

BOARD OF SUPERVISORS  
COUNTY OF RUSSELL  
LEBANON, VIRGINIA

Ordinance

At a regular meeting of the Russell County Board of Supervisors held in the Auditorium, Castlewood High School on the 4th day of June, 2013.

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<u>Present</u>	<u>Vote</u>
Jon Bowerbank, Chairman	Aye
Joseph Puckett, Vice Chariman	Aye
Bob Gibson	Aye
Ernest "Shy" Kennedy	Aye
Larry Rasnake	Aye
Danny L. Brown	Aye
Rebecca Dye	Aye

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On motion of Joseph Puckett, seconded by Ernest "Shy" Kennedy, which carried 7-0, the following ordinance was adopted:

**AMENDMENT TO AND RESTATEMENT OF RUSSELL COUNTY  
COAL, GAS AND OILSEVERANCE LICENSE TAX ORDINANCE -- 2013**

ORDINANCE - MINERAL SEVERANCE LICENSE TAX

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## **A. Coal Severance License Tax**

### **Sec. A-1. - Statutory Authority.**

The coal severance license tax portions of this ordinance are adopted pursuant to Chapter 37.1 of Title 58.1 of the Code of Virginia (§ 58.1-3740 et seq.) and all other applicable sections of Chapters 37 and 39 of Title 58.1 of the Code of Virginia, as amended, whether or not the specific section is cited herein. Such adoption is by reference and is inclusive, including all tax collection and lien enforcement provisions provided by Virginia law. Any and all additional and applicable sections of Chapters 37, 37.1 and 39 of Title 58.1 of the Code of Virginia, as amended, including but not limited to Virginia Code § 58.1-3703.1, are hereby adopted and incorporated herein by reference. Any amendments to any applicable sections of Chapter 37, Chapter 37.1, and Chapter 39 of Title 58.1 of the Code of Virginia, as amended, shall be deemed to be incorporated into this ordinance when they become effective as if they were separately adopted.

### **Sec. A-2. - Effective Date of Amendments.**

(A) As it applies to coal severance license taxes, this ordinance, including the general provisions in Section C, revises and replaces previous ordinances enacted under authority of Virginia Code §§ 58.1-3712 and 58.1-3713 as applied to persons engaged in the business of severing coal from the earth ("Prior Coal Severance License Tax Statutes"). These amendments are intended to reflect changes in the law set forth in Virginia Code § 58.1-3740 et seq. and associated statutory provisions enacted by the Virginia General Assembly in 2013. Sections A-1 through A-4 shall be effective as of July 1, 2013. Sections A-1 through A-4 of this ordinance are intended to be applied in accordance with the terms herein. Past administrative practices in applying prior ordinances enacted pursuant to Virginia Code §§ 58.1-3712, 58.1-3712.1, 58.1-3713, 58.1-3713.3, and 58.1-3713.4 shall not apply in interpreting such provisions of this ordinance.

(B) All unpaid taxes authorized by the Prior Coal Severance License Tax Statutes shall remain due and payable.

(C) All persons having a valid mineral severance license granted pursuant to the County's previously enacted ordinances under the Prior Coal Severance License Tax Statutes shall be deemed to have a license pursuant to this ordinance until such time as such licenses must be renewed as provided herein.

(D) The penalties for violations of the County's previously enacted ordinances under the Prior Coal Severance License Tax Statutes prior to the effective date shall remain applicable and in full force and effect.

(E) All assessments and collections previously made pursuant to the Prior Coal Severance License Tax Statutes prior to the effective date shall remain applicable and are hereby affirmed and ratified pursuant to appropriate statutory authority.

### **Sec. A-3. - Coal Definitions.**

The following words, terms, and phrases, when used in this ordinance as applied to coal severance license taxes, shall have the meaning ascribed to them in this section, unless otherwise defined by Virginia law or where the context clearly indicates a different meaning.

*Coal* means and include any mineral deposit composed predominantly of hydrocarbons in a solid state.

*Coal producer* shall have the meaning set forth in Virginia Code § 58.1-3740.

*Economic interest* shall have the meaning set forth in Virginia Code § 58.1-3740.

*Gross receipts* shall have the meaning set forth in Virginia Code § 58.1-3740.

*Non-local coal transportation and processing costs* shall have the meaning set forth in Virginia Code § 58.1-3740.

