

BOARD OF SUPERVISORS  
COUNTY OF RUSSELL  
LEBANON, VIRGINIA

Ordinance

At a regular meeting of the Russell County Board of Supervisors held in the Russell County Government Center, Lebanon, Virginia on the \_\_\_\_\_ day of \_\_\_\_\_, 2012:

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Present

Vote

Jon Bowerbank, Chairman  
Joseph Puckett, Vice Chairman  
Bob Gibson  
Ernest "Shy" Kennedy  
Larry Rasnake  
Danny L. Brown  
Rebecca Dye

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On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, which carried \_\_\_\_\_, the following ordinance was adopted:

COAL, GAS, AND OIL SEVERANCE TAX ORDINANCE

WHEREAS, the Russell County Board of Supervisors, pursuant to state law, has had in effect a Local Coal and Gas Severance Tax Ordinance; and

WHEREAS, the Russell County Board of Supervisors, pursuant to state law, has from time to time amended and reenacted the Coal and Gas Severance Tax Ordinance; and

WHEREAS, the Russell County Board of Supervisors has adopted, amended or reenacted the Coal and Gas Severance Tax Ordinance to include the provisions of §§ 58.1-3712, 58.1-3713 and 58.1-3713.4; and

WHEREAS, the Russell County Board of Supervisors wishes to amend the Coal and Gas Severance Tax Ordinance to include the provisions of Virginia Code § 58.1-3703.1; and

WHEREAS, Russell County, Virginia acting by and through its governing body, after notice of a public hearing as required by law and after conducting a public hearing on February 6, 2012, does hereby reenact, adopt and amend the Coal and Gas Severance Tax Ordinance, and shall be henceforth known as the Coal, Gas, and Oil Severance Tax Ordinance; and

WHEREAS, AN ORDINANCE TO REPLACE AND SUPERSEDE PREVIOUS ORDINANCES RELATED TO THE IMPOSITION OF LICENSE TAXES ON EVERY PERSON ENGAGED IN THE BUSINESS OF SEVERING COAL, GAS, AND OIL FROM THE EARTH IN RUSSELL COUNTY AS PROVIDED BY VIRGINIA CODE SECTIONS 58.1-3703.1, 58.1-3712, 58.1-3712.1, 58.1-3713, AND 58.1-3713.4.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF SUPERVISORS OF RUSSELL COUNTY, VIRGINIA THE IMPOSITION OF THE FOLLOWING LOCAL LICENSE TAX AND THAT IT BE AMENDED AND REENACTED AS FOLLOWS:

SECTION 1. IMPOSITION OF TAX PURSUANT TO STATE LAW

This Ordinance hereby incorporates by reference the provisions of Virginia Code Sections 58.1-3703.1 (as applicable to local severance license taxes), 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4.

Pursuant to §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4 of the Virginia Code, the following Coal, Gas, and Oil Severance Taxes are levied and imposed by this Ordinance:

A. Pursuant to § 58.1-3712, a local severance license tax is levied and imposed on every person in the business of severing coal or gases, including methane, propane and other migratory gases at a rate of one percent (1%) of the gross receipts from the sale of coal or gases, including methane, propane and other migratory gases severed within Russell County. Pursuant to § 58.1-3712.1, a local severance license tax is levied and imposed on every person in the business of severing oil at a rate of one-half of one percent (0.5%) of the gross receipts from the sale of oil severed in Russell County. Gross receipts shall be defined as the fair market value measured at the time such coal, oil, or gases, including methane, propane or other migratory gases are utilized or sold for utilization in the County or at the time they are placed in transit for shipment from Russell County. Producers of coal, oil, or gases, including methane, propane or other migratory gases and common carriers shall be required to maintain records and file reports showing the quantities of and receipts from coal, oil, or gases which they have produced or transported.

B. Pursuant to § 58.1-3713, a local coal and gas road improvement and Virginia Coal and Economic Development Authority severance license tax is levied and imposed on every person engaged in the business of severing coal or gases, including methane, propane or other migratory gases at a rate on one percent (1%) of the gross receipts from the sale of coal or gases, including methane, propane and other migratory gases severed within Russell County. Gross receipts shall be defined as the fair market

value measured at the time such coal or gases, including methane, propane and other migratory gases are utilized or sold for utilization in the County or at the time they are placed in transit for shipment from Russell County. The provisions of Virginia Code § 58.1-3712 as they relate to the measurement of gross receipts, filing of reports and record keeping shall be applicable to the tax herein imposed.

