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# HOUSE BILL No. 2006

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-7.5; IC 6-8.1-1-1; IC 8-18-8-5.

**Synopsis:** Coal and aggregate severance tax. Imposes the severance tax upon taxpayers that: (1) remove coal from the earth; (2) process coal after its removal; or (3) extract aggregate from natural deposits. Imposes the tax at a rate of 4.5% of the coal or aggregate removed or processed within a monthly reporting period. Provides for a minimum tax of \$0.50 per ton. Provides that the minimum tax does not apply to taxpayers who only process coal. Provides the method of determining gross value. Provides penalties for the failure to pay or report the severance tax due. Provides that the department of state revenue administers the tax. Provides that the officers of a corporation that fails to pay the tax are personally liable, jointly and severally, for the amount of unpaid tax. Provides that the tax revenue collected shall be returned to the counties in which the coal or aggregate is removed or processed. Provides that the counties may use the money to pay expenses incurred in the maintenance of county highways.

**Effective:** January 1, 2004.

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## LaPlante

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January 23, 2003, read first time and referred to Committee on Ways and Means.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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# HOUSE BILL No. 2006



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-7.5 IS ADDED TO THE INDIANA CODE AS A  
 2 **NEW ARTICLE TO READ AS FOLLOWS** [EFFECTIVE JANUARY  
 3 1, 2004]:  
 4 **ARTICLE 7.5. SEVERANCE TAX**  
 5 **Chapter 1. Definitions**  
 6 **Sec. 1. The definitions in this chapter apply throughout this**  
 7 **article.**  
 8 **Sec. 2. "Aggregate" means:**  
 9 (1) sand;  
 10 (2) gravel;  
 11 (3) dimension stone; or  
 12 (4) crushed stone.  
 13 **Sec. 3. "Coal" includes any material composed predominantly**  
 14 **of hydrocarbons in a solid state.**  
 15 **Sec. 4. "Department" refers to the department of state revenue.**  
 16 **Sec. 5. "Economic interest" refers to the economic interest**  
 17 **required by Internal Revenue Code Section 611, in effect on**



1 December 31, 1977, entitling the taxpayer to a depletion deduction  
2 for income tax purposes.

3 Sec. 6. "Gross value" refers to gross income from property as  
4 defined in Section 613(c) of the Internal Revenue Code and United  
5 States Department of Treasury Regulations 1.613-3 and 1.613-4, as  
6 in effect on December 31, 1977.

7 Sec. 7. "Related party" means two (2) or more persons,  
8 organizations, or businesses owned or controlled directly or  
9 indirectly by the same interest.

10 Sec. 8. "Reporting period" means the period in which each  
11 taxpayer shall compute the taxpayer's tax liability and remit the  
12 tax due to the department.

13 Sec. 9. "Severance" refers to either of the following:

- 14 (1) The physical removal of coal from the earth.  
15 (2) The extraction, removal, or recovery of aggregate from  
16 natural deposits.

17 Sec. 10. "Taxpayer" includes a pass through entity.

18 Sec. 11. "Ton" means a short ton of two thousand (2,000)  
19 pounds.

20 Chapter 2. Severance Tax

21 Sec. 1. (a) As used in this chapter, "processing" includes the  
22 following treatments to coal:

- 23 (1) Cleaning.  
24 (2) Breaking.  
25 (3) Dust allaying.  
26 (4) Freeze prevention.  
27 (5) Loading and unloading.  
28 (6) Sizing.

29 (b) Processing does not include:

- 30 (1) an act performed by a final consumer if:  
31 (A) the consumer is not a related party to the person who  
32 severed or processed the coal; and  
33 (B) the act is performed at the site where coal is consumed  
34 to generate electricity; or  
35 (2) the loading or unloading for shipment of coal that has not  
36 been severed or treated in Indiana.

37 Sec. 2. As used in this chapter, "registered taxpayer" refers to  
38 a taxpayer who holds a valid severance tax certificate of  
39 registration under IC 6-7.5-3 during the period in which the  
40 taxpayer's coal or aggregate is sold.

41 Sec. 3. (a) A severance tax is imposed on each taxpayer engaged  
42 in:

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- 1           (1) severing coal in Indiana;  
 2           (2) processing coal in Indiana; or  
 3           (3) severing aggregate in Indiana.

4           (b) Except as provided in subsection (d), the severance tax is  
 5 imposed at the rate of four and five-tenths percent (4.5%) of the  
 6 gross value of all:

- 7           (1) coal severed or processed; or  
 8           (2) aggregate severed;

9 during a reporting period.

