SEVERANCE TAX

Regulation 29-101.Section 39-29-101, C.R.S. 1973, provides for the imposition of tax on the severance of certain nonrenewable natural resources from the earth within this state. The tax applies upon the severance of such resources whether or not a profit is derived therefrom. The natural resources subject to taxation upon their severance are:

1) Metallic Minerals

2) Molybdenum

3) Oil and Gas

4) Coal

5) Oil Shale

The tax constitutes a severance tax and is applied in addition to all other taxes. This tax applies to severance occurring on or after January 1, 1978.

Regulation 29-102. Reserved

Regulation 29-102(3)(a). Gross income for oil and gas is the fair market value at the wellhead. The fair market value is determined by the actual transaction price or the value computed for Colorado and Federal income tax depletion purposes. If different values are determined, the higher of the two shall apply.

Gross income for this purpose shall include, but not be limited to, income received in the form of royalties or other production payments received by persons having an "economic interest" for depletion purposes. See Sections 611, 612 and 613 and the regulations promulgated thereunder of the Internal Revenue Code of 1954 for a definition of gross income for depletion purposes.

Regulation 29-102(3)(b). The gross income is the fair market value of the ore immediately after its removal from the mine. The fair market value is the price at which the ore would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Gross income from the ore shall not include any value added subsequent to mining. "Ore" as used in this regulation is defined as the crude material obtained without any handling or processing other than sorting of the lumps.

Regulation 29-102(6). The grade of the molybdenum ore has no bearing upon its definition. If the ore proves to be of nominal value after being severed it is nevertheless molybdenum ore for the purpose of this provision.

Regulation 29-103(1). In addition to all other taxes, there is levied a tax upon the severance of all metallic minerals from the earth within this state. The tax is levied against every mining operation engaged in severance of metallic minerals. The owners and/or operators of the mining operation so engaged shall be deemed liable for the maintenance of records, filing required forms and payment of the tax.

A mining operation shall be any combined unitary economic interest consisting of one or more related operations which are supportive of, or dependent upon, each other for the production of metallic minerals.

For each taxable year, the tax is imposed at the rate of 2.25% of gross income, except for the first $11,000,000 of gross income which is exempt. The $11,000,000 exemption need not be prorated for a taxable period of less than twelve months.

Ores severed prior to January 1, 1978 shall not be subject to these provisions. Where ores are processed and abandoned and subsequently reclaimed by an unrelated economic interest they shall be generally considered as waste or residue.

The following case is cited to exemplify what is not considered to be waste or residue from previously processed ores.

Taxpayer's predecessor in interest dredgemined property for gold, aggregates were picked up by dredge, washed but not treated chemically or crushed, then dumped back unchanged on same land. Gold was in free state, not actually extracted from aggregates. Aggregates were natural deposits of minerals in place - not dumps or tailings. Commissioner of Internal Revenue v. Claude C. Wood Company 321 F.2d 207, (9th Cir. 1963).

Regulation 29-102(4). Gross proceeds from the sale of oil shale severed from which shale oil has not been extracted will be computed based on first sales price as provided by Section 39-29-102(4). Gross proceeds from the sale of shale oil where such is processed by a centralized facility will be determined in the same manner.

Direct and indirect expenditures of processing the oil shale after mining are to be applied on the basis of generally accepted accounting principles for any given period. Excess cost of one taxable year cannot be applied to another taxable year.

Regulation 29-102(5). Minerals associated with molybdenum and oil shale are not excluded from the definition of metallic minerals.

Regulation 29-103(2). All ad valorem tax determined on the basis of gross proceeds or not proceeds under Section 29-6-106, C.R.S. 1973, is allowed as a credit against the tax imposed in subsection (1) of this section. The ad valorem tax credit allowed may not exceed fifty percent of the metallic minerals severance tax imposed. The amount of ad valorem tax used to determine the credit shall be the amount assessed in the case of an accrual basis taxpayer during the taxable year or the amount paid by a cash basis taxpayer during a taxable year. In the case of a short period return including the return for the first taxable period the credit will be limited to an amount equal to the ad valorem tax assessed to an accrual basis taxpayer or paid by a cash basis taxpayer during the short period.