C. In addition to the taxes levied pursuant to §§ 58.1-3712, 58.1-3712.1, and 58.1-3713, and additional local severance license tax is levied and imposed pursuant to § 58.1-3713.4 on every person engaged in the business of severing gases, including methane, propane and other migratory gases at a rate of one percent of the gross receipts from the sale of gases, including methane, propane and other migratory gases from Russell County. Gross receipts shall be defined as the fair market value measured at the time such gases, including methane, propane and other migratory gases are utilized or sold for utilization in the County or at the time they are placed in transit for shipment from Russell County. The provisions of § 58.1-3712 as they relate to the measurement of gross receipts, filing of reports and record keeping shall be applicable to the tax imposed under this Section.

## SECTION 2. RATE OF TAXATION

A. Pursuant to Virginia Code Section 58.1-3712, a local severance license tax is levied and imposed on every person engaged in the business of severing coal or gases, including methane, propane and other migratory gases from the earth in Russell County. The rate of taxation shall be one percent (1%) of the gross receipts from the sale of coal or gases, including methane, propane and other migratory gases. The gross receipts shall be the fair market value measured at the time such coal or gases, including methane,

propane and other migratory gases are utilized or sold for utilization in Russell Count or at the time they are placed in transit for shipment from Russell County.

B. Pursuant to § 58.1-3712.1, a local severance license tax is levied and imposed on every person in the business of severing oil at a rate of one-half of one percent (0.5%) of the gross receipts from the sale of oil severed from the earth in Russell County. The gross receipts shall be the fair market value measured at the time such oil is utilized or sold for utilization in Russell Count or at the time such oil is placed in transit for shipment from Russell County.

C. Pursuant to § 58.1-3713, a coal and gas license tax of one percent of the gross receipts is levied on each person engaged in the business of severing coal or gases, including methane, propane and other migratory gases from the earth in Russell County. The coal and gas road improvement and the Virginia Coalfield Economic Development Authority severance license tax shall be levied on the gross receipts from the sale of coal or gases, including methane, propane and other migratory gases severed from the earth in Russell County. Gross receipts shall be the fair market value measured at the time such coal or gases, including methane, propane and other migratory gases are utilized or are sold for utilization in Russell County or at the time they are placed in transit for shipment from Russell County.

D. Pursuant to § 58.1-3713.4, notwithstanding the rate limitations established in §§ 58.1-3712 and 58.1-3713, an additional license severance tax is levied and imposed on every person engaged in the business of severing gases, including methane, propane and other migratory gases from the earth in Russell County. The license severance tax shall be at a rate of one percent of the gross receipts from the sale of gas severed from the

earth in Russell County. The gross receipts shall be the fair market value measured at the time such gases, including methane, propane and other migratory gases are utilized or sold for utilization in Russell County or at the time they are placed in transit for shipment from Russell County.

### SECTION 3. DEFINITIONS

The following words, terms, and phrases when used in the Ordinance shall have the meanings ascribed to them in the section, except where the context clearly indicates a different meaning.

A.     “*Acted responsibly*” means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

B.     “*Amount in dispute*” when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

C.     “*Appealable event*” means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the Commissioner’s (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or

classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

D. “*Coal*” shall include any material composed predominantly of hydrocarbons in a solid state or any products made therefrom.

E. “*Commissioner*” shall mean the Commissioner of the Revenue of Russell County, Virginia.

F. “*Common Carrier*” means any person or corporation involved in any phase of the transportation of coal, oil, or gases, including methane, propane and other migratory gases within Russell County or from the County. This includes, but is not limited to, the receiving collection or assembly of coal, oil, or gases, including methane, propane and other migratory gases from conveyance from one mode of transportation to another or the same mode as well as the actual movement of the coal, oil, or gases, including methane, propane and other migratory gases in shipment.

G. “*Events beyond the taxpayer's control*” include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

H. “*Frivolous*” means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not

well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

I.       “*Gas*” means and includes any substance or form that is neither liquid nor solid and which is sought for and removed from the earth for the vapor itself, and used for lighting, heating, cooling or any other purpose, including, but not limited to, natural gas, propane, methane and other migratory gases from the earth.

J.       “*Gross Receipts*” shall mean the fair market value measured at the time such coal, oil, or gases, including methane, propane and other migratory gases are utilized or sold for utilization in Russell County or at the time they are placed in transit for shipment from Russell County, Virginia. In a transaction involving related parties, gross receipts shall not be less than the fair market value for coal, oil, or gas of a similar grade and quality. The term gross receipts shall include only those receipts derived from property located in Russell County. In calculating the fair market value, no person engaging in the production and operation of severing gases from the earth in connection with coal mining shall be allowed to take deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.