10          (c) Each taxpayer shall report the gross value of the coal or  
 11 aggregate that the taxpayer severed or processed during the  
 12 preceding month at the time and in the manner prescribed by the  
 13 department. However, the department may authorize a quarterly  
 14 reporting period.

15          (d) This subsection does not apply to a taxpayer who only  
 16 processes coal. The minimum tax for a reporting period is  
 17 determined by multiplying the total number of tons severed during  
 18 the reporting period by fifty cents (\$0.50).

19          Sec. 4. (a) Gross value is reported as follows:

20           (1) If the coal is severed or processed, or both, and sold during  
 21 a reporting period, gross value equals the amount received or  
 22 receivable by the taxpayer.

23           (2) If the coal is severed or processed, or both, but not sold  
 24 during a reporting period, the gross value is determined as  
 25 follows:

26           (A) If the coal is to be sold under the terms of an existing  
 27 contract, the contract price is used to compute gross value.

28           (B) If no contract exists, the fair market value for the  
 29 grade and quality of the coal is used to compute gross  
 30 value.

31           (3) If a transaction involves related parties, gross value is the  
 32 amount received or receivable from the first noncontrolled  
 33 sale by the related parties. However, if coal or aggregate is  
 34 sold to a related party for consumption, gross value is an  
 35 amount not less than the fair market value for coal or  
 36 aggregate of similar grade and quality.

37           (4) In the absence of a sale, gross value is the fair market  
 38 value for coal or aggregate of a similar grade and quality.

39           (5) If severed coal is purchased for processing and resale, the  
 40 gross value is the amount received or receivable during the  
 41 reporting period reduced by the amount paid or payable to  
 42 the registered taxpayer actually severing the coal.

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1 (6) If severed coal is purchased for processing and  
 2 consumption, the gross value is the fair market value of  
 3 processed coal of similar grade and quality reduced by the  
 4 amount paid or payable to the registered taxpayer actually  
 5 severing the coal.

6 (7) If the aggregate is severed and sold during a reporting  
 7 period, gross value equals the amount received or receivable  
 8 by the taxpayer.

9 (8) If the aggregate is severed but not sold during a reporting  
 10 period, the gross value is determined as follows:

11 (A) If the aggregate is to be sold under the terms of a  
 12 contract, the contract price is used to compute gross value.

13 (B) If no contract exists, the fair market value for the  
 14 grade and quality of the aggregate is used to compute gross  
 15 value.

16 (b) Gross value may not be reduced by any taxes, including the  
 17 tax imposed under this chapter, royalties, sales commissions, or  
 18 other expenses.

19 **Sec. 5. If a contract, either written or oral, is entered into by a  
 20 person that:**

21 (1) is engaged to sever or process the coal or to sever the  
 22 aggregate; and

23 (2) does not obtain title to or have an economic interest in the  
 24 coal or aggregate;

25 the party that owns the coal or aggregate or has an economic  
 26 interest in the coal or aggregate is the taxpayer.

27 **Sec. 6. A party who receives only an arm's length royalty is  
 28 not considered to have an economic interest.**

29 **Sec. 7. Notwithstanding section 3 of this chapter, the severance  
 30 tax for coal used for burning solid waste is limited to the lesser of:**

31 (1) fifty cents (\$0.50) per ton; or

32 (2) four percent (4%) of the selling price per ton.

33 **Chapter 3. Certificate of Registration and Administration**

34 **Sec. 1. (a) A taxpayer engaged in severing aggregate or severing  
 35 or processing coal shall file an application for a certificate of  
 36 registration on a form prescribed by the department.**

37 (b) Each application must be signed by the taxpayer or an agent  
 38 of the taxpayer. If the taxpayer is a partnership or association, the  
 39 application must be signed by a member. If the taxpayer is a  
 40 corporation, the application must be signed by an executive officer  
 41 or other person specifically authorized by the corporation to sign  
 42 the application.

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1           **Sec. 2.** A taxpayer must submit a severance tax return on a form  
2 prescribed by the department before the twentieth day of the  
3 month after the reporting period in which coal is severed or  
4 processed. The taxpayer must submit the amount of severance tax  
5 due with the severance tax return. The taxpayer must submit a  
6 return for each reporting period even though there may be no  
7 severance tax liability.

8           **Sec. 3.** If a taxpayer fails to comply with this chapter or a rule  
9 adopted under this chapter, the department may suspend or revoke  
10 the taxpayer's certificate of registration.

11           **Sec. 4. (a)** A taxpayer, including an officer of a corporation, who  
12 severs or processes coal in Indiana without obtaining a certificate  
13 of registration, or after a certificate of registration has been  
14 revoked, commits a Class B misdemeanor.

