WEST VIRGINIA CODE: §11-13A-2

§11-13A-2. Definitions.

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

(b) *General terms defined*. — Definitions in this subsection apply to all persons subject to the taxes imposed by this article.

(1) "Business" includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: *Provided*, That "business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership and services by a member of any other business entity on behalf of that entity are the business of the employer or partnership, or other business entity as the case may be, and reportable as such for purposes of the taxes imposed by this article.

(2) "Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engage in activities taxable under this article.

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

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

(5) "Gross proceeds" means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, without any deduction for the cost of property sold or leased or expenses of any kind.

(6) "Includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(7) "Partner" includes a member of a syndicate, group, pool, joint venture or other organization which is a "partnership" as defined in this section.

WV Legislature

(8) “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised and which is not within the meaning of this article a trust or estate or corporation. “Partnership” includes a limited liability company which is treated as a partnership for federal income tax purposes.

(9) “Person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or other entity, 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.

(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. “Sale” includes a lease of property, whether the transaction be characterized as a rental, lease, hire, bailment or license to use. “Sale” also includes rendering services for a consideration, whether direct or indirect.

(11) “Service” includes all activities engaged in by a person for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property: *Provided*, That “service” does not include: (A) Services rendered by an employee to his or her employer under a contract of employment; (B) contracting; or (C) severing or processing natural resources.

(12) “Tax” means any tax imposed by this article and, for purposes of administration and collection of such tax, it includes any interest, additions to tax or penalties imposed with respect thereto under article ten of this chapter.

(13) “Tax commissioner” or “commissioner” means the Tax Commissioner of the State of West Virginia or his or her delegate.

(14) “Taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which a tax liability is computed under this article. In the case of a return made under this article, or regulations of the Tax Commissioner, for a fractional part of a year, the term “taxable year” means the period for which such return is made.

(15) “Taxpayer” means any person subject to any tax imposed by this article.

(16) “This code” means the Code of West Virginia, 1931, as amended.

(17) “This state” means the State of West Virginia.

(18) “Withholding agent” means any person required by law to deduct and withhold any tax imposed by this article or under regulations promulgated by the Tax Commissioner.

(c) *Specific definitions for producers of natural resources*. —

WV Legislature

(1) “Barrel of oil” means forty-two U.S. gallons of two hundred thirty-one cubic inches of liquid at a standard temperature of sixty degrees Fahrenheit.

(2) “Coal” means and includes any material composed predominantly of hydrocarbons in a solid state.

(3) “Cubic foot of gas” means the volume of gas contained in one cubic foot at a standard pressure base of fourteen point seventy-three pounds per square inch (absolute) and a standard temperature of sixty degrees Fahrenheit.

(4) “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.

(5) “Extraction of ores or minerals from the ground” includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold.

(6) “Gross value” in the case of natural resources means the market value of the natural resource product, in the immediate vicinity where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, “gross value” is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

(B) 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.

(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) 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. If natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and sale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and

WV Legislature

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. If severed natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer 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 fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the amount of any federal energy tax imposed upon the taxpayer after June 1, 1993, but shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(H) For limestone or sandstone quarried or mined, gross value is the value of such stone immediately upon severance from the earth.

(7) "Mining" includes not merely the extraction of ores or minerals from the ground, but also those treatment processes necessary or incidental thereto.

(8) "Natural resources" means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state and includes standing timber. For the purposes of the severance tax levied in this article, salt produced solely for human consumption as food is not classified as a mineral subject to this tax.

(9) "Processed" or "processing" as applied to:

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(10) "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 natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the Tax Commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he or she determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(11) "Severing" or "severed" means the physical removal of the natural resources from the

WV Legislature

earth or waters of this state by any means: *Provided*, That "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 earth: *Provided*, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(12) "Stock" includes shares in an association, joint-stock company or corporation.

(13) "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 or processing (or both severing and 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 or processing (or both severing and 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 immediately after its severance or has an economic interest therein is the taxpayer.

(d) *Specific definitions for persons providing health care items or services*. —

"Behavioral health services" means services provided for the care and treatment of persons with mental illness, mental retardation, developmental disabilities or alcohol or drug abuse problems in an inpatient, residential or outpatient setting, including, but not limited to, habilitative or rehabilitative interventions or services and cooking, cleaning, laundry and personal hygiene services provided for such care: *Provided*, That gross receipts derived from providing behavioral health services that are included in the provider's measure of tax under article twenty-seven of this chapter shall not be include in that provider's measure of tax under this article. The amendment to this definition in the year 2004 is intended to clarify the intent of the Legislature as to the activities that qualify as behavioral health services, and this clarification shall be applied retrospectively to the effective date of the amendment to this section in which the definition of "behavioral health services" was originally provided as enacted during the first extraordinary session of the Legislature in the year 1993.

WV Legislature