HB 857 INTRODUCED BY RANEY, ET AL.
REVISE METHODS OF TAXING COAL

3/03 INTRODUCED
3/03 REFERRED TO TAXATION
3/03 FISCAL NOTE REQUESTED
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3/13 HEARING
3/16 TABLED IN COMMITTEE

House BILL NO. 857

INTRODUCED BY Raney Addy

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAXATION OF COAL; REDUCING THE COAL SEVERANCE TAX; IMPOSING A TAX ON THE NET PROFITS DERIVED FROM MINING COAL; AMENDING SECTIONS 15-35-101 THROUGH 15-35-104, MCA; REPEALING SECTIONS 15-35-106 AND 15-35-201 THROUGH 15-35-205, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-35-101, MCA, is amended to read:

"15-35-101. Legislative findings and declarations of purpose. (1) The legislature finds that while coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals such that they should be classified in different categories for taxation purposes. The legislature finds that while coal can be utilized like petroleum products, there are differences between coal and petroleum such that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral which is so often

marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;

~~(e)--coal----in---Montana,---when---subbituminous---and recoverable-by-strip-mining,-is-in-sufficient-demand-that-at least-one-third-of-the-price-it-commands-at-the-mine-may--go to-the-economic-rents-of-royalties-and-production-taxes;~~

~~(f)--coal--in--the--lignite--form-is-in-less-demand-and producers-of-lignite-are--able--to--pay--lesser--amounts--of royalty--and--production-tax-than-producers-of-subbituminous can-pay;~~

~~(g)--coal-produced--in--underground--mines--has--higher production--costs--and-underground-producers-are-able-to-pay lesser-amounts-of-royalty-and-production-tax-than-strip-mine producers-can-pay;~~

~~(h)~~(e) coal production in Montana has been subject to an uncoordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.

(2) The legislature declares that the purposes of this chapter are to:

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(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and

(d) accomplish the foregoing purposes by establishing ~~categories~~ a method of taxation which ~~recognize~~ recognizes the unique character of coal as well as the variations found within the coal industry."

Section 2. Section 15-35-102, MCA, is amended to read:

"15-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) "Base consumption level" for a purchaser means the ~~greater~~ lesser of:

(a) the ~~arithmetic--average~~ volume of coal purchased during calendar ~~years-1983--and--1984~~ year 1986 from all Montana coal mine operators; or

(b) the greater of:

(i) the arithmetic average volume of coal purchased

during calendar years 1983 and 1984 from all Montana coal mine operators; or

(ii) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(3) "Base production level" for a coal mine operator means the lesser of:

(a) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(b) the volume of coal produced in Montana and sold to a purchaser in 1986.

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are

calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

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(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed his base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

~~(12) "Strip mining" or "surface mining" is defined in 82-4-203.~~

~~(13)~~<u>(12)</u> "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

~~(14)~~(13) "Ton" means 2,000 pounds.

~~(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203.~~"

Section 3. Section 15-35-103, MCA, is amended to read:

"15-35-103. Severance tax -- ~~rates~~ rate imposed -- ~~exemptions~~. ~~(1)~~ A severance tax is imposed on each ton of coal produced in the state ~~in accordance with the following schedule:~~ at the rate of 10% of value.

~~Heating quality (Btu per pound of coal):~~	~~Surface Mining~~	~~Underground Mining~~
~~Under 7,000~~	~~12 cents or 20% of value~~	~~5 cents or 3% of value~~
~~7,000-8,000~~	~~22 cents or 30% of value~~	~~8 cents or 4% of value~~
~~8,000-9,000~~	~~34 cents or 30% of value~~	~~10 cents or 4% of value~~
~~Over 9,000~~	~~40 cents or 30% of value~~	~~12 cents or 4% of value~~

"Value" means the contract sales price.

~~(2) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule.~~

~~(3) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.~~

~~(4) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202.~~"

Section 4. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, ~~the average Btu value of the production,~~ the contract sales price received for the production, and such other information as the department may require. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than 30 days following the close of the quarter. The form shall be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor."

NEW SECTION. Section 5. Coal net profit tax -- statement. Each person engaged in the mining of coal shall on or before March 31 of each year deliver to the department a statement from which net profits are calculated. The statement must contain the gross yield and value of the coal produced from each mine owned or worked by him during the year preceding January 1 of the year in which the statement is made. The statement must be in a form prescribed by the department and must be verified by the affidavit of the person completing the statement or the manager, superintendent, agent, vice president, or president, if a corporation, association, or partnership. The statement must show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the coal or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of coal extracted, produced, and sold from the mine during the period covered by the

statement;

(4) the gross yield or value in dollars and cents calculated from the total purchase price paid to a producer;

(5) the cost of extracting from the mine;

(6) the cost of transporting to the place of sale;

(7) the cost of sale;

(8) the cost of marketing the product and converting the same into money;

(9) the cost of construction, repairs, and betterments of mines;

(10) the assessed valuation of the mine for the calendar year for which such return is made;

(11) the cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine;

(12) the cost of welfare and retirement fund payments provided for in wage contracts;

(13) the cost of testing extracted coal for the purpose of satisfying federal or state health and safety laws or regulations;

(14) the cost of sampling the extracted coal;

(15) the cost of plant security in Montana;

(16) the costs incurred in Montana for engineering and geological services for existing coal mining operations, but not including such services beyond the stage of mining of

the coal; and

(17) the cost of mine reclamation.