K.       “*Jeopardized by delay*” means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property therein; or (iv) do any other act tending to

prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

L.     “*Oil*” means an oily flammable bituminous liquid that occurs in many places in the upper strata of the earth either in seepages or in reservoir formations from which it is obtained by drilling and pumping if necessary, that is essentially a complex mixture of hydrocarbons of different types with small amounts of other substances, and that is subject to various refining processes for producing useful products.

M.     “*Operator*” shall mean any resident or nonresident person having an economic interest in coal, oil, or gas, including methane, propane and other migratory gases mined or extracted in the County, or any person who first receives proceeds from the sale of coal, oil, or gases, including methane, propane and other migratory gases mined in the County. This term may include owners and producers.

N.     “*Owner*” means the owner of legal or equitable interest in said coal, oil, or gases, including methane, propane and other migratory gases at the time of severance.

O.     “*Person*” shall include any individual, firm, partnership, corporation, cooperative, joint venture, association, estate, trust, business trust, trustee in bankruptcy, receiver, syndicate, assignee or other group or combination acting as a unit, in the plural as well as the singular number.

P.     “*Producer*” means any person engaged in severing coal, oil, or gases, including methane, propane and other migratory gases from the earth in Russell County, Virginia, including any owner or operator so engaged as such terms are defined and used herein.

Q. "Severing", "Severance", or "Severed" as used in this Ordinance shall mean the taking from any land, soil or slag piles situated in Russell County, Virginia of any coal, oil, or gases, including methane, propane and other migratory gases in any manner whatsoever.

R. "Well" shall mean a shaft or hole sunk, dug, or bored to obtain oil or natural gas, propane, methane and other migratory gases from the earth.

#### SECTION 4. MAINTENANCE OF RECORDS

A. Each person, owner, producer and/or common carrier of coal, oil, or gases, including methane, propane and other migratory gases shall maintain records and file reports showing the source, quantity and gross receipts on payments for coal, oil, and gases, including methane, propane and other migratory gases which they have produced or transported. The reports shall be filed with the Commissioner.

B. Said records shall be sufficient to enable the Commissioner to verify the correctness of the tax paid for the license years assessable and to enable the Commissioner to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the Commissioner in order to allow the Commissioner to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The Commissioner shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside of Russell County, copies of the appropriate books and records shall be sent to the Commissioner's office upon demand.

## SECTION 5. LICENSE OF OPERATORS

A. Prior to the beginning of any mining, oil, or gas operation in Russell County, every person and/or operator shall file with the Commissioner an application for a severance tax license for each mine or well prior to beginning business if he was not subject to licensure in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the license year if he had been issued a license for the preceding year. Every application shall be signed by the operator, if a natural person; for an association or partnership, the application shall be signed by a member or partner; for a corporation, the application shall be signed by an executive officer or person specifically authorized by the corporation to sign the application. Each application shall be accompanied by a list of all persons having an economic interest in a mine, mining operations, and oil and gas wells.

B. When the required application has been made, the Commissioner may issue a license to each applicant who has met all of the requirements of this Ordinance. A separate severance tax license shall be issued for each mine or well operated within the County. The severance tax license shall not be transferable. The operator or person shall post the detachable part of the license where it will be readily visible at the entrance of the mining or well operation.

C. The Commissioner may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to

be unreasonable under the circumstances, with a penalty of ten percent (10%) of the portion paid after the due date.

D. No severance tax license shall be issued to a person or agent for a person who owns an interest in a mining operation or well owing delinquent severance taxes at the time the application is submitted; and when such facts are known to the Commissioner, he may, at his election, hold a hearing as provided for in this Section.

E. Whenever any person fails to comply with any provision of this severance tax ordinance, the Commissioner, at his election, may hold a hearing after giving such person ten (10) days written notice, specifying the time and place of the hearing. The purpose of the hearing is to require the person and/or operator to show cause why the severance tax mining license should not be revoked, suspended, or denied. The Commissioner may revoke, suspend or deny any or all of the severance tax mining licenses held by such person and/or operator for noncompliance with the ordinance or for other good cause.

F. If the holder of a severance tax mining license ceases mining or well operations, the severance tax license shall expire upon the cessation of mining or well operations, and such holder of the severance tax mining license shall inform the Commissioner in writing within thirty (30) days of the cessation of any mining or well operations. A copy of the written communication shall also be provided to the Treasurer.