Regulation 29-105(1) (a).Section 39-22-505, C.R.S. 1973, regarding a tax on gross income from oil and gas production for income tax is repealed as of January 1, 1978. This Section 39-29-105, provides a tax on the severance of crude oil, natural gas, and oil and gas within this state. This tax is levied in addition to all other taxes. Gross income from oil wells which produce ten barrels or less of crude oil per day for the average of all producing days during the taxable year or taxable period is exempt from this tax. No exemption is allowed for gas measured by cubic feet.

A barrel for this purpose means forty-two U.S. gallons at sixty degrees fahrenheit at atmospheric pressure.

The tax is levied on the gross income from crude oil, natural gas, and oil and gas. Payment of the tax is the responsibility of the recipient of the gross income. See Section 39-29-102(3)(a).

Regulation 29-105(1)(b). On or after January 1, 2000, oil produced from any well that produces fifteen (15) barrels per day or less of oil, and gas produced from wells that produce ninety thousand cubic feet or less of gas per day, for the average of all producing days for such oil and gas production during the taxable year, shall be exempt from the tax imposed by 39-29-105(1)(b) C.R.S.

Regulation 29-105(2)(a). The credit computed by this section is apportionable among related parties in proportion to each party's share of gross income. If such credit allowed by this subsection exceeds the tax on severance of oil and gas, no overpayment, refund or other credit shall result from such excess. In the case of a short taxable period, the credit shall apply only if the ad valorem tax is assessed to an accrual basis taxpayer or paid by a cash basis taxpayer during such period. The credit applicable for one period may not be used in another period. The ad valorem tax paid on buildings, equipment and facilities is not to be considered in computing this credit.

Regulation 29-105(2)(b). An ad valorem tax credit shall not be allowed for any ad valorem tax paid or assessed on oil or gas production exempt from the state severance tax pursuant to 39-29-105(1), C.R.S. Well production may be exempt from the state severance tax in a year where an ad valorem tax is paid for previous production from that well. A credit for ad valorem tax paid on well production is not allowed if the production was exempt from the severance tax in the year the ad valorem tax was paid or assessed.

Regulation 29-105(2)(c). Taxpayers on a cash basis for oil or gas revenue and expense reporting for federal income tax purposes must claim ad valorem credits based on the date ad valorem taxes are paid to the county clerk. Taxpayers on an accrual basis for oil and gas revenue and expense reporting for federal income tax purposes must claim ad valorem credits in the tax year that contains the accrual date for the ad valorem tax in the state of Colorado. The accrual date is the levy date of the ad valorem tax, which is January 1 of the calendar year following the year of production that is reported to the county assessor.

Regulation 29-106(1). In addition to all other taxes, there is levied a tax upon the severance of coal from the earth within this state. A person shall be considered to be any combined unitary economic interest consisting of one or more related operations which are supportive of, or dependent upon, each other for the production of coal, and such person shall be liable for the payment of the tax imposed. The tax is levied at the rate of sixty cents per ton of coal severed, except that the rate may be increased or decreased in accordance with subsection (5) of this section.

Regulation 29-106(2). In the case of a production period of less than three months the full eight thousand ton exemption applies.

Regulation 29-106(4). In addition to the credit allowed in subsection (3), there is allowed a credit equal to fifty percent of the severance tax on lignitic coal.

Regulation 29-106(5). The rate of tax on coal shall be determined as follows: (A) The basic rate shall be 60c per ton of coal. (B) The rate shall be adjusted each quarter based upon changes in the Wholesale Price Index - All Commodities (Not Seasonally Adjusted) prepared by the U.S. Department of Labor, Bureau of Labor Statistics. (C) The adjustment will be one percent of the basic rate for every three points' change in the index of wholesale prices. (For the purpose of this computation, one half or more of a point shall be considered as one full point. Less than one half of a point shall be disregarded.) The adjusted rate applicable for a given quarter shall be determined as of the month preceding the quarter for which the rate shall apply.