*Severing, severance, and severed* with regard to coal means the taking of any coal from any land, soil, slag piles, or any other source situated in the County in any manner whatsoever.

*Small mine* shall have the meaning set forth in Virginia Code § 58.1-3740.

*Utilized or utilize* means to put to beneficial use for such purposes as making coke, facility heating, power generation, machinery operation, equipment operation, and similar uses.

### **Sec. A-4. - Tax levied.**

(A) A license tax is hereby levied and imposed pursuant to Virginia Code § 58.1-3741(A) on every coal producer that sells or utilizes coal severed from the earth within the County. The rate of tax for the sale or utilization of coal from small mines shall be three-fourths of one percent of the gross receipts from the sale or utilization of such coal by the coal producer. The rate of tax for all other coal shall be one percent of the gross receipts from the sale or utilization of such coal by the coal producer.

(B) In addition to the tax imposed in subsection (A), a license tax is hereby levied and imposed pursuant to Virginia Code § 58.1-3741(B) on every coal producer that sells or utilizes coal severed from the earth within the County. The rate of tax for the sale or utilization of coal

from small mines shall be three-fourths of one percent of the gross receipts from the sale or utilization of such coal by the coal producer. The rate of tax for all other coal shall be one percent of the gross receipts from the sale or utilization of such coal by the coal producer.

(C) The foregoing taxes are hereby levied and imposed in addition to all other taxes and fees of every kind now imposed by law upon every coal producer.

## **B. Gas and Oil Severance License Taxes**

### **Sec. B-1. - Statutory Authority.**

The gas and oil severance license tax portions of this ordinance are adopted pursuant to Virginia Code §§ 58.1-3712, 58.1-3712.1, 58.1-3713, 58.1-3713.3, and 58.1-3713.4 (the "Gas Severance License Tax Statutes") and all other applicable sections of Chapters 37 and 39 of Title 58.1 of the Code of Virginia, as amended, whether or not the specific section is cited herein. Such adoption is by reference and is inclusive, including all tax collection and lien enforcement provisions provided by Virginia law. Any and all additional and applicable sections of Chapters 37 and 39 of Title 58.1 of the Code of Virginia, as amended, including but not limited to Virginia Code § 58.1-3703.1, are hereby adopted and incorporated herein by reference. Any amendments to any applicable sections of Chapter 37 and Chapter 39 of Title 58.1 of the Code of Virginia, as amended, shall be deemed to be incorporated into this ordinance when they become effective as if they were separately adopted.

### **Sec. B-2. - Effective Date of Amendments.**

(A) As it applies to gas and oil severance license taxes, this ordinance, including the general provisions in Section C, amends the Russell County Coal, Gas and Oil Severance License Tax Ordinance adopted in June, 2012, which was enacted under authority of the Severance License Tax Statutes and effective as of January 1, 2008. These amendments shall not alter that prior effective date. This ordinance is intended to be applied in accordance with the terms stated herein. Past administrative practices in applying prior ordinances enacted pursuant to the Gas Severance License Tax Statutes shall not apply in interpreting this ordinance.

(B) All unpaid taxes authorized by the Gas Severance License Tax Statutes shall remain due and payable.

(C) All persons having a valid mineral severance license granted pursuant to the County's previously enacted ordinances under the Gas Severance License Tax Statutes shall be deemed to have a license pursuant to this ordinance until such time as such licenses must be renewed as provided herein.

(D) The penalties for violations of the County's previously enacted ordinances under the Gas Severance License Tax Statutes prior to the effective date shall remain applicable and in full force and effect.

(E) All assessments and collections previously made pursuant to the Gas Severance License Tax Statutes prior to the effective date shall remain applicable and are hereby affirmed and ratified pursuant to appropriate statutory authority.

### **Sec. B-3. – Gas and Oil Definitions.**

The following words, terms, and phrases, when used in this ordinance as applied to gas and oil severance license taxes, shall have the meaning ascribed to them in this section, unless otherwise defined by Virginia law or where the context clearly indicates a different meaning.

*Coalbed methane gas* means occluded natural gas produced from coalbeds and rock strata associated therewith.

*Fair market value* means the following: (1) in circumstances where the gas or oil is sold by arms-length transaction between unrelated persons, the sale price of the gas or oil; (2) in circumstances in which the gas or oil is (i) utilized or (ii) sold in a related party transaction or under other circumstances that indicate that the sale is not an arms-length transaction, the average sale price received by the person engaged in the business of severing oil or gas from the earth in arms-length transactions for the sale of other minerals of comparable quality produced from a comparable area during the same time frame or, if none, the sale price for other such minerals of comparable quality as indicated by either appropriate regional indices or sales by other persons engaged in the severance of similar minerals within the County or neighboring counties.