G. A penalty of ten percent (10%) of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the Commissioner if both the application and payment are late; however, both penalties may be assessed if the Commissioner

determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Commissioner, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Commissioner is not paid within 30 days, the Treasurer or other collecting official may impose a 10 percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

H. Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the Commissioner is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any severance tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under § 58.1-3916.

I. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than

30 days from the date of the payment that created the refund or the due date of the tax, whichever is later.

#### SECTION 6. RETURN BY OPERATORS

Every person and/or operator shall pay the severance license tax levied pursuant to Virginia Code Sections 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4 on or before the twentieth day of each month for the preceding calendar month. The report shall show the total gross receipts from the sale of coal, oil, or gases, including methane, propane and other migratory gases severed in Russell County. Gross receipts shall be the fair market value measured at the time such coal, oil, or gases, including methane, propane and other migratory gases are utilized or sold for utilization in Russell County or at the time they are placed in transit for shipment from the County. The tax returns shall be prepared and transmitted to the Commissioner by every person and/or operator on or before the twentieth day of each month for the preceding calendar month. The Commissioner shall transmit to the Treasurer a copy of all returns, taxes owed or payments.

#### SECTION 7. SUBMISSION OF RECORDS BY COMMON CARRIERS

Any common carrier involved in the transportation of coal, oil, or gases, including methane, propane and other migratory gases within or from Russell County shall submit upon request of the Commissioner records showing the source and quantity; and if purchased, the price paid for all coal, oil, and gases, including methane, propane and other migratory gases which they have acquired and/or transported. This information may be made available to any other political subdivision in which the coal, oil, or gases, including methane, propane and other migratory gases have been severed.

## SECTION 8. PAYMENT TO ACCOMPANY OPERATIONS RETURN

At the time of transmitting the tax return as required by this Ordinance to the Commissioner, the person shall remit to the Treasurer the amount of tax due under the applicable provisions of this Ordinance. Failure to remit such tax shall cause such tax to become delinquent on the twenty-first day of the month following the month in which the tax became due and payable. A penalty of ten percent (10%) shall be assessed upon all delinquent taxes. In addition, interest will be charged at the rate of ten percent (10%) per annum with both penalty and interest imposed as of the first day of the month following the month in which the tax became delinquent. The Treasurer shall notify the Commissioner in writing of all payments received identifying the taxpayer; the amount received and any outstanding taxed due and owed.

## SECTION 9. REISSUANCE OF LICENSE

Upon receipt of the prescribed returns as required by this Ordinance and payment of taxes or extension granted pursuant to this Ordinance, the Commissioner may issue the severance license tax for the succeeding month.

## SECTION 10. LIMITATIONS AND EXTENSIONS

A. Upon payment of a sum equal to fifty percent (50%) of the average license severance taxes paid pursuant to §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4 for the previous three (3) months, plus penalty and interest of 10%, the Commissioner of Revenue, for good cause shown, may grant an extension of thirty (30) days for any delinquent severance taxes.

B. Where, before the expiration of the time prescribed for the assessment of any local severance license tax imposed pursuant to this Ordinance, both the

Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

C. Notwithstanding § 58.1-3903, the Commissioner shall assess the local severance license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

D. The period for collecting any local severance license tax shall not expire prior to the period specified in § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this subdivision of the Ordinance, two years after the final determination of an appeal for which collection has been stayed pursuant to this Ordinance, or two years after the final decision in a court application pursuant to § 58.1-3984 or a similar law for which collection has been stayed, whichever is later.

#### SECTION 11. ASSESSMENT BASED ON ESTIMATE

In the event an operator and/or person fails to make a tax return as provided by this Ordinance, makes an incorrect return, or files a return that is false or fraudulent, it shall be the duty of the Commissioner to make an estimate of the severance license taxes due plus interest and penalty. The Commissioner shall give such individual a ten (10) day written notice requiring such individual to appear before him with such books, records, papers and other documents as he may require; require such operator and/or person or their agents and employees to give sworn testimony and/or to answer interrogatories under oath. The Commissioner is hereby authorized to make a severance

license tax assessment against any individual who fails to make the return as provided by this Ordinance, makes an incorrect return, or files a return that is false or fraudulent. The assessment shall be deemed *prima facie* correct.

