

Gross Receipts, Valuation, and Situs Rules
Current Law and Administrative Opinions

Who is subject to the Severance Tax?

- Every person engaged in the business of severing coal or gases from the earth (*Va. Code* §§ 58.1-3712, 58.1-3713, and 58.1-3713.4)

What is subject to the Severance Tax?

- The severance tax is imposed on the gross receipts from the sale of coal or gases severed within the locality. (*Va. Code* §§ 58.1-3712, 58.1-3713, and 58.1-3713.4)

When are the gross receipts measured?

- The Attorney General has held that gross receipts may be measured at two distinct times: (1) when the coal is used or sold for use within the taxing locality; or (2) when the coal is placed in transit for shipment from the taxing locality. (1990 *Op. Att'y Gen.* 223 (September 21, 1990))
- The Tax Commissioner has held that gas not used or sold for use within the locality is valued when placed in transit for shipment, which is at the wellhead. (Ruling of the Tax Commissioner, Public Document (“PD”) 99-306 (November 29, 1999))
- Both the Attorney General and Tax Commissioner have held that gross receipts from sale may be used as a starting point when determining the value of the gases at the time they are placed in transit for shipment. (OAG 10-110 (August 5, 2011) and Ruling of the Tax Commissioner, PD 12-44 (April 18, 2012))

How are gross receipts measured?

- “Gross receipts” is the fair market value measured at the time such coal or gas is utilized or sold for utilization in such county or city or at the time such coal or gas is placed in transit for shipment in the locality. (*Va. Code* §§ 58.1-3712, 58.1-3713, and 58.1-3713.4)

Impact of contract miners

- The Attorney General has held that it was logical for a locality to measure the contract miner’s gross receipts for purposes of the tax by the amount of money he receives from the owner. (1983 *Op. Att'y Gen.* 514 (June 28, 1983))

What deductions are allowed?

- The Attorney General has held that the fair market value for purposes of determining gross receipts should not include value added by the processing of the coal in another jurisdiction. (1990 *Op. Att'y Gen.* 223 (September 21, 1990))
- The Tax Commissioner has held that expenses that add value to the gas between the wellhead and the point of sale were deductible from the gross receipts. (Ruling of the Tax Commissioner, PD 99-306 (November 29, 1999))
- In 2002, Senate Bill 78 (2002 *Acts of Assembly*, Chapter 433 was enacted limiting the 1999 Ruling of the Tax Commissioner.
 - Persons engaged in severing gases from the earth in connection with coal mining are prohibited from taking deductions from the gas severance tax, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes. (*Va. Code* § 58.1-3712)
 - Settlement agreements regarding the calculation of fair market value, including deductions for transportation and compression costs, between Buchanan County and the taxpayer may provide for such deductions. (*Va. Code* § 58.1-3712)
- Both the Attorney General and the Tax Commissioner have subsequently held that expenditures representing value added to the gases at, and subsequent to, the time they are placed in transit for shipment may be deducted. Such expenses may include processing, transportation and marketing expense. (OAG 10-110 (August 5, 2011) and Ruling of the Tax Commissioner, PD 12-44 (April 18, 2012))

Issues

- Are taxpayers and local governments following the administrative opinions concerning valuation and situs?
- Should the current procedures concerning valuation and situs be revised?
- In what situations does the restriction prohibiting taking deductions “in connection with mining” apply?