

1 AN ACT relating to coal severance tax.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 143.010 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "Department" means the Department of Revenue;
- 6 (2) "Coal" means and includes any material composed predominantly of hydrocarbons
7 in a solid state;
- 8 (3) "Severed," "severing," or "severance" means the physical removal of coal from the
9 earth;
- 10 (4) "Ton" means a short ton of 2,000 pounds. The number of tons shall be determined
11 at the first point at which the coal is weighed;
- 12 (5) (a) "Taxpayer" means and includes any individual, partnership, joint venture,
13 association, or corporation engaged in severing and/or processing coal in this
14 state. In instances where contracts, either oral or written, are entered into by
15 which persons, organizations, or businesses are engaged to mine or process
16 the coal but do not obtain title to or do not have an economic interest therein,
17 the party who owns the coal or has an economic interest shall be the taxpayer.
- 18 (b) For purposes of this chapter, a taxpayer possesses an economic interest in coal
19 where the taxpayer has acquired by investment any interest in coal and
20 secures, by any form of legal relationship, income derived from the severance
21 or processing of coal, to which he must look for a return of his capital. A party
22 who has no capital investment in the coal or who only receives an arm's length
23 royalty shall not be considered as having an economic interest;
- 24 (6) "Gross value" is defined as follows:
- 25 (a) For coal severed and/or processed and sold during a reporting period, gross
26 value shall be the amount received or receivable by the taxpayer;
- 27 (b) For coal severed and/or processed, but not sold during a reporting period,

1 gross value shall be determined as follows:

2 1. If the coal is to be sold under the terms of an existing contract, the
3 contract price shall be used in computing gross value; and

4 2. If there is no existing contract, the fair market value for that grade and
5 quality of coal shall be used in computing gross value;

6 (c) In a transaction involving related parties, gross value shall be the amount
7 received or receivable from the first noncontrolled sale by the related parties.
8 If coal is sold to a related party for consumption, gross value shall not be less
9 than the fair market value for coal of similar grade and quality;

10 (d) In the absence of a sale, gross value shall be the fair market value for coal of
11 similar grade and quality;

12 (e) If severed coal is purchased for the purpose of processing and resale, the gross
13 value shall be the amount received or receivable during the reporting period
14 reduced by the amount paid or payable to the registered taxpayer actually
15 severing the coal;

16 (f) If severed coal is purchased for the purpose of processing and consumption,
17 the gross value shall be the fair market value of processed coal of similar
18 grade and quality reduced by the amount paid or payable to the registered
19 taxpayer actually severing the coal;

20 (g) In all instances, the gross value shall not be reduced by any taxes, including
21 the tax levied by KRS 143.020, royalties, sales commissions, or any other
22 expense; and

23 (h) In all instances, transportation expense incurred in transporting coal shall not
24 be deducted from gross value~~[considered as gross income from the property]~~;

25 (7) "Reporting period" means the period for which each taxpayer shall compute his tax
26 liability and remit the tax due to the department. The reporting period shall be
27 monthly. However, the department may, under certain conditions, authorize a

- 1 quarterly reporting period;
- 2 (8) "Processing" includes cleaning, breaking, sizing, dust allaying, treating to prevent
3 freezing, or loading or unloading for any purpose. "Processing" shall not include:
- 4 (a) Acts performed by a final consumer who is not a related party to the person
5 who severed and/or processed the coal if such acts are performed only at the
6 site where the coal is consumed for purposes of generating electricity;
- 7 (b) The act of unloading or loading for shipment coal that has not been severed,
8 cleaned, broken, sized, or otherwise treated in Kentucky; or
- 9 (c) The use of electromagnetic energy on coal to reduce moisture, ash, sulfur, or
10 mercury in the coal;
- 11 (9) "Related party" means two (2) or more persons, organizations, or businesses owned
12 or controlled directly or indirectly by the same interest. Control shall exist if a
13 contract or lease, either written or oral, is entered into whereby one (1) party
14 mines or processes coal owned or held by another party and the owner or
15 lessor participates in the mining, processing, or marketing of the coal or
16 receives any value other than an arm's length passive royalty interest. In the
17 case of related parties, the department may apportion or allocate the receipts
18 between or among the persons, organizations, or businesses if it determines
19 that the apportionment or allocation is necessary in order to more clearly
20 reflect gross value;
- 21 (10) (a) "Transportation expense" means:
- 22 1. The amount paid by a taxpayer to a third party for transporting coal from
23 the mine mouth or pit to a processing plant, tipple, or loading dock; and
- 24 2. The expense incurred by a taxpayer using his own facilities in
25 transporting coal from the mine mouth or pit to a processing plant,
26 tipple, or loading dock.
- 27 (b) "Transportation expense" shall not include:

- 1 1. The cost of acquisition, improvements, and maintenance of real
2 property;
- 3 2. The cost of acquisition and operating expenses of mining and nonmining
4 loading or unloading facilities; or
- 5 3. The cost of acquisition and operating expenses of equipment used to
6 load or unload the coal at the mine, processing facility, and mining and
7 nonmining loading facility;
- 8 (11) "Registered taxpayer" means a taxpayer who holds a valid coal tax certificate of
9 registration required under KRS 143.030(1) and the certificate of registration was
10 valid for the period in which his coal was sold;
- 11 (12) "Above-drainage" means coal in a coal bed that outcrops at the surface within a
12 mine permit area and that is accessed at the outcrop location;
- 13 (13) "Below-drainage" means coal in a coal bed that does not outcrop at the surface
14 within a mine permit area and that is accessed by mine slopes or other openings that
15 penetrate the coal a minimum of thirty (30) feet below the surface drainage level;
16 and
- 17 (14) "Mining ratio" means the amount of bank cubic yards of surface material that must
18 be removed before a ton of coal can be mined.
- 19 ➔Section 2. This Act applies to periods beginning on or after July 1, 2019.