

**WV TAXES ON MINERAL INTERESTS:
SEVERANCE TAXES, PROPERTY TAXES,
SALES AND USE TAXES; AND B&O TAXES**

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Essay Question: Discuss how West Virginia taxes oil and gas, and coal, and the different approaches to each.

Overall

- Income Tax
- Severance Tax
- Property Tax
- Sales Tax
- Business and Occupation Taxes

Severance Taxes/Oil and Gas

Rate: 5% of Gross Value

Tax: Imposed on the severing of natural gas or oil for “sale, profit or commercial use” at “five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer ...” W.Va. § 11-13A-3a.

Taxable Value: The value of oil and gas is its value **at the wellhead** preceding transportation and transmission and any conversion or refining process. W.Va. § 11-13A-2(b)(6)(G) and (9)(A).

When the gas produced is not sold at the well-mouth, transportation and transmission expenses incurred by the producer in its system before the point of sale are deducted from the gross proceeds of the sale.

Oil and Gas - Continued

The regulations (110 WVCSR Series 13A, Section 4.8) set forth four alternative methods for valuing gas when the gas is not sold at the wellhead:

- *Actual cost method:* From the gross proceeds of the sale of natural gas, deduct the “actual costs” of transportation and transmission through the system of the producer from the well-mouth to the point of sale. Excluded are general administration, overhead and return on investment.
- *First sale ceiling price method:* Producers subject to regulation by the Federal Energy Regulatory Commission (FERC) may use the “first sale ceiling price” as determined, adjusted and published by the FERC. Applies to the production of “new gas” as defined by statute.
- *Average purchase price method:* The well-mouth value may be determined by the average purchase price of natural gas from the same pool or field or from the most proximate pool or field of the same quality and characteristics as the natural gas produced.
- *Fixed percentage method:* The well-mouth value of natural gas not sold at the well-mouth may be determined by a standard allowance for transportation and transmission costs in the amount of 15% of the gross proceeds from the sale of the natural gas severed and produced.

Oil and Gas - Continued

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.”
W.Va. § 11-13A-2(b)(5)

How Other States Tax Oil and Gas:

- Tax on Market Value (typically point of production)
- Tax on Gross Income
- Flat Rate Taxes
- Impact Fees
- Variety of Exemptions and Incentives

Severance Taxes/Coal

Rate:	5%
	2% (Underground Mining from seams of 37" to 45")
	1% (Underground Mining from seams of less than 37")
	2.5% (Waste and Residue)

Minimum Tax On Coal: 75 cents per ton (there are some exemptions)

Taxable Value:

Processing considered part of mining: The following treatment processes applied by the producer or contract miner to natural resources mined in this State shall be considered mining and therefore subject to the severance tax:

- *Coal:* Treatment processes include crushing, working, cleaning, breaking, drying, sorting, sizing, dust allaying, loading for shipment and freeze treatment. Production of coal will also include the severance, extraction and processing of gob piles, sludge ponds or other coal waste which, when processed, are sold as coal.
- *Minerals customarily sold in crude form:* The value added by sorting, concentrating, sintering and substantially equivalent processes to bring the mineral to shipping grade and form, and loading for shipment, is subject to the tax.

Coal - Continued

- *Minerals not customarily sold in crude form*: The value added by crushing, grinding and beneficiation by concentration (gravity, flotation, amalgamation or electrostatic or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting or refining), or substantially equivalent processes or combinations of processes used in the separation or extraction of the product or products from the ore or the minerals from other materials from the mine or other natural deposit is subject to the tax.
- *Oil shale*: The value added by extraction from the ground, crushing, loading into the retort and retorting, but not hydrogenation, refining or any other process subsequent to retorting, is subject to the tax.

Coal - Continued

- *Processing not considered part of mining:* The value added by the following treatment processes are not considered “mining” and is not subject to the tax: electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping.
- **Waste Coal:** Coal produced from the waste and residue of prior mining is generally not subject to the 5% tax on the privilege of severing coal or to the minimum severance tax on the privilege of severing coal. The privilege of producing waste coal is subject to tax, however, at the 2.5% rate of tax when the producer of the waste coal also processes the waste coal for sale, profit or commercial use.
- **River Coal:** Dredging of coal from a riverbed is subject to the 5% severance tax on the privilege of producing coal and to the 75 cents per ton minimum severance tax. Recovery of coal from a riverbed is not treated as the production of coal from the waste or residue of prior mining. West Virginia State Tax Publication TSD-416 (2012).

