed under this act.

1 Sec. 10. Unless the minerals severance tax is being contested
2 as provided by law, upon an action being filed under the direction
3 of the attorney general in the circuit court for the county of
4 Ingham, that court shall have power to restrain by injunction any
5 taxpayer or person that has failed to comply with this act and in
6 the same manner to restrain any taxpayer or person from continuing
7 to extract minerals while delinquent in the filing of any report or
8 the paying of any tax, penalty, or cost required under this act.

9 Sec. 11. The minerals severance tax levied under this act
10 shall be administered by the department.

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