*Gas* means all natural gas, including, but not limited to, coalbed methane gas, whether hydrocarbon or non-hydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil herein.

*Gross receipts* means, except in the case of persons engaging in the production and operation of severing gases from the earth in connection with coal mining, the fair market value of the severed oil or gas measured at the time the oil or gas is utilized or sold for utilization in the County or at the time the oil or gas is placed in transit for shipment from the County. When such minerals are placed in transit for shipment from the County, fair market value may be reduced by deducting reasonable costs actually incurred by the person engaged in the business of severing oil or gas from the earth in processing or transporting the mineral after it is placed in transit for shipment from the County prior to sale of the mineral. For persons engaging in the production and operation of severing gases from the earth in connection with coal mining, *gross receipts* means the fair market value of the gas measured at the time it is utilized or sold for utilization in the County or at the time it is placed in transit for shipment from the County, with no deduction or allowance for costs. In all circumstances, *gross receipts* includes the royalty share of the mineral(s) severed and all minerals subject to a royalty obligation.

*Mineral or minerals* means oil or gas.

*Oil* means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well, in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

*Owner* means the owner of a legal or equitable interest in oil or gas at the time of severance.

*Person* means and includes any individual, firm, partnership, limited liability company, corporation, cooperative, joint venture, association, estate, trust, business trust, trustee, trustee in bankruptcy, any person acting under a declaration of trust, executor, administrator, partner, agent, receiver, syndicate, assignee, or other group or combination acting as a unit, in the plural as well as in the singular number.

*Person engaged [or engaging] in the business of severing oil or gas from the earth* means the following: (1) where the minerals are unleased, the owner(s) of such minerals; or (2) where the minerals are leased, the lessee of the mineral or the lessee of the right to extract, mine or produce such minerals.

*Placed in transit for shipment from the county* means the point in distribution of the severed mineral at which the mineral is placed in final shipment from the County with no additional treatment, processing, compression, handling, or mechanical manipulation to be performed within the County. Except in cases where gas is produced at the wellhead at sufficient pressure and quality such that it is not treated in any manner or compressed by mechanical compressor within the County, gas is not placed in transit for shipment from the County at the wellhead.

*Severing, severance, and severed* with regard to oil or gas means the taking of any oil or gas from any land, soil, landfill, or any other formation or source situated in the County in any manner whatsoever.

*Severing gases from the earth in connection with coal mining* means producing coalbed methane gas from wells that directly or indirectly remove gas from: (1) units or permitted well areas which include coal seams that have been fractured by current or previous mining activities ("GOB wells"); and (2) units or permitted well areas which include coal seams that have been fractured in the absence of mining ("FRAC wells") but where all or some of the fractured coal seams are within a permitted mine boundary or within the area projected for mining by the 20-year mine plan map for any coal operator.

*Utilized or utilize* with regard to oil or gas means to put to beneficial use for such purposes as facility heating, power generation, machinery operation, equipment operation, and similar uses. Utilized minerals include oil or gas that is severed from the earth within the County and used by the person engaged in the business of severing oil or gas from the earth (or those acting on his behalf, at his direction, or with his permission or consent) in some beneficial manner, in which case, the severed and utilized mineral shall be deemed to have been sold for the fair market value of such mineral.

#### **Sec. B-4. - Tax levied.**

(A) A license tax is hereby levied and imposed pursuant to § 58.1-3712 of the 1950 Code of Virginia, as amended, on every person engaged in the business of severing gas from the earth. Such tax shall be at a rate of 1% of gross receipts.

(B) In addition to the taxes levied in subsection (A) herein, a license tax is hereby levied and imposed pursuant to § 58.1-3713 of the 1950 Code of Virginia, as amended, on every person engaged in the business of severing gas from the earth. Such tax shall be at a rate of 1% of gross receipts.

(C) In addition to the taxes levied in subsections (A) and (B) herein, a license tax is hereby levied and imposed pursuant to § 58.1-3713.4 of the 1950 Code of Virginia, as amended, on every person engaged in the business of severing gas from the earth. Such tax shall be at a rate of 1% of gross receipts.

