

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:

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
7 transfer.

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

2 (i) Subject to approval by the department, for the first 3
3 years in which a producing mine is subject to the minerals
4 severance tax, not more than 40% of the amount of the minerals
5 severance tax levied in that year to reimburse the taxpayer 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 subparagraph 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 subparagraph may be carried forward
17 only for the first and second year in which a producing mine is
18 subject to the minerals severance tax. The deduction allowed under
19 this subparagraph shall not be available to a taxpayer for any
20 costs for which the taxpayer has been reimbursed, for which the
21 taxpayer is entitled to claim a credit or other deduction against
22 any other tax levied by this state, or which have been paid for on
23 behalf of the taxpayer from any source other than the taxpayer.

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

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

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

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

25 (f) "Mineral" means a naturally occurring solid substance that
26 can be extracted from the earth in this state primarily for its
27 nonferrous metallic mineral content for commercial, industrial, or

1 construction purposes. Mineral does not include gypsum, limestone,
2 salt, low-grade iron ore that is defined and taxed under 1951 PA
3 77, MCL 211.621 to 211.626, or any property that is defined and
4 taxed under 1963 PA 68, MCL 207.271 to 207.279.

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

16 (i) Fee lands that are mineral-bearing property.

17 (ii) Mineral leases, options, and mining rights on mineral-
18 bearing property.

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

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

23 (v) Buffer lands that are owned, leased, or controlled by a
24 taxpayer and are contiguous to mineral-bearing property.

25 (vi) Buildings, improvements, fixtures, and nonmobile equipment
26 located upon, beneath, or appurtenant to a mine, including
27 administrative and support facilities appurtenant to a mine

1 provided that such property is located upon, beneath, or on a
2 parcel that is a mineral-producing property.

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

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

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

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

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

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

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

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

26 (l) "Producing mine" means a mineral mine in this state at
27 which a taxpayer is producing 1 or more minerals. Producing mine

1 does not include a mine operated primarily for tourism purposes or
2 a mine in which the minerals produced are used for artistic
3 purposes and are incidental to the business operation of the owner.

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

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

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

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

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

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

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

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

9 (4) Each year, the interim minerals severance tax shall be
10 paid in 2 installments. Fifty percent of the interim minerals
11 severance tax shall be paid when the summer levy is due and 50% of
12 the interim minerals severance tax shall be paid when the winter
13 levy is due under the general property tax act, 1893 PA 206, MCL
14 211.1 to 211.155.

15 (5) The local tax collecting unit shall collect the interim
16 minerals severance tax as provided in this section and collect the
17 same collection charges as general property taxes under the general
18 property tax act, 1893 PA 206, MCL 211.1 to 211.155. Minerals taxed
19 under this section shall be subject to return and sale for
20 nonpayment of taxes in the same manner, at the same time, and under
21 the same penalties as property returned and sold for nonpayment of
22 taxes levied under the general property tax act, 1893 PA 206, MCL
23 211.1 to 211.155.

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

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

8 (8) Except for a district that does not receive any state
9 portion of its foundation allowance, as calculated under section
10 20(4) of the school aid act of 1979, 1979 PA 94, MCL 388.1620, for
11 interim minerals severance taxes spread for school operating
12 purposes, the amount that would otherwise be disbursed to a local
13 school district shall be paid by the local tax collecting unit
14 instead of to the state treasury and credited to the state school
15 aid fund established by section 11 of article IX of the state
16 constitution of 1963. For a district that does not receive any
17 state portion of its foundation allowance, as calculated under
18 section 20(4) of the school aid act of 1979, 1979 PA 94, MCL
19 388.1620, the amount disbursed shall be determined as provided in
20 subsection (5).

21 Sec. 4. (1) The minerals severance tax is levied on taxable
22 minerals that a taxpayer extracts from the earth in this state or
23 that a taxpayer beneficiates in this state. A mineral extracted
24 from the earth in this state by a taxpayer which is shipped outside
25 this state for beneficiation outside this state or otherwise
26 removed from this state prior to actual sale or transfer is
27 considered to have been sold by the taxpayer immediately prior to

1 the shipment or removal and is subject to the minerals severance
2 tax levied under this section. A taxpayer subject to the minerals
3 severance tax is exempt from all of the following as provided in
4 this act:

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

8 (b) The tax levied under part 2 of the income tax act of 1967,
9 1967 PA 281, MCL 206.601 to 206.699, as provided in sections 31b
10 and 623 of the income tax act of 1967, 1967 PA 281, MCL 206.31b and
11 206.623.

12 (c) The tax levied under the general sales tax act, 1933 PA
13 167, MCL 205.51 to 205.78, as provided in section 4dd of the
14 general sales tax act, 1933 PA 167, MCL 205.54dd.