15           **(b)** A taxpayer, including an officer of a corporation, who severs  
16 aggregate in Indiana without obtaining a certificate of registration,  
17 or after a certificate of registration has been revoked, commits a  
18 Class B misdemeanor.

19           **Sec. 5. (a)** The department may authorize the taxpayer  
20 processing the coal to report and pay the tax that would be due  
21 from the taxpayer severing the coal.

22           **(b)** An authorization under subsection (a) must be in the form  
23 of an agreement executed by the taxpayer processing the coal, the  
24 taxpayer severing the coal, and the department. The agreement  
25 must be on a form prescribed by the department.

26           **(c)** The agreement must be signed by the taxpayer and the  
27 commissioner of the department. If the taxpayer is a partnership  
28 or association, the application must be signed by a member. If the  
29 taxpayer is a corporation, the application must be signed by an  
30 executive officer or other person specifically authorized by the  
31 corporation to sign the application.

32           **(d)** The agreement may be terminated by a party after thirty  
33 (30) days written notice to the other parties. However, the  
34 department may terminate the agreement immediately upon  
35 written notice to the other parties if either the taxpayer severing  
36 the coal or the taxpayer processing the coal fails to comply with the  
37 terms of the agreement.

38           **Sec. 6. (a)** The department shall provide to all registered  
39 taxpayers that sell severed or processed coal that will subsequently  
40 be claimed as a reduction from gross value for purchased coal  
41 under IC 6-7.5-2-4(5) a certificate prescribed by the department  
42 for the processor of the coal to verify the processor's reduction

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1 from gross value for purchased coal.

2 (b) If a processor purchases coal that has been severed outside  
3 Indiana, the processor shall obtain a certificate from the person  
4 severing the coal on a form prescribed by the department to verify  
5 the purchased coal.

6 Sec. 7. (a) A reduction for purchased coal may not be allowed  
7 for purchases of coal originating from persons severing coal in  
8 Indiana who have not registered to report and pay the tax imposed  
9 under this article.

10 (b) A reduction for purchased coal may not be allowed for  
11 purchases of coal that cannot be traced to the person who severed  
12 the coal outside Indiana.

13 Sec. 8. The department shall adopt rules under IC 4-22-2 to  
14 implement this article.

15 Chapter 4. Payment of Tax

16 Sec. 1. (a) Each taxpayer charged with the duty to file reports  
17 and pay the severance tax imposed under this article shall post a  
18 cash or corporate surety bond in an amount prescribed by the  
19 department.

20 (b) The department may bring an action for a restraining order  
21 or a temporary or permanent injunction to restrain or enjoin the  
22 taxpayer's business until the bond is posted. The department may  
23 bring the action in the Marion County circuit court or in the circuit  
24 court of the county in which the taxpayer's business is located.

25 Sec. 2. The department may suspend or revoke a taxpayer's  
26 certificate of registration if the taxpayer fails to comply with the  
27 provisions of this chapter.

28 Sec. 3. (a) If a taxpayer:

29 (1) fails to pay the full amount of tax imposed under this  
30 article as shown on the taxpayer's return by the due date for  
31 the return or for the payment;

32 (2) fails to report the tax due under this article;

33 (3) falsifies a return required under this article; or

34 (4) incurs a deficiency upon the determination of the  
35 department;

36 the taxpayer is subject to a penalty and interest on the unpaid tax.

37 (b) Interest applies at the rate established in IC 6-8.1-10-1 from  
38 the date the tax becomes delinquent until the date the tax is paid.

39 (c) A taxpayer described in subsection (a) is subject to a penalty  
40 in an amount determined by the department under IC 6-8.1-10.

41 Sec. 4. (a) Notwithstanding any other provisions of this article,  
42 the president, vice president, secretary, treasurer, or other person

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1 holding an equivalent corporate office of a corporation subject to  
 2 the provisions of this article is personally liable, jointly and  
 3 severally, for the tax imposed under this article.

4 (b) The following events do not discharge the personal liability  
 5 of an officer described in subsection (a):

- 6 (1) The dissolution of the corporation.  
 7 (2) The withdrawal of the corporation from Indiana.  
 8 (3) The officer's cessation of holding office.

9 (c) The personal liability applies to each person holding  
 10 corporate office at the time the taxes become due.

11 (d) A person that does not have authority in the management of  
 12 the business or financial affairs of the corporation at the time the  
 13 taxes are imposed may not be held personally liable for the tax  
 14 imposed under this article.

