

1 AN ACT relating to the natural resources severance and processing tax.

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

3 ➔Section 1. KRS 143A.010 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "Department" means the Department of Revenue;
- 6 (2) "Natural resource" means all forms of minerals including but not limited to rock,
7 stone, limestone, shale, gravel, sand, clay, natural gas, and natural gas liquids which
8 are contained in or on the soils or waters of this state. For purposes of this chapter,
9 "natural resource" does not include coal and oil which are taxed under KRS 143.020
10 and 137.120;
- 11 (3) "Severing" or "severed" means the physical removal of the natural resource from the
12 earth or waters of this state by any means; however, "severing" or "severed" shall
13 not include the removal of natural gas from underground storage facilities into
14 which the natural gas has been mechanically injected following its initial removal
15 from the earth;
- 16 (4) (a) "Taxpayer" means and includes any individual, partnership, joint venture,
17 association, corporation, receiver, trustee, guardian, executor, administrator,
18 fiduciary, or representative of any kind engaged in the business of severing
19 and/or processing natural resources in this state for sale or use. In instances
20 where contracts, either oral or written, are entered into whereby persons,
21 organizations or businesses are engaged in the business of severing and/or
22 processing a natural resource but do not obtain title to or do not have an
23 economic interest therein, the party who owns the natural resource or has an
24 economic interest is the taxpayer.
- 25 (b) For purposes of this chapter, a taxpayer possesses an economic interest in a
26 natural resource where the taxpayer has acquired by investment any interest in
27 a natural resource and secures, by any form of legal relationship, income

1 derived from the severance or processing of the natural resource, to which he
2 must look for a return of his capital. A party who has no capital investment in
3 the natural resource or who only receives an arm's length royalty shall not be
4 considered as having an economic interest;

5 (5) "Gross value" is defined as follows:

- 6 (a) For natural resources severed and/or processed and sold during a reporting
7 period, gross value is the amount received or receivable by the taxpayer;
- 8 (b) For natural resources severed and/or processed, but not sold during a reporting
9 period, gross value shall be determined as follows:
- 10 1. If the natural resource is to be sold under the terms of an existing
11 contract, the contract price shall be used in computing gross value; and
- 12 2. If there is no existing contract, the fair market value for that grade and
13 quality of the natural resource shall be used in computing gross value;
- 14 (c) In a transaction involving related parties, gross value shall not be less than the
15 fair market value for natural resources of similar grade and quality;
- 16 (d) In the absence of a sale, gross value shall be the fair market value for natural
17 resources of similar grade and quality;
- 18 (e) If severed natural resources are purchased for the purpose of processing and
19 resale, the gross value is the amount received or receivable during the
20 reporting period reduced by the amount paid or payable to the taxpayer
21 actually severing the natural resource;
- 22 (f) If severed natural resources are purchased for the purpose of processing and
23 consumption, the gross value is the fair market value of processed natural
24 resources of similar grade and quality reduced by the amount paid or payable
25 to the taxpayer actually severing the natural resource;
- 26 (g) In all instances, the gross value shall not be reduced by any taxes including the
27 tax levied in KRS 143A.020, royalties, sales commissions, or any other

1 expense; and

2 (h) In all instances, transportation expense incurred in transporting a natural
3 resource shall not be considered as gross income from the property;

4 (6) (a) "Processing," for all natural resources, includes but is not limited to
5 breaking, crushing, cleaning, drying, sizing, or loading or unloading for any
6 purpose.

7 (b) "Processing," for all natural resources other than limestone, shall not
8 include the act of unloading or loading for shipment natural resources that
9 have not been severed, cleaned, broken, crushed, dried, sized or otherwise
10 treated in Kentucky;

11 (7) "Related parties" means two (2) or more persons, organizations or businesses
12 owned or controlled directly or indirectly by the same interests; and

13 (8) (a) "Transportation expense" means:

14 1. The amount paid by a taxpayer to a third party for transporting natural
15 resources; and

16 2. The expenses incurred by a taxpayer using his own facilities in
17 transporting natural resources from the point of extraction to a
18 processing plant, tipple, or loading dock.

19 (b) "Transportation expense" shall not include:

20 1. The cost of acquisition, improvements, and maintenance of real
21 property;

22 2. The cost of acquisition and operating expenses of mining and nonmining
23 loading or unloading facilities; or

24 3. The cost of acquisition and operating expenses of equipment used to
25 load or unload the natural resource at the point of extraction, processing
26 facility, or mining and nonmining loading facility.