(D) A license tax is hereby levied and imposed pursuant to § 58.1-3712.1 of the Code of Virginia, as amended, on every person engaged in the business of severing oil from the earth. Such tax shall be at a rate of one-half of 1% of gross receipts.

(E) The foregoing taxes are hereby levied and imposed in addition to all other taxes and fees of every kind now imposed by law upon every person engaged in the business of severing oil or gas from the earth.

### **C. General Provisions Applicable to Coal, Gas and Oil Severance License Taxes**

#### **Sec. C-1. - General Definitions.**

The following words, terms, and phrases, when used in this ordinance, shall have the meaning ascribed to them in this section, unless otherwise defined by Virginia law or where the context clearly indicates a different meaning.

*Closely-held corporation* means a corporation not publicly traded and having twenty (20) or fewer shareholders.

*Common carrier* means any person involved in any phase of the transportation of coal, oil, or gas within the County or from the County. This includes, but is not limited to, the receiving, collection, or assembly of coal, oil, or gas for conveyance from one mode of transportation to another or to the same mode of transportation, as well as the actual movement of the coal, oil, or gas in shipment.

*Mining operation* means any act or activity which results in the severing of coal, oil, or gas from the earth.

*Person* means and includes any individual, firm, partnership, limited liability company, corporation, cooperative, joint venture, association, estate, trust, business trust, trustee, trustee in bankruptcy, any person acting under a declaration of trust, executor, administrator, partner,

agent, receiver, syndicate, assignee, or other group or combination acting as a unit, in the plural as well as in the singular number.

**Sec. C-2. - License generally.**

(A) It shall be unlawful for any coal producer or any person to engage in the business of severing coal, oil, or gas from the earth within the County or to cause others to sever coal, oil, or gas from the earth within the County unless the coal producer or person engaging in the business of severing coal, oil, or gas from the earth has first obtained a current license to do so issued by the Commissioner of Revenue.

(B) Every coal producer and every person engaged in the business of severing oil or gas from the earth shall file with the Commissioner of Revenue an application for a license for each of such coal producer's or such person's mining operations in the County. Every application shall be signed by each such coal producer or person or an authorized representative of such coal producer or person. In connection with any such application, the coal producer or the person engaged in the business of severing oil or gas from the earth shall provide such information as the Commissioner of Revenue may require.

(C) Every coal producer and every person engaged in the business of severing oil or gas from the earth that did not have a license to sever coal, oil, or gas in the County in the previous license tax year shall file an application as provided herein prior to beginning any severance of coal, oil, or gas in the County.

Every coal producer and every person engaged in the business of severing oil or gas from the earth that had a license or licenses to sever coal, oil, or gas in the County in the previous license tax year shall file an application for the renewal of such license or licenses on or before March 1 of the current license tax year. In such case, the existing license shall remain in effect until the new license is issued. Issuance of a new license may be conditioned upon receipt by the Commissioner of Revenue of a written report from the County Treasurer documenting such person's payment of any license taxes due or an arrangement for the payment of any license taxes.

The Commissioner of Revenue may grant an extension of time in which to file an application for a license or renewal thereof, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax. Any such estimated tax is 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 10 percent of the portion paid after the due date.

(D) When the required application has been made, the Commissioner of Revenue shall issue to each applicant who has met all of the requirements of this ordinance a separate license for each mining operation within the County, which license shall not be transferable.

(E) No license shall be issued or reissued under this section to a person who owns an interest in a mining operation conducted by a person owing delinquent taxes at the time the application is submitted, or to a person who owes delinquent taxes. When such facts are known to the Commissioner of Revenue, he may, at his election, hold the hearing provided for in subsection (f) of this section. An arrangement for payment of delinquent taxes made by the County Treasurer may be treated as payment for the purposes of this section.

(F) Whenever any person fails to comply with any provision of this ordinance, the Commissioner of Revenue may hold a hearing after giving such person ten (10) days' notice, in writing, specifying the time and place of hearing and requiring the person to show cause why his license should not be revoked or suspended or his application for renewal of his license should not be denied. The Commissioner of Revenue may revoke or suspend or deny reissuance of any one or more of the licenses held by such person.

