NONFERROUS METALLIC MINERALS EXTRACTION SEVERANCE TAX ACT

Act 410 of 2012

AN ACT 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.

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

The People of the State of Michigan enact:

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211.781 Short title.

Sec. 1.

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

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.782 Definitions.

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.

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

(c) "Mineral" means a naturally occurring solid substance that is 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, 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 that is defined and taxed under 1951 PA 77, MCL 211.621 to 211.626, 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.

(d) "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 or in 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 appurtenant to mineral-producing property. For purposes of determining appurtenance to mineral-producing property for buffer lands owned, leased, or controlled by a taxpayer, there is a rebuttable presumption that all of the following apply:

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

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

taxpayer for use as buffer land.

(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 beneficiation activities begin.

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

(e) "Mineral-producing property" does not include real and personal property that is used for transportation of minerals between any locations, unless it is specifically described in subdivision (d). Also, mineral-producing property does not include real property owned, leased, or controlled by a taxpayer that is used as residential real property.

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

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

(h) "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.

(i) "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.

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

(k) "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.

(l) "Taxable 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 or transfer between unrelated persons reflects the taxable mineral value. In determining the taxable mineral value of a taxable mineral for contracts of sale or transfer between related persons, there is a rebuttable presumption that taxable mineral value for related party sales or transfers shall be based on the average daily price of the mineral as quoted on published market indices as of the date of sale or transfer. The taxable 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 taxable mineral value shall reflect the total value of the minerals immediately prior to the shipment or removal based on the average daily price of the mineral as quoted on published market indices as determined by the department.

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

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

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

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211.783 Mineral and right, claim, lease, or option; tax exemption; shaft, incline, adit, or value of overburden stripping at open mine; tax exemption.

Sec. 3.

Beginning December 31, 2012, any mineral and any right, claim, lease, or option in or of any mineral is exempt and any shaft, incline, adit, or value of overburden stripping located at an open mine is exempt under section 7pp of the general property tax act, 1893 PA 206, MCL 211.7pp.

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.784 Minerals severance tax; levy; other tax exemptions; rate; computation of taxable mineral value; payment; transfer or purchase of mineral; tax credit for open mines opened between January 1, 2011 and June 30, 2013; first year of tax levy.

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 under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, as 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) The minerals severance tax required to be paid by each taxpayer each year shall be 2.75% of the taxable mineral value.

(3) The taxable mineral value of all minerals shall be computed as of the time of sale or transfer. 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 year in which the department declares the property to be mineral-producing property under section 6.

(4) If a taxpayer sells or transfers the minerals to another taxpayer, the seller or transferor shall add to the sales price, or to the value of the consideration with respect to a transfer, any minerals severance tax the seller or transferor paid under this act for those minerals 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 or transferor for those minerals that is itemized on the invoice.

(6) For open mines opened at any time between January 1, 2011 and June 30, 2013, for the first 5 years in which that open mine is a producing mine and 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) of the general property tax act, 1893 PA 206, MCL 211.24, in 2012.

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

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

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

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.785 Preparation and submission of report by taxpayer.

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, and any other information required by the department for valuation purposes.

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History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.786 Mineral-producing property; determination by department; notification that property no longer mineral-producing property; notification; list to be provided by state geologist; notice of ceased operations.

Sec. 6.

(1) The department shall determine when property is classified under this act as mineral-producing property. A taxpayer shall notify the department within 30 days of beginning operation of a producing mine. 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 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 when the property is determined to be mineral-producing property by the department. Beginning on the date an open mine becomes a producing mine, the mineral-producing property is exempt from the taxes set forth in section 4(1)(b), (c), and (d) as provided in this act.

(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 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 local tax collecting unit in which the property is located is responsible for assessment of that property 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 related tax exemptions described in section 4(1)(b), (c), and (d) 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.

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History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.787 Record to be prepared, kept, and preserved by taxpayer; inspection; publication of value of all minerals.

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 beneficiated 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.

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.788 Rules.

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.

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.789 Minerals severance tax; allocation by department; collection by local tax collecting unit; distribution; report of collections and distributions; remittance of portion to department for deposit in rural development fund; modification so that distributions to school districts, this state, and local governmental units not reduced; provisions applicable to open mines opened between January 1, 2011 and June 30, 2013.

Sec. 9.

(1) The department shall allocate the minerals severance tax 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 by the department, shall determine the portion attributable to each local tax collecting unit.

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

(a) 65% 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) 35% to the department for deposit into the rural development fund.

(4) 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 a 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.

(5) 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 school districts, this state, and local governmental units under subsection (3)(a).

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

(a) For the first 5 years in which that open mine is a producing mine and is subject to the minerals severance tax, if the amount distributed under subsection (3)(a) is less than $3,500,000.00, the taxpayer shall, in addition to the amount distributed under subsection (3)(a), pay the difference between $3,500,00.00 and the amount distributed under subsection (3)(a), which additional amount shall be distributed to the school districts, this state, and local governmental units in the proportion provided in subsection (3)(a).

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

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

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

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211.790 Restraining order.

Sec. 10.

Unless the minerals severance tax is being contested as provided by law, 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.

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

211.791 Administration of tax by department.

Sec. 11.

The minerals severance tax levied under this act shall be administered by the department.

History: 2012, Act 410, Imd. Eff. Dec. 20, 2012

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