27 ➔Section 2. KRS 143A.035 is amended to read as follows:

- 1 (1) A credit is ~~hereby~~ allowed against the tax imposed by KRS 143A.020~~[this chapter]~~
 2 on the gross value of limestone which is severed or processed within this state and
 3 sold to a purchaser outside of this state. **This credit shall:**
- 4 ~~(a)(2)~~ ~~[The credit allowed in subsection (1) of this section shall]~~Be equal to
 5 the tax imposed by KRS 143A.020~~[this chapter]~~ on the gross value of a
 6 similar quantity of severed or processed limestone valued as of the day the
 7 sale is made to a purchaser outside of this state;~~[-]~~
- 8 ~~(b)(3)~~ ~~[The credit allowed in this section shall]~~Extend only to a taxpayer who
 9 severs or processes limestone through the rip-rap construction aggregate or
 10 agricultural limestone stages, and who sells in interstate commerce not less
 11 than sixty percent (60%) of such stone; **and**
- 12 ~~(c)~~ ~~[-The credit shall]~~Not be allowed to a taxpayer who processes the limestone
 13 beyond the agricultural limestone stage.
- 14 **(2) A credit is allowed against the tax imposed by KRS 143A.020 on the gross value**
 15 **of limestone that has been severed or processed outside this state and then**
 16 **unloaded in this state, upon which a severance tax substantially identical to the**
 17 **tax imposed by KRS 143A.020 for the privilege of severing or processing**
 18 **limestone has been paid by the taxpayer to another state or any political**
 19 **subdivision thereof. This credit shall be allowed as follows:**
- 20 **(a) The credit shall be equal to the amount of tax actually paid by the taxpayer**
 21 **to the other state or political subdivision thereof, but shall not exceed the**
 22 **liability of the taxpayer for the tax imposed by KRS 143A.020; and**
- 23 **(b) Proof of payment of the tax shall be submitted as prescribed by the**
 24 **department.**
- 25 **(3) A taxpayer may claim the credit allowed in subsection (1) or (2) of this section,**
 26 **but may not claim both in relation to the same limestone.**
- 27 **(4) In no event shall a taxpayer be eligible to receive a total amount of any credit, or**

1 any combination of credits, allowed by this section that exceeds the liability of the
 2 taxpayer for the tax imposed by KRS 143A.020.

3 (5) On or before January 1, 2023, and annually thereafter as long as the credits in
 4 subsections (1) and (2) of this section are permitted, the department shall report
 5 to the Legislative Research Commission:

6 (a) The cumulative amount of tax credits claimed under subsection (1) of this
 7 section and the cumulative amount of tax credits claimed under subsection
 8 (2) of this section, by taxpayers for each taxable year;

9 (b) The number of taxpayers that claimed the credit under subsection (1) of this
 10 section and the number of taxpayers that claimed the credit under
 11 subsection (2) of this section, for each taxable year; and

12 (c) Based on the mailing address of the return, the total amount of credits
 13 claimed under subsection (1) of this section and the total amount of credits
 14 claimed under subsection (2) of this section, by county for each taxable
 15 year.

16 ➔Section 3. KRS 131.190 is amended to read as follows:

17 (1) No present or former commissioner or employee of the department, present or
 18 former member of a county board of assessment appeals, present or former property
 19 valuation administrator or employee, present or former secretary or employee of the
 20 Finance and Administration Cabinet, former secretary or employee of the Revenue
 21 Cabinet, or any other person, shall intentionally and without authorization inspect or
 22 divulge any information acquired by him or her of the affairs of any person, or
 23 information regarding the tax schedules, returns, or reports required to be filed with
 24 the department or other proper officer, or any information produced by a hearing or
 25 investigation, insofar as the information may have to do with the affairs of the
 26 person's business.