### **Sec. C-3. - Returns.**

Every coal producer and every person engaged in the business of severing oil or gas from the earth required to pay any of the taxes imposed by this ordinance shall, on or before the twentieth day of each month, transmit to the Commissioner of Revenue, upon a form furnished by the Commissioner, a completed return showing such information as the Commissioner of Revenue may require, including (i) the quantities of coal, oil, and gas produced from each mining operation, (ii) the gross receipts from all coal, oil, and gas severed from each mining operation during the immediately preceding calendar month, and (iii) any deductions that have been applied in calculating gross receipts. At the request of the Commissioner of Revenue, coal producers and persons engaging in the business of severing oil or gas shall provide the names and addresses of any owners or other persons participating in each mining operation, any persons who are members of an affiliated group of which the operator is a member and to whom the coal, oil, or gas was sold or placed into transit for shipment from the County, and all persons having an economic interest in the mining operation. In the event that any date on which a return is to be filed falls upon a Saturday, Sunday, legal holiday, or other date on which the County Courthouse is closed, then the time for the filing of such return shall be extended until the next day that the Commissioner of Revenue's office is open for business. This return shall be made under oath and subject to the penalty for perjury. The Commissioner of Revenue shall transmit to the County Treasurer forthwith all records related to the taxes owed by and the payments received from each coal producer and each person engaged in the business of severing gas or oil from the earth.

### **Sec. C-4. - Payment of tax; penalty and interest on delinquencies.**

(A) At the time of transmitting the return required by Sec. C-3 to the Commissioner of Revenue, the coal producer or person engaged in the business of severing oil or gas from the earth shall remit to the County Treasurer therewith the amount of tax due under the applicable provisions of this ordinance. Failure to remit such tax by the deadline for filing the return required by Sec. C-3 shall cause such tax to become delinquent.

(B) A penalty of 10 percent of the tax may be imposed upon the failure to file an application for a license or the failure to pay the required tax by the appropriate due dates set forth in this ordinance. Only the late filing penalty shall be imposed by the Commissioner of Revenue if both the application and tax payment are late; however, both penalties may be assessed if the Commissioner of Revenue determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Commissioner of Revenue, 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 or 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 of Revenue is not paid within 30 days, the County Treasurer 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 County Treasurer. 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 or her control.

“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.

“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.

(C) 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 of Revenue 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 tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. However, 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. Interest charged on any late payment or paid on any refund shall be calculated at the same rate charged under Virginia Code § 58.1-3916. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year.

(D) The County Treasurer and the Commissioner of Revenue shall reconcile their records monthly concerning the identities of taxpayers, amounts received, outstanding taxes due, and, if applicable, any arrangements made by the County Treasurer for payment of delinquent taxes.

**Sec. C-5. - Procedure when coal producer or person engaged in the business of severing oil or gas from the earth fails to make return or makes incorrect or false return.**

In the event any coal producer or person engaged in the business of severing oil or gas from the earth fails to make a return as provided by this ordinance, the Commissioner of Revenue shall give such coal producer or such person 10 days' notice in writing requiring such coal producer or such person to appear before him, with such books, records, and papers as the Commissioner of Revenue may require relating to the business of such coal producer or such person for such taxable period, and the Commissioner of Revenue may require such coal producer or such person or the agents and employees of such coal producer or such person to give testimony or to answer interrogatories under oath respecting such mining or extracting of coal, oil, or gas or the failure to make a return thereof as provided in this ordinance. If, after being provided with the opportunity to supply such information, such coal producer or such person still fails to make a return or refuses to permit an examination of his or its books, records, or papers, or to appear and answer questions within the scope of such investigation, the Commissioner of Revenue is hereby authorized to make an estimate of gross receipts for all such coal, oil, or gas severed by or at the direction of such coal producer or such person and to assess the appropriate tax, plus penalties and interest in accordance with Sec. C-4, based upon such information as may be available to him. The County Treasurer may issue a warrant for the collection of any such taxes and penalties so found to be due. The assessment so made shall be deemed prima facie correct. In addition, the Commissioner of Revenue may, upon reasonable notice, assess taxes for such mining operation against any other person liable for the tax.

**Sec. C-6. - Procedure when coal producer or person engaged in the business of severing oil or gas from the earth ceases operations.**

If the holder of a license issued under this ordinance ceases to conduct a mining operation, the license shall thereupon expire, and such license holder shall inform the Commissioner of Revenue in writing within 30 days thereafter that he has ceased to conduct such mining operation. A copy of such report, upon receipt thereof, shall be forwarded to the County Treasurer.

