WEST VIRGINIA CODE: §11-12B-2

§11-12B-2. Definitions.

(a) General. -- When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) Terms defined.

(1) "Coal" means and includes any material composed predominantly of hydrocarbons and carbon in a solid state and includes, but is not limited to, all materials commonly known as coal, bituminous coal, anthracite coal, lignite, brown coal, peat or jet.

(2) "Delegate" in the phrase "or his delegate," when used in reference to the Tax Commissioner, means any officer or employee of the Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more delegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(3) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by section 611 of the Internal Revenue Code in effect on December 31, 1985, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(4) "Extraction of coal from the ground" includes extraction by mine owners or operators of coal from the waste or residue of prior mining.

(5) "Fiduciary" means and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(6) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which coal is severed, extracted, reduced to possession in this state, or is produced or prepared in this state, for sale, profit or commercial use. "Partner" includes a member of such a syndicate, group, pool, joint venture or organization.

(7) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(8) "Production" for purposes of this article means and includes the initial severance and extraction of coal in place, from a seam within this state, or from the waste or residue of prior mining located within this state.

WV Legislature

(9) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes coal owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the coal or receives any value other than an arm's length passive royalty interest.

(10) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(11) "Severing" or "severed" means the physical removal of coal from the earth or waters of this state by any means.

(12) "Tax commissioner" means the Tax Commissioner of the State of West Virginia, or his delegate.

(13) "Taxable year' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the Tax Commissioner, the period for which such return is made.

(14) "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 producing, severing or extracting coal in this state for sale, profit or commercial use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of producing, severing or extracting coal but do not obtain title to or have an economic interest therein, the party who owns the coal or has an economic interest therein is the taxpayer.

(15) "This code" means the Code of West Virginia, 1931, as amended.

(16) "This state" means the State of West Virginia.

(17) "Ton" means two thousand pounds.

WV Legislature