

Marcellus Shale - Sales and Use Tax Update

PA, WV, OH, MD, NY

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Pennsylvania

Sales and Use Tax

- Mining Exemption is Broad
 - Direct Use & Predominant Use Test
 - Most Equipment is Exempt
 - *R.G. Johnson* (Subcontractors and Independent Contractors)
 - Use of equipment by subcontractors, independent contractors, and help supply all qualify for exemption
- Department of Revenue is impermissibly limiting scope of mining exemption(s) through Policy Statements and Rulings
 - Under *R.G. Johnson* most equipment is not taxable, regardless of DOR Policy Statements and Rulings
 - Pollution Control
 - Research and Development

Pennsylvania

Unconventional Gas Well Fee

- Who Must Pay and How Much?
- Heavy Compliance Burdens
- Constitutionality
 - Fee vs. Tax
 - Retroactive implication is unconstitutional; creates uniformity problems
- Interpretation
- Administrative Procedure
- Legislative “Fixes”

Pennsylvania

Keystone Opportunity Zone (“KOZ”)

- No sales or use tax on purchases of services or tangible personal property (equipment, etc.), other than motor vehicles, used exclusively in a KOZ
- Special income tax apportionment for companies with “base of operations” in a KOZ

West Virginia

Sales and Use Tax

- If company is subject to severance tax then exempt on all purchases “made by them for use in severance activities”
- Broad Exemption for Producers of Natural Resources
 - Must be for *direct use or consumption* in producing natural resources. W. Va. TSD-358
 - Need not be subject to severance tax to take exemption
 - Applies to independent contractors and subcontractors
- Research and Development for Producers of Natural Resources
 - Regulation improperly narrows the exemption

Ohio

Sales and Use Tax

- Exemption for machinery, equipment and tangible personal property *used or consumed* in extraction of natural gas
- Applies to Subcontractors and Independent Contractors
 - Includes equipment, etc. used for:
 - Extraction; transportation after extraction; construction of private roads to facilitate transportation (machinery only); repairs of the machinery; and protection of the extraction (storage)
 - Broad language means nearly all equipment used to prepare well sites, extract, and transport natural gas is exempt
 - Does not apply to sales of TPP that are incorporated into a structure or improvement to real property
 - What is an improvement to real property?

Ohio

Additional Tax Implications

- House Bill 66
 - Marcellus Shale lease and royalty payments subject to Commercial Activity Tax (“CAT”) if payments received are over \$150,000
- Bills proposed to increase severance tax

Maryland

- Drilling not expected to commence until 2014 – or until MD Dept. of Environment Study Concludes
- Bills floating around with proposals of anywhere from 2.5%, to a 15% severance tax.
- Exemption from sales and use tax for machinery and equipment *used directly and prominently* in a production activity, covering any stage of operation on a well site

New York

- Moratorium on drilling
- Discussions of severance tax on natural gas severed from the Marcellus or Utica shale formations by means of a horizontal well
- Broad exemption from sales and use tax for purchases of machinery and equipment *used directly and predominantly* in mining or extracting activities

Discussion

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