27 (2) The prohibition established by subsection (1) of this section shall not extend to:

- 1 (a) Information required in prosecutions for making false reports or returns of
2 property for taxation, or any other infraction of the tax laws;
- 3 (b) Any matter properly entered upon any assessment record, or in any way made
4 a matter of public record;
- 5 (c) Furnishing any taxpayer or his or her properly authorized agent with
6 information respecting his or her own return;
- 7 (d) Testimony provided by the commissioner or any employee of the department
8 in any court, or the introduction as evidence of returns or reports filed with the
9 department, in an action for violation of state or federal tax laws or in any
10 action challenging state or federal tax laws;
- 11 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
12 energy resources assessed under KRS 132.820, or owners of surface land
13 under which the unmined minerals lie, factual information about the owner's
14 property derived from third-party returns filed for that owner's property, under
15 the provisions of KRS 132.820, that is used to determine the owner's
16 assessment. This information shall be provided to the owner on a confidential
17 basis, and the owner shall be subject to the penalties provided in KRS
18 131.990(2). The third-party filer shall be given prior notice of any disclosure
19 of information to the owner that was provided by the third-party filer;
- 20 (f) Providing to a third-party purchaser pursuant to an order entered in a
21 foreclosure action filed in a court of competent jurisdiction, factual
22 information related to the owner or lessee of coal, oil, gas reserves, or any
23 other mineral resources assessed under KRS 132.820. The department may
24 promulgate an administrative regulation establishing a fee schedule for the
25 provision of the information described in this paragraph. Any fee imposed
26 shall not exceed the greater of the actual cost of providing the information or
27 ten dollars (\$10);

- 1 (g) Providing information to a licensing agency, the Transportation Cabinet, or
2 the Kentucky Supreme Court under KRS 131.1817;
- 3 (h) Statistics of gasoline and special fuels gallonage reported to the department
4 under KRS 138.210 to 138.448;
- 5 (i) Providing any utility gross receipts license tax return information that is
6 necessary to administer the provisions of KRS 160.613 to 160.617 to
7 applicable school districts on a confidential basis;
- 8 (j) Providing documents, data, or other information to a third party pursuant to an
9 order issued by a court of competent jurisdiction; or
- 10 (k) Providing information to the Legislative Research Commission under:
- 11 1. KRS 139.519 for purposes of the sales and use tax refund on building
12 materials used for disaster recovery;
- 13 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 14 3. KRS 141.437 for purposes of the ENERGY STAR home and the
15 ENERGY STAR manufactured home credits;
- 16 4. KRS 141.383 for purposes of the film industry incentives;
- 17 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
18 tax credits and the job assessment fees;
- 19 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 20 7. KRS 141.396 for purposes of the angel investor tax credit;
- 21 8. KRS 141.389 for purposes of the distilled spirits credit;
- 22 9. KRS 141.408 for purposes of the inventory credit;
- 23 10. KRS 141.390 for purposes of the recycling and composting credit;
- 24 11. KRS 141.3841 for purposes of the selling farmer tax credit;
- 25 12. KRS 141.4231 for purposes of the renewable chemical production tax
26 credit;
- 27 13. KRS 141.524 for purposes of the Education Opportunity Account

1 Program tax credit;

2 14. KRS 141.398 for purposes of the development area tax credit; ~~and~~

3 15. KRS 139.516 for the purposes of the sales and use tax exemption on the
4 commercial mining of cryptocurrency; and

5 16. Section 2 of this Act for purposes of the natural resources severance
6 tax credit.

7 (3) The commissioner shall make available any information for official use only and on
8 a confidential basis to the proper officer, agency, board or commission of this state,
9 any Kentucky county, any Kentucky city, any other state, or the federal government,
10 under reciprocal agreements whereby the department shall receive similar or useful
11 information in return.

12 (4) Access to and inspection of information received from the Internal Revenue Service
13 is for department use only, and is restricted to tax administration purposes.
14 Information received from the Internal Revenue Service shall not be made available
15 to any other agency of state government, or any county, city, or other state, and shall
16 not be inspected intentionally and without authorization by any present secretary or
17 employee of the Finance and Administration Cabinet, commissioner or employee of
18 the department, or any other person.

19 (5) Statistics of crude oil as reported to the department under the crude oil excise tax
20 requirements of KRS Chapter 137 and statistics of natural gas production as
21 reported to the department under the natural resources severance tax requirements
22 of KRS Chapter 143A may be made public by the department by release to the
23 Energy and Environment Cabinet, Department for Natural Resources.

24 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
25 submissions for the 1989 tax year, the department may make public or divulge only
26 those portions of mine maps submitted by taxpayers to the department pursuant to
27 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-

1 out parcel areas. These electronic maps shall not be relied upon to determine actual
2 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
3 required under KRS Chapters 350 and 352 shall not be construed to constitute land
4 surveying or boundary surveys as defined by KRS 322.010 and any administrative
5 regulations promulgated thereto.

6 ➔Section 4. This Act takes effect August 1, 2022.