#### SECTION 12. BOND

The Commissioner may, when in his judgment, it is necessary and advisable to secure the collection of a severance license tax levied by this ordinance, require any person and/or operator file with him a bond secured by a surety company authorized to do business in Virginia. The bond shall be in such reasonable amounts as the Commissioner may fix to secure the payment of any tax, penalty or interest due or which may become due.

#### SECTION 13. JEOPARDY ASSESSMENT

If the Commissioner is of the opinion that the collection of the severance license tax imposed by this Ordinance will be jeopardized by delay or non-payment, he shall make an assessment of the tax, including penalty and interest and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the taxes, penalties and interest. The Commissioner may declare the tax period for the current pay period immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated. Such tax shall be immediately due and payable whether or not the time otherwise allowed by the Ordinance for filing a return and paying tax, penalty and interest has expired.

## SECTION 14. TAX WARRANTS

When any tax becomes delinquent under this Ordinance, the Treasurer is empowered by statute and this Ordinance to issue a civil warrant for the collection of the tax, penalty and interest. Costs and attorney's fees shall be added to any other penalties imposed.

## SECTION 15. PENALTIES

- A. The following persons shall be guilty of a Class 1 Misdemeanor:
  - (1) Any person who conducts mining, or oil or gas well operation in this County without obtaining a license or after a license has been suspended or revoked.
  - (2) Each officer or director of a corporation that conducts mining, or oil or gas well operation in this County without obtaining a license or after a license has been suspended or revoked.
  - (3) Each shareholder of a closely-held corporation that conducts mining, or oil or gas well operation in this County without obtaining a license or after a license has been suspended or revoked.

No person shall be convicted under the provisions of subsections (2) and (3) of this section who shall have objected to the conduct of the mining, oil or gas well operation in writing to the president or secretary of such corporation and forwarded a copy of this objection to the Commissioner.

- B. It shall be unlawful for any person:
  - (1) To fail to keep the records required by this Ordinance or to make such records available as herein required; or

- (2) Willfully fail to pay, collect or truthfully account for and pay any license tax herein imposed; or
- (3) Willfully to attempt in any manner to evade or defeat any such license tax or the payment thereof.

- C. Each day that this Ordinance is violated shall constitute a separate offense.
- D. Violations under this Ordinance shall be Class 1 Misdemeanors.

- E. Any penalty imposed for a violation of this Ordinance shall be in addition to the civil remedies or penalties provided for by law or Ordinance.

#### SECTION 16. DISTRIBUTION OF REVENUE

Local severance license taxes as collected pursuant to this Ordinance shall be distributed consistent with the terms and conditions of §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4.

#### SECTION 17. COAL AND GAS ROAD IMPROVEMENT ADVISORY COMMITTEE

Pursuant to § 58.1-3713, there is hereby established a "Coal and Gas Road Improvement Advisory Committee." The Committee shall be composed of four members: (i) a member of the Russell County Board of Supervisors, appointed by the Board of Supervisors; (ii) a representative of the Virginia Department of Transportation; and (iii) two citizens of Russell County connected with the coal or gas industry, appointed for a term of four years, by the chief judge of the circuit court.

#### SECTION 18. COAL AND GAS ROAD IMPROVEMENT PLAN

The Coal and Gas Road Improvement Advisory Committee shall develop on or before July 1 of each year a plan for improvement of roads during the following fiscal year. Such plan shall have the approval of three members of the Committee and shall be

submitted to the Board of Supervisors for approval. The Board of Supervisors may approve or disapprove such plan, but may make no changes without the approval of three members of the Committee.

#### SECTION 19. COAL AND GAS ROAD IMPROVEMENT WITHIN TOWNS

The Board of Supervisors may also, at its discretion, elect to make an appropriation from a Coal and Gas Road Improvement Fund directly to town councils for the improvement of town roads.

#### SECTION 20. SPECIAL FUND

A. The Treasurer of Russell County shall set up a special fund for monies collected from taxes imposed under this Sections 1(B) and 2(C) of this Ordinance, pursuant to § 58.1-3713. Said fund shall be called the "Coal Road Improvement Fund."

B. Coal Road Improvement Fund monies shall be spent in the manner designated in § 58.1-3713.

#### SECTION 20. ADMINISTRATIVE APPEALS TO COMMISSIONER

A. *Filing and contents of administrative appeal.* Any person assessed with a local severance license tax as a result of an appealable event as defined in this Ordinance may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the Commissioner. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Commissioner may hold a conference with the taxpayer

if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed *prima facie* correct. The Commissioner shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.

B. *Notice of right of appeal and procedures.* Every assessment made by the Commissioner pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.