**Sec. C-7. - Maintenance of Records.**

(A) Every person who is assessable with a license tax under this ordinance or who is a common carrier of coal, oil, or gas shall keep sufficient records, including, but not limited to, records showing the source and quantity of, and gross receipts from, the coal, oil, and gas which he has produced or transported, or for which he has received some economic benefit, to enable the Commissioner of Revenue to verify the correctness of the tax paid for the license months or years assessable and to enable the Commissioner of Revenue to ascertain what is the correct amount of tax that was assessable for each of those months or years. All such records, books of accounts, and other information shall be open to inspection and examination by the Commissioner of Revenue in order to allow the Commissioner of Revenue to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the County. The Commissioner of Revenue shall provide such persons with the option to conduct the audit in

such person's local business office within the County, if the records are maintained there. In the event the records are maintained outside the County, copies of the appropriate books and records shall be sent to the Commissioner's office upon demand.

(B) Any common carrier involved in the transportation of coal, oil, or gas within or from the County shall submit, upon request, to the Commissioner of Revenue records showing the source and quantity of, and, if purchased, the price paid for, all coal, oil, or gases which the common carrier acquired or transported during the applicable time periods. This information may be made available to any other political subdivision in which the coal, oil, or gas may have been severed.

#### **Sec. C-8. - Distribution of taxes collected.**

The taxes collected pursuant to this ordinance shall be paid and distributed as provided by Virginia law. Any taxes not distributed according to specific provisions of law shall be paid into the general fund of the County. In the event that a taxpayer is issued a refund of severance license taxes paid pursuant to this ordinance, the recipients of the revenue from such severance license taxes shall be proportionately liable for such refund based on their respective percentages of the original distribution of such revenue. The County Treasurer is hereby authorized to offset such liability for any such refund against any future distribution of severance license tax revenues paid pursuant to this ordinance.

#### **Sec. C-9. - Coal and Gas Road Improvement Advisory Committee generally.**

Pursuant to Virginia Code § 58.1-3713, there is hereby established a Coal and Gas Road Improvement Advisory Committee to be composed of four (4) members as follows: A member of the Board of Supervisors of the County appointed by the Board of Supervisors; a representative of the Virginia Department of Transportation; and two (2) citizens of the County connected with the coal and gas industries and to be appointed for a term of four years by the chief judge of the circuit court.

#### **Sec. C-10. - Coal and gas road improvement plans.**

Pursuant to Virginia Code § 58.1-3713, the Coal and Gas Road Improvement Advisory Committee shall develop, on or before July first of each year, a plan for improvement of roads during the following fiscal year. Such plan must have the approval of three members of the committee and shall be submitted to the Board of Supervisors of the County 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.

#### **Sec. C-11. - Use of County funds for coal and gas road improvements in towns or city.**

The Board of Supervisors may, in its discretion, and when permitted by applicable state law, elect to improve city and town roads with its funds, if consent of the city or town council is obtained.

#### **Sec. C-12. - Violations and penalties.**

(A) The following persons shall be guilty of a Class 1 misdemeanor:

- (1) Any person who engages in the business of severing coal, oil, or gas from the earth in this County without first obtaining a license or after a license has been suspended or revoked.
- (2) Each officer or director of a corporation that engages in the business of severing coal, oil, or gas from the earth in this County without first obtaining a license or after a license has been suspended or revoked, provided that such officer or director had actual or constructive knowledge that the corporation was engaging in the business of severing coal, oil, or gas from the earth in this County without first obtaining a license or after a license had been suspended or revoked.
- (3) Each shareholder of a closely-held corporation that engages in the business of severing coal, oil, or gas from the earth in this County without first obtaining a license or after a license has been suspended or revoked, provided that such shareholder had actual or constructive knowledge that the corporation was engaging in the business of severing coal, oil, or gas from the earth in this County without first obtaining a license or after a license had been suspended or revoked.
- (4) Any person who violates any provision of this ordinance.

Each day of violation shall constitute a separate offense. 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 operation in writing to the president or secretary of such corporation and forwarded a copy of this objection to the Commissioner of Revenue.

(B) It shall be unlawful for any person:

- (1) To fail to keep the records required by this ordinance or fail to make such records available as herein required; or
- (2) Willfully to 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.

Each day of violation shall constitute a separate offense.