NEW SECTION. Section 6. Net profit -- how computed. (1) The department shall calculate from the statement provided in [section 5] the amount of coal mined by each person and its gross value for the year covered by the statement and shall calculate the net profit on the coal to the person engaged in mining. Net profit must be determined by subtracting from value of the gross product:

(a) taxes paid on production, severance, and property;

(b) all royalty paid or apportioned in cash or in kind by the person engaged in mining;

(c) all money spent for labor, machinery, and supplies needed and used in the mining operations and developments;

(d) all money spent for improvements and repairs necessary in and about the mine;

(e) all money actually spent for transporting the coal to the place of sale and for marketing the coal;

(f) all money spent for insurance, welfare, and retirement costs reported on the statement required in [section 5]; and

(g) all money spent for necessary labor, equipment, and supplies for testing coal to satisfy federal or state safety laws and regulations as reported on the statement required in [section 5].

(2) In computing the deductions allowable for repairs and improvements to the mine, the department shall allow 10% of such cost each year for a period of 10 years.

(3) No money invested in mines or improvements may be allowed as a deduction unless all machinery, equipment, and buildings represented by such money are reported to the county in which such mine is located for assessment purposes at the level of assessment of all other property in such county.

(4) No money invested in the mines and improvements during any year except the year for which such statement is made and except as provided in this section may be included in such expenditures, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

NEW SECTION. Section 7. Lien -- penalty. The tax and penalty assessed on net profits are a lien upon all of the right, title, and interest of the operator in or to the mine or mining claim and upon all of the right, title, and interest in or to the machinery, buildings, tools, and equipment used in operating the mine or mining claim. The tax and penalty on such net profits may be collected and the payment enforced by the seizure and sale of the personal property upon which the tax and penalty are a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. Resort to any one of the methods of enforcing collection does not bar the right to resort to either or both of the other methods, but any two or all of the methods may be used until the full amount of such tax and penalty is collected.

NEW SECTION. Section 8. False or fraudulent reports. If any report required by [sections 5 through 12] contains any willfully false or fraudulent statements as to the gross amount received by a person engaged in mining coal, then the department shall compute the gross value of such coal based upon the average quotations of the price of coal in New York City or the relative market value at the point of delivery as evidenced by some established authority or market report. If a person has sold or otherwise disposed of any of its coal at a price substantially below the true market price at the time and place of sale or disposal, then the department shall compute the gross value of such portion of the coal sold or disposed of substantially below the market price, which gross value must be based upon the quotations of the price of coal in New York City or the relative market value at the point of delivery at the time such portion of the

coal was sold or otherwise disposed of as evidenced by some established authority or market report. Should there be no quotation covering any type of coal, then the department shall fix the value of the gross product or such portion thereof as has been sold or otherwise disposed of at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem equitable.

NEW SECTION. Section 9. Lien of tax -- enforcement of payment. (1) The taxes on net profits calculated under [section 6] must be levied as the levy of other taxes is provided for, and every such tax is a lien upon the mine or mining claim from which the coal is mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such coal, provided such personal or real property is owned by or under lease by the person who extracted the coal.

(2) The tax on net profits may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax is a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods of

enforcing collection provided for does not bar the right to resort to either or both of the other methods, but any two or all of the methods provided for may be used until the full amount of such tax is collected.

NEW SECTION. Section 10. Examination of records by department. The department shall have the right and power at any time to examine the records of any person specified in [sections 5 through 9] as the same may pertain to the yield of coal in order to verify the statements made by such person, and if, from such examination or from other information, the department finds any statement or any material part thereof willfully false or fraudulent, the department shall assess in the same manner as provided for in [section 8].

NEW SECTION. Section 11. Surface ground and improvements not exempt. Nothing in [sections 1 through 10] may be construed to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim or used in connection therewith or supplies used in mines.

NEW SECTION. Section 12. Rate of taxation. The rate of taxation on net profits of coal mined must be set by the department by rule. The rate beginning July 1, 1987, must be set in an amount so that the net profit tax when added to the 10% severance tax contained in 15-35-103 would equal the

tax paid under the former 30% severance tax on base production. The tax rate on net profits of new or interim production is one-half of the rate for base production. On July 1, 1989, and thereafter, the tax rate on net profits for all coal mined must be equal to the rate applied to new or interim production on July 1, 1987.

NEW SECTION. Section 13. Repealer. Sections 15-35-106 and 15-35-201 through 15-35-205, MCA, are repealed.

NEW SECTION. Section 14. Codification instruction. Sections 5 through 12 are intended to be codified as an integral part of Title 15, chapter 35, and the provisions of Title 15, chapter 35, apply to sections 5 through 12.

NEW SECTION. Section 15. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 16. Effective dates. (1) Sections 1 through 11 and 13 are effective July 1, 1987.

(2) Sections 12, 14, 15, and this section are effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB857 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the taxation of coal; reducing the coal severance tax; imposing a tax on the net profits derived from mining coal; and providing effective dates.

ASSUMPTIONS:
The proposed legislation would require a combined severance tax (10%) and net profits tax equal to what the tax otherwise would be under the current 30 percent severance tax. Also, the proposed legislation does not change the distribution of coal tax receipts. Consequently, there is no effect on revenues or expenditures in the coming biennium.

The above consequence is based on the assumption that all coal companies will maintain a level of "profit" sufficient to generate current law revenues.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
During the coming biennium, the proposed legislation provides for a net profits tax rate on new or interim production equal to half the net profits rate applied to base production. Beginning July 1, 1989 the net profit tax rate on all production would be equal to the rate applied to new production during the 1989 biennium. Based on FY89 projections (REAC) this would result in a drop in coal tax revenues of approximately $27 million in fiscal years beyond FY89.

David L Hunter DATE 3/7/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Bob Raney DATE 3/9
BOB RANEY, PRIMARY SPONSOR

Fiscal Note for HB857, as introduced.

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