15 **Sec. 5. A taxpayer that fails to:**

- 16 (1) file returns required under this article;  
 17 (2) remit the tax due under this article; or  
 18 (3) falsifies or alters a certificate or other form required  
 19 under this article;

20 commits a Class B misdemeanor.

21 **Chapter 5. Use of Tax**

22 **Sec. 1. (a)** A special account within the state general fund is  
 23 established for taxes collected under this article. The department  
 24 shall transfer the taxes that are collected under this article each  
 25 month to the account.

26 (b) The treasurer of state shall distribute the money in the  
 27 account to each county in which:

- 28 (1) coal is severed or processed; or  
 29 (2) aggregate is severed.

30 The treasurer of state shall distribute to each county an amount  
 31 proportional to the amount of severance tax imposed in the county.

32 (c) The treasurer shall hold all amounts of collections received  
 33 under subsection (a) during a particular month and shall distribute  
 34 the amounts required under subsection (b) on the fifth day of the  
 35 immediately following month.

36 (d) Money in this account at the end of a state fiscal year does  
 37 not revert to the state general fund.

38 **Sec. 2.** A distribution from the account established under section  
 39 1 of this chapter shall be made by warrants issued by the auditor  
 40 of state to the treasurer of state ordering the appropriate  
 41 payments.

42 **Sec. 3.** A county treasurer shall deposit money received under

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1 **this chapter in the county general fund. Money received under this**  
 2 **chapter may be used to pay expenses incurred in the maintenance**  
 3 **of county highways.**

4 SECTION 2. IC 6-8.1-1-1, AS AMENDED BY P.L.192-2002(ss),  
 5 SECTION 140, IS AMENDED TO READ AS FOLLOWS  
 6 [EFFECTIVE JANUARY 1, 2004]: Sec. 1. "Listed taxes" or "taxes"  
 7 includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5);  
 8 the riverboat admissions tax (IC 4-33-12); the riverboat wagering tax  
 9 (IC 4-33-13); the gross income tax (IC 6-2.1) (repealed); the utility  
 10 receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5);  
 11 the adjusted gross income tax (IC 6-3); the supplemental net income  
 12 tax (IC 6-3-8) (repealed); the county adjusted gross income tax  
 13 (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county  
 14 economic development income tax (IC 6-3.5-7); the municipal option  
 15 income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the  
 16 financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the  
 17 alternative fuel permit fee (IC 6-6-2.1); the special fuel tax  
 18 (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax  
 19 collected under a reciprocal agreement under IC 6-8.1-3; the motor  
 20 vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax  
 21 (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the  
 22 cigarette tax (IC 6-7-1); **the severance tax (IC 6-7.5)**; the beer excise  
 23 tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax  
 24 (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise  
 25 tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various  
 26 innkeeper's taxes (IC 6-9); the various county food and beverage taxes  
 27 (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil  
 28 inspection fee (IC 16-44-2); the emergency and hazardous chemical  
 29 inventory form fee (IC 6-6-10); the penalties assessed for oversize  
 30 vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for  
 31 overweight vehicles (IC 9-20-4 and IC 9-30); the underground storage  
 32 tank fee (IC 13-23); the solid waste management fee (IC 13-20-22);  
 33 and any other tax or fee that the department is required to collect or  
 34 administer.

35 SECTION 3. IC 8-18-8-5 IS AMENDED TO READ AS FOLLOWS  
 36 [EFFECTIVE JANUARY 1, 2004]: Sec. 5. (a) Except as provided in  
 37 subsection (c), all expenses incurred in the maintenance of county  
 38 highways shall be paid out of funds from the gasoline tax, special fuel  
 39 tax, **severance tax**, and the motor vehicle registration fees that are paid  
 40 to the counties by the state, and from funds derived from the:

- 41 (1) county motor vehicle excise surtax;  
 42 (2) county wheel tax;



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1           (3) county adjusted gross income tax;  
 2           (4) county option income tax;  
 3           (5) riverboat admission tax (IC 4-33-12); or  
 4           (6) riverboat wagering tax (IC 4-33-13).  
 5           (b) Except as provided in subsection (c), no ad valorem property tax  
 6           may be levied by any county for the maintenance of county highways,  
 7           except in an emergency and by unanimous vote of the county fiscal  
 8           body.  
 9           (c) The county fiscal body may appropriate money from the county  
 10          general fund to the county highway department to pay for employees'  
 11          personal services.  
 12          SECTION 4. [EFFECTIVE JANUARY 1, 2004] **IC 6-7.5, as added**  
 13          **by this act, applies to aggregate severed or coal severed or**  
 14          **processed after December 31, 2003.**

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