C. *Suspension of collection activity during appeal.* Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Commissioner, unless the Treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the commissioner of the revenue or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Commissioner that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of this Ordinance, but no further penalty shall be imposed while collection action is suspended.

D. *Procedure in event of nondecision.* Any taxpayer whose administrative appeal to the Commissioner pursuant to the provisions of this Ordinance has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the Commissioner, elect to treat the appeal as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of this Ordinance. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the Commissioner was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner or other assessing official to make his determination.

#### SECTION 21. ADMINISTRATIVE APPEAL TO THE TAX COMMISSIONER

A. Any person assessed with a severance tax as a result of a determination, upon an administrative appeal to the Commissioner pursuant to this Ordinance, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the Tax Commissioner within 90 days of the date of the determination by the commissioner of the revenue or other assessing official. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the Commissioner. The Tax Commissioner shall permit the Commissioner to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the Commissioner are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to § 58.1-1822.

B. *Suspension of collection activity during appeal.* On receipt of a notice of intent to file an appeal to the Tax Commissioner under this Ordinance, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Tax Commissioner, unless the Treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the Commissioner, or the Tax Commissioner, that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Commissioner that the appeal is frivolous as defined in this Ordinance. Interest shall accrue in accordance with the provisions of this Ordinance, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to this Ordinance is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

C. *Implementation of determination of Tax Commissioner.* Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to this Ordinance, the Commissioner shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions of this Ordinance.

(1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the Commissioner shall certify the amount to the Treasurer, and the Treasurer shall issue a bill to the taxpayer for such amount due, together with interest accrued and

penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner.

(2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the Commissioner shall certify the amount to the Treasurer, and the Treasurer shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.

(3) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the Commissioner to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the Commissioner shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Commissioner shall certify the new assessment to the Treasurer, and the Treasurer shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

(4) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the Commissioner to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the Commissioner shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the

taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Commissioner shall certify the new assessment to the Treasurer, and the Treasurer shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

SECTION 22. JUDICIAL REVIEW OF DETERMINATION OF TAX COMMISSIONER

A. *Judicial review.* Following the issuance of a final determination of the Tax Commissioner pursuant to this Ordinance, the taxpayer or Commissioner may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

B. *Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.*

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to 58.1-3984, of a determination of the Tax Commissioner pursuant to this Ordinance, and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the

Treasurer shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality.

For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

(2) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

(3) No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute.

(4) The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to §58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(5) The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of

an action pursuant to §58.1-3984 without prior exhaustion of the appeals provided by this Ordinance.

C. *Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.*

(1) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant to this Ordinance shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.

(2) No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.

(3) The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

D. *Accrual of interest on unpaid amount of tax.* Interest shall accrue in accordance with the provisions of this Ordinance, but no further penalty shall be imposed while collection action is suspended.

## SECTION 23. RULINGS

Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local severance license tax to a specific situation from the Commissioner. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the Commissioner notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

## SECTION 24. EXPIRATION OF SEVERANCE TAXES

This Ordinance shall continue with full force and effect until legislation is adopted by the Virginia General Assembly revoking the locality's authority to impose the severance taxes as imposed by §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4.

## SECTION 25. VALIDITY-SEVERABILITY

In the event the taxes imposed by §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4, or any part thereof, or any part of this Ordinance should be held unconstitutional, void or invalid, all other such provisions of this Ordinance shall remain in full force and effect.

## SECTION 26. EFFECTIVENESS

The provisions of this Ordinance shall take effect on \_\_\_\_\_, 2011, pursuant to §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4 of the Code of Virginia, 1950, as amended, and:

A. All unpaid coal, oil, and gas license severance taxes owed pursuant to §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4 which were due and payable prior to enactment of this revised Ordinance shall remain due and payable pursuant to 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4.

B. All persons having valid coal, oil, or gas severance tax license or coal haul road severance tax licenses, pursuant to prior severance tax ordinances, shall be considered to have similar licenses pursuant to this Ordinance until such time as such licenses must be renewed as provided for herein.

C. The penalties for violations of such prior coal and gas severance tax ordinances shall remain applicable and in full force and effect; however, except as otherwise provided herein such ordinances are hereby repealed.

D. This Ordinance shall supercede all other coal, oil, or gas severance tax ordinances as previously adopted by the Russell County Board of Supervisors.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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\_\_\_\_\_  
CHAIRMAN,  
RUSSELL COUNTY BOARD OF SUPERVISORS

ATTEST:

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CLERK