

CHAPTER 182**(HB 698)**

AN ACT relating to coal tax.

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

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

As used in this chapter, unless the context requires otherwise:

- (1) "Department" means the Department of Revenue.
- (2) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.
- (3) "Severed," "severing," or "severance" means the physical removal of coal from the earth.
- (4) "Ton" means a short ton of 2,000 pounds. The number of tons shall be determined at the first point at which the coal is weighed.
- (5) "Taxpayer" shall mean and include any individual, partnership, joint venture, association, or corporation engaged in severing and/or processing coal in this state. In instances where contracts, either oral or written, are entered into by which persons, organizations, or businesses are engaged to mine or process the coal but do not obtain title to or do not have an economic interest therein, the party who owns the coal or has an economic interest shall be the taxpayer.
- (6) "Gross value" is synonymous with gross income from property as defined in Section 613(c) of the Internal Revenue Code and regulations 1.613-3 and 1.613-4 in effect on December 31, 1977, with the exception that in all instances transportation expense, as defined in subsection (11) of this section, incurred in transporting coal shall not be considered as gross income from the property. Gross value shall be reported as follows:
 - (a) For coal severed and/or processed and sold during a reporting period, gross value shall be the amount received or receivable by the taxpayer.
 - (b) For coal severed and/or processed, but not sold during a reporting period, gross value shall be determined as follows:
 1. If the coal is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value.
 2. If there is no existing contract, the fair market value for that grade and quality of coal shall be used in computing gross value.
 - (c) In a transaction involving related parties, gross value shall be the amount received or receivable from the first noncontrolled sale by the related parties. If coal is sold to a related party for consumption, gross value shall not be less than the fair market value for coal of similar grade and quality.
 - (d) In the absence of a sale, gross value shall be the fair market value for coal of similar grade and quality.
 - (e) If severed coal is purchased for the purpose of processing and resale, the gross value shall be the amount received or receivable during the reporting period reduced by the amount paid or payable to the registered taxpayer actually severing the coal.
 - (f) If severed coal is purchased for the purpose of processing and consumption, the gross value shall be the fair market value of processed coal of similar grade and quality reduced by the amount paid or payable to the registered taxpayer actually severing the coal.
 - (g) In all instances, the gross value shall not be reduced by any taxes, including the tax levied by KRS 143.020, royalties, sales commissions, or any other expense.
- (7) "Reporting period" means the period for which each taxpayer shall compute his tax liability and remit the tax due to the department. The reporting period shall be monthly. However, the department may, under certain conditions, authorize a quarterly reporting period.
- (8) "Processing" includes cleaning, breaking, sizing, dust allaying, treating to prevent freezing, or loading or unloading for any purpose. "Processing" shall not include:

- (a) Acts performed by a final consumer who is not a related party to the person who severed and/or processed the coal if such acts are performed only at the site where the coal is consumed for purposes of generating electricity;~~{or}~~
 - (b) The act of unloading or loading for shipment coal that has not been severed, cleaned, broken, sized, or otherwise treated in Kentucky; *or*
 - (c) *The use of electromagnetic energy on coal to reduce moisture, ash, sulfur, or mercury in the coal.*
- (9) "Related party" means two (2) or more persons, organizations, or businesses owned or controlled directly or indirectly by the same interest. Control shall exist if a contract or lease, either written or oral, is entered into whereby one (1) party mines or processes coal owned or held by another party and the owner or lessor participates in the mining, processing, or marketing of the coal or receives any value other than an arm's length passive royalty interest. In the case of related parties, the department may apportion or allocate the receipts between or among the persons, organizations, or businesses if it determines that the apportionment or allocation is necessary in order to more clearly reflect gross value.
- (10) "Economic interest" for the purposes of this chapter shall be synonymous with the economic interest ownership required by Internal Revenue Code Section 611 in effect on December 31, 1977, entitling the taxpayer to a depletion deduction for income tax purposes with the exception that a party who only receives an arm's length royalty shall not be considered as having an economic interest.
- (11) "Transportation expense" shall mean:
- (a) The amount paid by a taxpayer to a third party for transporting coal from the mine mouth or pit to a processing plant, tipple, or loading dock.
 - (b) The expense incurred by a taxpayer using his own facilities in transporting coal from the mine mouth or pit to a processing plant, tipple, or loading dock.
 - (c) Transportation expenses shall not include:
 - 1. The cost of acquisition, improvements, and maintenance of real property;
 - 2. The cost of acquisition and operating expenses of mining and nonmining loading or unloading facilities;
 - 3. The cost of acquisition and operating expenses of equipment used to load or unload the coal at the mine, processing facility, and mining and nonmining loading facility.
- (12) "Registered taxpayer" as used in subsection (6)(e) and (f) of this section shall mean a "taxpayer" as defined in subsection (5) of this section who holds a valid coal tax certificate of registration required under KRS 143.030(1) and the certificate of registration was valid for the period in which his coal was sold.
- (13) "Above-drainage" means coal in a coal bed that outcrops at the surface within a mine permit area and that is accessed at the outcrop location.
- (14) "Below-drainage" means coal in a coal bed that does not outcrop at the surface within a mine permit area and that is accessed by mine slopes or other openings that penetrate the coal a minimum of thirty (30) feet below the surface drainage level.
- (15) "Mining ratio" means the amount of bank cubic yards of surface material that must be removed before a ton of coal can be mined.

Signed by Governor April 24, 2008.