15 (d) The tax levied under the use tax act, 1937 PA 94, MCL
16 205.91 to 205.111, as provided in section 4aa of the use tax act,
17 1937 PA 94, MCL 205.94aa.

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

22 (3) The taxable mineral value of all minerals shall be
23 computed as of the time of sale or transfer. Except as otherwise
24 provided in this subsection, each taxpayer shall pay the minerals
25 severance tax to the local tax collecting unit on or before
26 February 15 beginning on February 15 in the calendar year
27 immediately following the second year in which the department

1 declares the property to be mineral-producing property under
2 section 6. In the first calendar year immediately following the
3 year in which the department determines the property is mineral-
4 producing property under section 6, the taxpayer shall pay not
5 later than July 15 a partial mineral severance tax equal to the
6 summer levy of the ad valorem taxes levied on that mineral-
7 producing property in the immediately preceding calendar year under
8 the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

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

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

18 (6) If a producing mine begins operation in 2014 or 2015,
19 then, for the first 5 years in which the producing mine is subject
20 to the minerals severance tax, the taxpayer may claim a credit of
21 not more than 20% of the amount of the ad valorem property tax
22 levied on that open mine in 2012 attributable to those minerals
23 valued by the state geologist under section 24(2) of the general
24 property tax act, 1893 PA 206, MCL 211.24, in 2012 plus the amount
25 of the interim minerals severance tax paid for each year through
26 the end of the year in which the department determines the property
27 to be mineral-producing property plus interest. Interest shall

1 accrue to the taxpayer at the rate provided for in section 37 of
2 the tax tribunal act, 1973 PA 186, MCL 205.737. However, if the
3 taxpayer is delinquent on any ad valorem property taxes on the
4 producing mine, then the taxpayer is not eligible to claim a credit
5 under this subsection.

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

11 (a) The minerals severance tax calculated under subsection
12 (2).

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

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

24 Sec. 6. (1) The department shall determine when property is
25 classified under this act as mineral-producing property. Upon
26 making this determination, the department shall notify all local
27 assessing authorities of those properties that are classified as a

1 mineral-producing property and are subject to the minerals
2 severance tax under this act. Beginning on December 31 in the
3 calendar year in which property is determined by the department to
4 be mineral-producing property, that property is exempt from taxes
5 collected under the general property tax act, 1893 PA 206, MCL
6 211.1 to 211.155. The property shall be subject to the minerals
7 severance tax beginning January 1, the calendar year immediately
8 following in which the property is determined to be mineral-
9 producing property by the department.

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

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

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

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

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

11 Sec. 8. The department may promulgate rules to implement this
12 act pursuant to the administrative procedures act of 1969, 1969 PA
13 306, MCL 24.201 to 24.328.

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

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

1 local tax collecting unit.

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

5 (a) 60% by the local tax collecting unit to school districts,
6 this state, and local governmental units in the same proportion as
7 the general ad valorem property taxes are distributed. The amounts
8 distributed may be used by the receiving entities for any use for
9 which such entity is permitted to use general ad valorem property
10 tax revenues.

11 (b) 40% to the department for deposit into the rural
12 development fund.

13 (4) Except for a district that does not receive any state
14 portion of its foundation allowance, as calculated under section
15 20(4) of the school aid act of 1979, 1979 PA 94, MCL 388.1620, for
16 minerals severance taxes spread for school operating purposes, the
17 amount that would otherwise be disbursed to a local school district
18 shall be paid by the local tax collecting unit instead to the state
19 treasury and credited to the state school aid fund established by
20 section 11 of article IX of the state constitution of 1963. For a
21 district that does not receive any state portion of its foundation
22 allowance, as calculated under section 20(4) of the school aid act
23 of 1979, 1979 PA 94, MCL 388.1620, the amount disbursed shall be
24 determined as provided in subsection (1).

25 (5) The local tax collecting unit shall report all collections
26 and distributions under this act to and remit the portion of the
27 minerals severance tax described in subsection (3)(b) to the

1 department for deposit in the rural development fund no later than
2 30 days after a payment is received from the taxpayer. If the local
3 tax collecting unit fails to make any distribution or remittance
4 required under this act to another entity, the department shall
5 deduct an equivalent amount from any revenues the local tax
6 collecting unit would otherwise be entitled to receive under the
7 Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL
8 141.901 to 141.921, and distribute the amount deducted to those
9 entities entitled to receive that distribution under this act.

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

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

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

27 Sec. 11. The specific taxes levied under this act shall be

1 administered by the department pursuant to 1941 PA 122, MCL 205.1
2 to 205.31, and this act. If the provisions of 1941 PA 122, MCL
3 205.1 to 205.31, and this act conflict, the provisions of this act
4 shall control.

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