Regulation 29-107(1). This tax is levied at the rate of four percent, except as provided in subsection (2) of this section, on the gross proceeds from each commercial oil shale facility. A commercial oil shale facility shall be considered to be any combined unitary economic interest consisting of one or more related operations which are supportive of, or dependent upon, each other for the production of oil shale or oil from oil shale.

Regulation 29-107.5(4). Reserved.

Regulation 29-108. Reserved.

Regulation 29-110(1)(c). Reserved.

Regulation 29-110(1)(d)

For purposes of complying with the reporting requirements contained in 39-29-110 (1)(d) C.R.S., 1973, as amended, a producer of crude oil, natural gas or oil and gas who is subject to severance tax shall include within its report information as follows:

1. The names of the municipalities or counties in which the producer's full-time employees, including any contractor's fulltime employees, maintain their actual residences, as given by the employees, giving the number of employees in each such municipality or unincorporated area of each such county as of December 31 of each year.

2. Employees to be included are those residents of the state of Colorado employed and compensated on a full-time basis by the producer (or contractor) for the purposes of extracting crude oil, natural gas, or oil and gas out of the ground, and at point of first sale within Colorado or who are assigned fulltime to such extraction activities at point of first sale, but who reside or whose office is located elsewhere in the state.

3. The term, “full-time employee” means an employee who has been employed and compensated on a full-time basis by the producer or contractor during the entire six-month period commencing July 1 and ending December 31 of each annual reporting period.

The statutory basis for this Regulation is 39-21-112, C.R.S. 1973. The purpose is to further define the term “employee” as contained in 39-29-110, C.R.S. 1973 so that an appropriate distribution of the severance fund can be accomplished within the intent of the law.

Regulation 29-111(1)(a). Every producer or purchaser who disburses funds owed to any person owning a working interest, a royalty interest, a production payment, or any other interest in any oil or gas produced in Colorado shall withhold one percent (1%) of the gross income from such payments; except, no withholding shall be taken from payments for:

(I) interests held by the United States of America;

(II) interests held by the State of Colorado or any political subdivisions of the state of Colorado;

(III) interests held by the Southern Ute Indian Tribe or the Mountain Ute Indian Tribe; or

(IV) On or after January 1, 2000 any production exempt from the tax imposed by 39-29-105(1)(a) or 39-29-105(1)(b) C.R.S.

Producers and purchasers do not have to register wells with production exempt under section 39-29-105(1)(b), C.R.S. where the well API number shows exempt levels of monthly production on the conservation levy records of the Colorado Oil and Gas Conservation Commission. Producers or purchasers who wish to register wells with the Department should submit on Department Form DR 23 all newly qualified low production wells by API well number. Wells only have to be registered in the first quarter in which the well produces at exempt levels.

Regulation 29-111(2). Every producer or first purchaser who withholds as provided in subsection (1) of this section shall furnish an annual report to the Department of Revenue on a calendar year basis reflecting: The gross royalty income, the amount withheld, and any ad valorem tax attributable to the particular royalty interest and not claimed by the producer or the first purchaser. The amount withheld by the producer or first purchaser may be claimed as a credit by the royalty interest owner of oil and gas or oil shale production when such party files a return as required under Section 39-29-112. If the credit for the amount withheld exceeds the tax shown on the return, the excess credit shall be refunded to the royalty interest owner.

Regulation 29-112(2). Every corporation subject to the imposition of the severance tax shall prepare and file a declaration of estimated tax provided that the tax for its taxable year can be expected to exceed one thousand dollars.

The declaration and payments related thereto for severance tax shall be separate and apart from the declaration and payments for income or other taxes.

The estimated tax shall be paid in four installments. The declaration and the first installment shall be due on the fifteenth day of the fourth month of the taxpayer's taxable year. The second installment shall be due on the fifteenth day of the sixth month of the taxable year. The third installment shall be due on the fifteenth day of the ninth month of the taxable year. The fourth and final installment shall be due on the fifteenth day of the twelfth month of the taxable year.

If no declaration is determined to be due until after the due date of a particular installment, then a declaration shall be prepared and filed as of the next installment due date. Thus, a declaration filed on the fifteenth day of the sixth month of the taxable year shall be accompanied by one third of the total estimated tax. The remaining installments shall each equal one third of the total estimated tax due.