Property Taxes/Oil and Gas

- Recent amendments to W. Va. Code § 11-1C-10 pertaining to valuation of properties providing oil, natural gas and/or natural gas liquids (NGLs).
 - For assessments made on or after July 1, 2022.
 - Market value to be determined through the process of applying a yield capitalization model to the net proceeds.
 - Net proceeds for oil and gas: “gross receipts on a sales volume basis determined through a weighted average price from regional markets where West Virginia oil and natural gas are normally sold, less royalties paid, less actual annual operating costs as reported on the taxpayer’s returns.”
 - Net proceeds for NGLs: “actual gross receipts determined from the actual price received by the taxpayers as reported on the taxpayer’s returns, less royalties paid, less actual annual operating costs.”
 - Actual annual operating costs: “all operating costs, including, but not limited to, lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation charges.”

Property Taxes/Coal

- Key to determine active mining property and reserve mining property.
- Active mining property: “a mineable bed of coal on a property or portion of a property involved in a mining operation. Each and every bed of coal being mined in a permitted mining operation is a separate active mining property.”
 - Valuation based, in part, on “annual production” which is the arithmetic mean of the last 3 years’ calendar year production.
- Reserve mining property: “any property for which coal rights are part of the owned estate and which is not part of an active mining property.”

Sales Tax Issues

- Exemptions: Sales of “gas . . . delivered to consumers, through mains or pipes.” W.Va. Code § 11-15-9(a)(1).
- “Sales for resale” exemption. W.Va. Code § 11-15-9(a)(9).
- “Direct Use” Exemption: Exempts “Sales of services, machinery, supplies and materials directly used and consumed in the activities of . . . production of natural resources . . . in the businesses or organizations named in this subdivision . . .” W. Va. Code § 11-15-9(b)(2).
- See W. Va. Code § 11-15-8d(c) related to new or existing natural gas compressor stations or gas transmission lines having a diameter of 20 inches or more.

Sales Tax Issues (cont.)

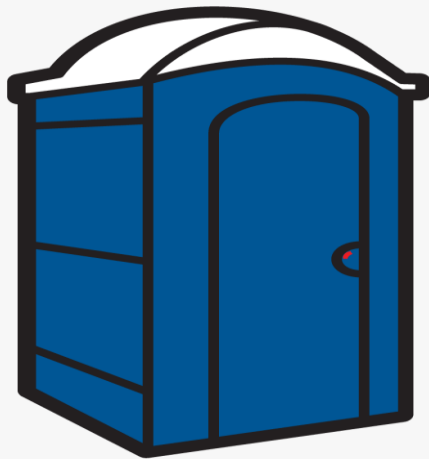
Direct Use:

- Exempt if “directly used or consumed” in production of natural resources; an “integral and essential part” of those activities.
- Taxable if “incidental, convenient or remote” to production of natural resources.

Sales Tax Issues (cont.)

Antero v. Steager (2020)

- Porta Johns/Septic Cleaning Services: Exempt



Sales Tax Issues (cont.)

- Crew Quarters: Exempt



Sales Tax Issues (cont.)

- Trash Trailers: Taxable



Sales Tax Issues (cont.)

Lindy Paving (Kanawha County Circuit Court) (2021)

- Direct Use exemption
- “Where West Virginia law requires a natural resource producer to repair and maintain public roads as a condition precedent to receiving a Horizontal Well Permit, those paving expenses must be considered a necessary and integral overall part of the process of producing oil and natural gas.”



B&O Taxes



State B&O Tax

- Gas storage business. W.Va. Code § 11-13-2e.
- Public service or utility business (except pipelines).
W.Va. Code § 11-13-2d.

Municipal B&O Tax

- State law authorizes municipalities to impose its business and occupation tax on “production of natural resources.”
W.Va. Code § 8-13-5; 110 WVCSR Series 26
- Applies to production of oil and gas or coal within the municipality.
- Maximum rates: Coal: \$1.00 per \$100; Natural Gas: \$6.00 per \$100; Oil: \$3.00 per \$100.