WEST VIRGINIA CODE CHAPTER 11 ARTICLE 12B

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§11-12B-1. Short title; arrangement and classification.

This article may be cited as the "Minimum Severance Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.

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§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.

(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,

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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.

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§11-12B-3. Imposition of tax, credit.

(a) Imposition of tax. – Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession, or producing coal for sale, profit, or commercial use, there is hereby imposed an annual minimum severance tax equal to 50 cents per ton of coal produced by the taxpayer for sale, profit or commercial use during the taxable year: *Provided*, That for taxable years ending after May 31, 1993, the minimum severance tax imposed on coal produced by the taxpayer for sale, profit, or commercial use during such taxable year shall be 75 cents per ton, with such rate increase to apply only to tons of coal produced after May 31, 1993: *Provided, however*, That for taxable years ending after December 31, 1999, the minimum severance tax on coal may not be imposed on any ton of coal mined by underground methods from seams with an average thickness of 45 inches or less produced on or after April 1, 2000, on which the severance tax is imposed by §11-13A-3 of this code.

(b) Credit against the severance tax imposed under §11-13A-1 *et seq*. of this code – A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on the privilege of producing coal by §11-13A-3 of this code, but not including the additional severance tax on coal imposed by §11-13A-6 of this code or, for taxable years ending after December 31, 1999, the severance tax imposed by the provisions of §11-13A-3 of this code on coal mined by underground methods from seams with an average thickness of 45 inches or less produced on or after April 1, 2000. The amount of credit allowed shall be equal to the liability of the taxpayer for the taxable year for payment of the minimum severance tax on coal imposed by this article: *Provided*, That the amount of credit allowed by this section may not exceed the severance tax liability of the taxpayer for the taxable year determined under §11-13A-3 of this code exclusive of the additional tax on coal imposed by §11-13A-6 of this code and, for taxable years ending after December 31, 1999, of the severance tax imposed by §11-13A-3 of this code on coal mined by underground methods from seams with an average thickness of 45 inches or less produced on or after April 1, 2000, after application of all credits to which the taxpayer may be entitled except any credit allowed pursuant to §5E-1-1 *et seq*. of this code, any credit for installment payments of estimated tax paid pursuant to §11-12B-6 of this code during the taxable year, and any credit for overpayment of the severance tax imposed under §11-13A-1 *et seq*. Notwithstanding anything herein to the contrary, in no event may the credit allowed under §5E-1-1 *et seq*. of this code be allowed as a credit against the minimum severance tax imposed by this article.

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§11-12B-4. Accounting periods and methods of accounting.

(a) General rule. -- For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) Change of taxable year. -- If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) Methods of accounting.

(1) Same as federal. -- A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the Tax Commissioner, in writing, consents to or requires use of another method.

(2) Change of accounting methods. -- If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

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§11-12B-5. Annual return.

(a) On or before the expiration of one month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the Tax Commissioner may require and computing the amount of taxes due under this article for the taxable year.

(b) Any taxpayer may elect to file as part of a consolidated, composite or unitary group for purposes of the tax imposed by article thirteen-a of this chapter and if such election is made, the taxpayer shall file a consolidated, composite or unitary return under this article encompassing the same consolidated, composite or unitary group unless the Tax Commissioner shall specifically require or approve a filing on some other basis.

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§11-12B-6. Periodic installment payments of estimated tax.

(a) General rule. -- The annual tax levied under this article shall be due and payable in monthly installments during the taxable year. Installment payments shall be due and payable on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subsection on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15 each year.

(b) Remittance form. -- Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, in the form prescribed by the Tax Commissioner, sign the same and mail it together with a remittance of the amount of tax due to the office of the Tax Commissioner: Provided, That the installment payment otherwise due under this section on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15.

(c) Exception. -- Notwithstanding the provisions of subsection (a) of this section, the Tax Commissioner, if he or she deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than that prescribed in said subsection.

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§11-12B-7. Time and place for paying tax shown on returns.

(a) General rule. -- The person required to make the annual return required by this article shall, without assessment or notice and demand from the Tax Commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Date fixed for payment of tax. -- The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

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§11-12B-8. Extension of time for filing return.

The Tax Commissioner may, upon written request received on or prior to the due date of the annual return, or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory to the Tax Commissioner is provided by the taxpayer.

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§11-12B-9. Extension of time for paying tax.

(a) Amount determined on return. -- The Tax Commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payment), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency. -- Under regulations prescribed by the Tax Commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the Tax Commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) No extension for certain deficiencies. -- No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

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§11-12B-10. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the Tax Commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: Provided, That the Tax Commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

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§11-12B-11. Signing of returns and other documents.

(a) General. -- Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the Tax Commissioner.

(b) Signing of corporation returns. -- The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns. -- The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) Signature presumed authentic. -- The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him

(e) Verification of returns. -- Except as otherwise provided by the Tax Commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

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§11-12B-12. Bond of taxpayer may be required.

(a) Whenever it is deemed necessary to ensure compliance with this article, the Tax Commissioner may require any taxpayer to post a cash or corporate surety bond.

(b) The amount of the bond shall be fixed by the Tax Commissioner but, except as provided in subsection (c) of this section, shall not be greater than three times the average quarterly liability of taxpayers filing returns for quarterly periods, five times the average monthly liability of taxpayers required to file returns for monthly periods, or two times the average periodic liability of taxpayers permitted or required to file returns for other than monthly or quarterly periods.

(c) Notwithstanding the provisions of subsection (b) of this section, no bond required under this section shall be less than $500.

(d) The amount of the bond may be increased or decreased by the Tax Commissioner at any time subject to the limitations provided in this section. The Tax Commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer's business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid. Such action may be brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.

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§11-12B-13. Collection of tax; Tax Commissioner may require first purchaser to withhold tax of delinquent taxpayer.

Whenever the Tax Commissioner determines that a taxpayer is delinquent in payment of the tax imposed by this article and that collection of the tax imposed by this article will be facilitated or expedited, the Tax Commissioner may require the first person who purchases the coal which is the measure of tax under this article from the taxpayer to withhold the tax due under this article from the purchase price as agent for the state and remit it to the Tax Commissioner as provided in sections seven and eight of this article.

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§11-12B-14. Records.

(a) Every taxpayer liable for reporting or paying tax under this article shall keep such records, receipts, invoices and other pertinent papers in such form as the Tax Commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the Tax Commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

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§11-12B-15. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

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§11-12B-16. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

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§11-12B-17. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

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§11-12B-18. Effective date; compliance.

(a) Effective date. -- The tax imposed by this article shall take effect on October 1, 1990, and apply to coal sold or delivered for sale, profit or commercial use on or after that date.

(b) Compliance. -- To facilitate ease of administration and ease of compliance by taxpayers, the Tax Commissioner may require persons subject to the tax imposed by this article and persons subject to the tax imposed by article thirteen-a of this chapter to file combined returns or declarations of estimated tax for both taxes and to make combined payments of such taxes.

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