

#### **143A.010 Definitions.**

- (1) "Department" means the Department of Revenue.
- (2) "Natural resource" means all forms of minerals including but not limited to rock, stone, limestone, shale, gravel, sand, clay, natural gas, and natural gas liquids which are contained in or on the soils or waters of this state. For purposes of this chapter, "natural resource" does not include coal and oil which are taxed under KRS 143.020 and 137.120.
- (3) "Severing" or "severed" means the physical removal of the natural resource from the earth or waters of this state by any means; however, "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth.
- (4) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind engaged in the business of severing and/or processing natural resources in this state for sale or use. In instances where contracts, either oral or written, are entered into whereby persons, organizations or businesses are engaged in the business of severing and/or processing a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest is the taxpayer.
- (5) "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 (9) of this section incurred in transporting a natural resource shall not be considered as gross income from the property. Gross value is to be reported as follows:
  - (a) For natural resources severed and/or processed and sold during a reporting period, gross value is the amount received or receivable by the taxpayer.
  - (b) For natural resources severed and/or processed, but not sold during a reporting period, gross value shall be determined as follows:
    1. If the natural resource 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 the natural resource shall be used in computing gross value.
  - (c) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.
  - (d) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.
  - (e) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource.

- (f) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource.
- (g) In all instances, the gross value shall not be reduced by any taxes including the tax levied in KRS 143A.020, royalties, sales commissions, or any other expense.
- (6) "Processing" includes but is not limited to breaking, crushing, cleaning, drying, sizing, or loading or unloading for any purpose. "Processing" shall not include the act of unloading or loading for shipment natural resources that have not been severed, cleaned, broken, crushed, dried, sized or otherwise treated in Kentucky.
- (7) "Related parties" means two (2) or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests.
- (8) "Economic interest" for the purpose of this chapter is 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.
- (9) (a) "Transportation expense" means:
  - 1. The amount paid by a taxpayer to a third party for transporting natural resources; and
  - 2. The expenses incurred by a taxpayer using his own facilities in transporting natural resources from the point of extraction to a processing plant, tipple, or loading dock.
- (b) 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; or
  - 3. The cost of acquisition and operating expenses of equipment used to load or unload the natural resource at the point of extraction, processing facility, or mining and nonmining loading facility.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 544, effective June 20, 2005. -- Amended 1994 Ky. Acts ch. 133, sec. 2, effective July 15, 1994. -- Amended 1984 Ky. Acts ch. 173, sec. 1, effective July 13, 1984. -- Created 1980 Ky. Acts ch. 392, sec. 1, effective June 1, 1980.