(C) Violations under this section shall be Class 1 misdemeanors, and shall be punishable by a fine not to exceed \$2,500.00 for each day of violation and confinement in the County jail for not more than twelve (12) months, either or both in the discretion of the court or jury trying the case. Conviction of a second offense under this section shall, in addition to a fine not to exceed \$2,500.00, require confinement in the County jail for not less than ten (10) days nor more than twelve (12) months.

(D) Any penalty imposed for violation of this section shall be in addition to the civil remedies or penalties provided for by law.

**Sec. C-13. - Limitations and extensions of assessments and collections of tax.**

(A) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this ordinance, both the Commissioner of Revenue 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.

(B) Notwithstanding Virginia Code § 58.1-3903, the Commissioner of Revenue shall assess the license tax omitted because of fraud or failure to apply for a license for the current license tax year and the six preceding license tax years.

(C) The period for collecting any local license tax shall not expire prior to the period specified in Virginia Code § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this section, two years after the final determination of an appeal for which collection has been stayed pursuant to subsections (B) or (D) of Sec. C-14, or two years after the final decision in a court application pursuant to Virginia Code § 58.1-3984 or a similar law for which collection has been stayed, whichever is later.

**Sec. C-14. - Administrative appeals to the Commissioner of Revenue.**

(A) Definitions for purposes of this section:

*"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.

*"Appealable event"* means an increase in the assessment of a license tax payable by a taxpayer, the denial of a refund, or the assessment of a license tax where none previously was assessed, arising out of the Commissioner of Revenue'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 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.

*"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.

*“Jeopardized by delay”* means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the County; (ii) remove his property from the County; (iii) conceal himself or his property in the County; 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.

(B) *Filing and contents of administrative appeal.* Any person assessed with a license tax as a result of an appealable event as defined in this section 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 of the Revenue. 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 of Revenue 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 of Revenue 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.

(C) *Notice of right of appeal and procedures.* Every assessment made by the Commissioner of Revenue 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 County, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for the filing of an appeal.

(D) *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 of Revenue, unless the County Treasurer (i) determines that collection would be jeopardized by delay as defined in subsection (A) of this section; (ii) is advised by the Commissioner of Revenue that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Commissioner of Revenue that the appeal is frivolous as defined in subsection (A) of this section. Interest shall accrue in accordance with the provisions of subsection (C) of Sec. C-4, but no further penalty shall be imposed while the collection action is suspended.

(F) *Procedure in event of nondecision.* Any taxpayer whose administrative appeal to the Commissioner of Revenue pursuant to the provisions of this section 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 of Revenue, elect to treat the appeal as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of Sec. C-15. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this ordinance if he finds that the absence of a final determination on the part of the Commissioner

of Revenue was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the Commissioner of Revenue to make his determination.

**Sec. C-15. - Administrative appeal to the Tax Commissioner.**

(A) Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the Commissioner of Revenue pursuant to Sec. C-14, 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 Revenue. 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 of Revenue. The Tax Commissioner shall permit the Commissioner of Revenue 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 of Revenue are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Virginia Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to Virginia Code § 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 pursuant to the provisions of subsection (A) of this section, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Tax Commissioner, unless the County Treasurer (i) determines that collection would be jeopardized by delay as defined in subsection (A) of Sec. C-14; (ii) is advised by the Commissioner of Revenue, 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 of Revenue that the appeal is frivolous as defined in subsection (A) of Sec. C-14. Interest shall accrue in accordance with the provisions of subsection (C) of Sec. C-4, 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 the provisions of subsection (A) of this section 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 the provisions of subsection (A) of this section, the Commissioner of Revenue 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 County Treasurer 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 of Revenue shall certify the amount to the County Treasurer and the County Treasurer shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this ordinance, 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 of Revenue shall certify the amount to the County Treasurer and the County Treasurer shall issue a payment to the taxpayer for such amount due together with interest accrued pursuant to this ordinance, within 30 days of the date of the determination of the Tax Commissioner.

(3) If the determination of the Tax Commissioner does not forth a specific amount of tax due, or otherwise requires the Commissioner of Revenue 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 of Revenue 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 of Revenue shall certify the new assessment to the County Treasurer and the County Treasurer shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any as authorized by this ordinance, 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 of Revenue 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 of Revenue 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 of Revenue shall certify the new assessment to the County Treasurer and the County 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.

