

1982-83 Va. Op. Atty. Gen. 514, 1982-83 Va. Rep. Atty. Gen. 514, 1983 WL 164960 (Va.A.G.)

Office of the Attorney General
Commonwealth of Virginia

*1 June 28, 1983

TAXATION. COAL SEVERANCE. CONTRACT MINER MAY BE LIABLE FOR PAYMENT OF TAX.

The Honorable Mark K. Flynn
County Attorney for **Tazewell** County

This is in response to your letter in which you asked two questions concerning the imposition of the **severance** tax on coal authorized by § 58-266.1:1 of the Code of Virginia. That section permits counties and cities to levy a license tax on “every person engaging in the business of severing coal and gases from the earth.”

You describe the factual context in which your questions arise as follows. While there are various types of underground mining operations, one common method in **Tazewell** County is for the coal company which owns the land or mineral rights or which owns a lease to those rights to enter into a contract with a miner (contract miner) for the actual mining of the coal. In this method of operation, the contract miner actually severs the coal from the earth and delivers it to a point designated by the owner for further processing. Often the delivery point is in an adjoining county and, on occasion, is in West Virginia. Typically, the contract miner is responsible for obtaining the necessary federal and state licenses and permits for his operation. It is clear, however, that the contract miner has no right or authority to sell the coal to third parties or to use it for his own benefit. According to your letter, the contract miner is generally an independently owned operation employing ten to twenty employees.

With these facts in mind, you have asked two questions:

1. Upon whom does § 58-266.1:1 impose the responsibility for payment of the **severance** tax, the contract miner who severs the coal or the company owning the coal?
2. For determination of the gross receipts upon which the **severance** tax is imposed, is the fair market value of the coal to be calculated solely on the price paid to the contract miner, or are additional factors required by the statute to be considered?

In response to your first question, a **severance** tax may not be imposed by localities except in accordance with the provisions of the Code. Section 58-266.1:1 permits the **severance** license tax in question to be imposed only on “every person engaging in the business of severing coal or gases from the earth.” The General Assembly did not define “the business of severing coal...” It is unclear whether the provision should be read so literally that the tax is imposed upon the individual actually doing the work (the employee of the contract miner in your description), or, alternatively, upon the company or firm retained by the owner to dig out the coal (the contract miner in your description), or still differently, upon the owner who arranges for the **severance** of the coal.

In a case of ambiguity, one guide in statutory construction is the interpretation given by those administrators charged with the statute's implementation. While certainly not conclusive, this aid in statutory construction is particularly helpful when the interpretation has been consistent over the years and when it began simultaneously with the adoption of the statute. See [County of Henrico v. Management Recruiters of Richmond, Inc.](#), 221 Va. 1004, 1010, 277 S.E.2d 163 (1981); 2A [Sutherland Statutory Construction](#) § 49.03 (1973).

*2 It is my understanding from your letter that the **Tazewell** County officials, following **Tazewell's** adoption of the **severance** tax ordinance in 1978, have generally levied the tax upon the contract miner in those situations in which a contract miner is retained to sever the coal. This approach is apparently consistent with the industry understanding. Most importantly, it is consistent with the language of the Cdde. Significantly, the legislature, which has the authority to change provisions if it believes the interpretation is erroneous, has not taken action to change it. Legislative inaction following administrative interpretation for a number of years may be deemed legislative acquiescence in the interpretation. This, too, is an important aid in statutory construction. See [Dan River Mills, Inc. v. Unemployment Commission](#), 195 Va. 997, 1002, 81 S.E.2d 620 (1954); 2A [Sutherland Statutory Construction](#) § 49.10 (1973).

Accordingly, based upon the foregoing, I am unable to conclude that this administrative interpretation apparently consistently applied over the years, has been wrong. Consistent with that interpretation, I believe that the tax may be levied upon the contract miner in those situations such as described above. Of course, this does not prevent the owner from making the actual payment on behalf of the contract miner, but the contract miner would still be legally liable to the county for the payment.

Turning to your second question concerning the method of valuation, the pertinent portion of § 58-266.1:1 provides:

“Such tax shall be at a rate not to exceed one per centum of the gross receipts from sale of coal or gases severed within such county. Such gross receipts shall be the fair market value measured at the time such coal or gases are utilized or sold for utilization in such county or city or at the time they are placed in transit for shipment therefrom, provided that if the tax provided herein be levied, such county or city cannot enact the provisions of § 58-774 relating to a tax on gross receipts.”

The answer to this question may be ascertained in a manner similar to the first question. In your letter, you state that the “majority of the taxes have been paid based on gross receipts arrived at by determining the price which the contract miner receives per ton from the lessee/owner.”

As indicated above, administrative interpretation is a helpful guide in statutory construction. Moreover, this administrative interpretation is logical and consistent with the practice of imposing the assessment of **severance** taxes upon the contract miner. Where the contract miner pays the assessment, it is logical that its gross receipts, the basis for the tax, be measured by the amount of money which it receives from the owner. Under such circumstances, I am unable to conclude that the statute requires consideration of additional factors.

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Attorney General

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