

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE SEVERANCE TAX
ACT RELATING TO THE COAL SURTAX EXEMPTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-26-6.2 NMSA 1978 (being Laws
1990, Chapter 83, Section 1 and also Laws 1990, Chapter 84,
Section 1, as amended) is amended to read:

"7-26-6.2. COAL SURTAX EXEMPTION--QUALIFICATION
REQUIREMENTS.--

A. The following coal is exempt from the surtax
imposed on coal under the provisions of Section 7-26-6 NMSA
1978:

(1) coal sold and delivered pursuant to coal
sales contracts that are entered into on or after July 1,
1990, under which deliveries start after July 1, 1990, if the
sales contracts are not the result of:

(a) a producer and purchaser mutually
rescinding an existing contract and negotiating a revised
contract under substantially similar terms and conditions;

(b) a purchaser establishing an
affiliated company to purchase coal on behalf of the
purchaser; or

(c) a purchaser independently
abrogating a contract that was in effect on July 1, 1990 with

a producer for the purpose of securing the benefits of the exemption granted by this section; and

(2) coal sold and delivered pursuant to a contract in effect on July 1, 1990 that exceeds the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, whichever is greater.

B. If a contract existing on July 1, 1990 is renegotiated between a producer and a purchaser after May 20, 1992 and if that renegotiated contract requires the purchaser to take annual coal deliveries in excess of the greater of the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall not apply to such excess deliveries for the remaining term of the renegotiated contract.

C. For coal exempt under the provisions of Paragraph (2) of Subsection A of this section, if the contract involved was for a lesser term during the production years specified, then actual deliveries shall be annualized to establish average calendar year deliveries, and in the event that coal sold and delivered in a calendar year after June 30, 2009 falls below the average calendar year deliveries during 1987, 1988 and 1989, the exemption shall no

longer apply unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract.

D. The taxpayer, prior to taking the exemption provided by this section, shall register any contract for the sale of coal that qualifies for the exemption from the surtax under the provisions of this section with the department on forms provided by the secretary. If upon examination of the contract or upon audit or inspection of transactions occurring under the contract the secretary or the secretary's delegate determines that a person who is a party to the contract has taken an action to circumvent the intent and purpose of this section, the exemption shall be disallowed." ==

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