#### **Sec. C-16. - Judicial review of determination of the Tax Commissioner.**

(A) *Judicial review.* Following the issuance of a final determination of the Tax Commissioner pursuant to subsection (A) of Sec. C-15, the taxpayer or Commissioner of Revenue may apply to the Circuit Court in the County for judicial review of the determination, or any part thereof, pursuant to Virginia Code § 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 intent to initiate judicial review.*

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to Virginia Code § 58.1-3984, of a determination of the Tax Commissioner pursuant to

subsection (A) of Sec. C-15 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 County 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, determined that (i) the taxpayer's application for judicial review is frivolous, as defined in subsection (A) of Sec. C-14; (ii) collection would be jeopardized by delay, as defined in subsection (A) of Sec. C-14; or (iii) suspension of collection would cause substantial economic hardship to the County. For purposes of determining whether substantial economic hardship to the County would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the County 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 County, 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 Virginia Code § 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 section shall not be applicable to any appeal of a license tax that is initiated by the direct filing of an action pursuant to Virginia Code § 58.1-3984 without prior exhaustion of the appeals provided by Sec. C-14 and Sec. C-15.

*(C) Suspension of payment of disputed amount of refund due upon the County'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 subsection (A) of Sec. C-15 shall be suspended if the County 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 Virginia Code § 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 County's application for judicial review is frivolous, as defined in subsection (A) of Sec. C-14.

(2) No suspension of refund activity shall be permitted if the County'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 Virginia Code § 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 subsection (C) of Sec. C-4, but no further penalty shall be imposed while collection action is suspended.

#### **Sec. C-17. - Rulings.**

Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a license tax to a specific situation from the Commissioner of Revenue. 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 issues. A written ruling may be revoked or amended prospectively if (1) 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 (2) the Commissioner of Revenue 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.

#### **Sec. C-18. - Audits.**

The Commissioner of Revenue is authorized to perform any audits in connection with his duty to assess the taxes levied by this ordinance that, in his discretion, are necessary to enable him to verify the correctness of the tax paid for the license months or years assessable and to enable him to ascertain what is the correct amount of tax that was assessable for each of those months or years.

#### **Sec. C-19 - Severability.**

In the event any provisions of this ordinance or any part, section, subsection, sentence, definition or phrase thereof should be held unconstitutional or otherwise void or invalid on any ground, such provision, part, section, subsection, sentence, or phrase shall be deemed severable and the remainder of this ordinance shall remain in full force and effect.

#### **Sec. C-20. - Uniform Provisions of Virginia Code § 58.1-3703.1.**

It is the intention of this ordinance to include the uniform ordinance provisions of § 58.1-3703.1, with the exception of subdivisions A1 and A3 of such section. To the extent that

any provision of this ordinance is in conflict with the provisions of § 58.1-3703.1 or this ordinance fails to recite or contain provisions substantially similar to those set forth in § 58.1-3703.1, (with the exception of subdivisions A1 and A3 of such section), such provisions of § 58.1-3703.1 are incorporated herein by reference and shall take precedence over any conflicting provisions in this ordinance.

**Sec. C-21. – Agreements with Taxpayers.**

No provision of this ordinance shall be construed or interpreted to change or affect, invalidate, or interfere with any agreement regarding coal, gas, or oil severance license taxes entered into between a taxpayer and the commissioner of the revenue or other local assessing official of the County.

**Secs. C-22 - C-25. - Reserved.**

ADOPTED AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS FOR RUSSELL COUNTY ON THE 4<sup>th</sup> DAY OF June, 2013, UPON DULY ADVERTISED NOTICE TO THE PUBLIC BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OF RUSSELL, VIRGINIA, AFTER PUBLIC HEARING, UPON MOTION AND SECOND.

RECORDED VOTE: 7-0

MEMBERS PRESENT: 7

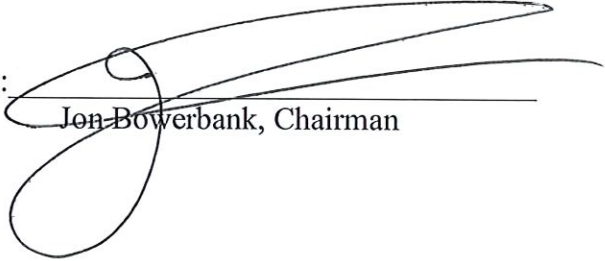
MEMBERS ABSENT: 0

AYES: 7

NAYS: 0

RUSSELL COUNTY BOARD OF  
SUPERVISORS

By: \_\_\_\_\_

  
Jon Bowerbank, Chairman

ATTEST:

  
CLERK