Wyoming Mineral Taxation

Constitution, Statutes, and Concepts

Gross Product

- Gross Product makes its first appearance in Wyoming Constitution Article 15 Section 3.

All mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or may be produced shall be taxed in addition to the surface improvements, and in lieu of taxes on the lands, on the ***gross product*** thereof, as may be prescribed by law; provided, that the product of all mines shall be taxed in proportion to the value thereof

Value of the Gross Product

- All mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or may be produced shall be taxed in addition to the surface improvements, and in lieu of taxes on the lands, on the **gross product** thereof, *as may be prescribed by law*; **provided**, that the product of all mines ***shall be taxed in proportion to the value thereof***.

- W.S. 39-14-101 (xv) "value of the gross product" means ***fair market value*** as prescribed by W.S. 39-11-101, less any deductions and exemption allowed by Wyoming law or rules;

Fair Market Value

- W.S. 39-11-101 (vi) "Fair market value" means the amount in cash or terms reasonably equivalent to cash, a well informed buyer is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time…
- fair market value of mine products shall be determined by W.S 39-14-103(b), 39-14-203(b), 39-14-303(b), 39-14-403-(b), 39-14-503(b), 39-14-603(b) and 39-14-703(b)
- 39-14-103 (b)(ii) The value of the gross product shall be the fair market value of the product **at the mouth of the mine where produced, after the mining or production process is completed;**

IMPLICATIONS OF "VALUE OF THE GROSS PRODUCT" AND "FAIR MARKET VALUE"

1) Wyoming taxes production and not reserves in the ground
2) Many other states tax the estimated value of reserves in the ground as a property tax
3) Wyoming only taxes a mineral once- when it is produced
4) Value of the Gross Product is to be Fair Market Value where the mineral or valuable deposit is produced after the mining or production process is complete (i.e. Point of Valuation)

Two Different Taxes

- County Gross Products Tax (Ad Valorem)
  - Ownership interest

  - Based upon valuation certification from the Department of Revenue
    - Notices of Valuations (NOV) and Notices of Changes in Valuations (NOVC)
- State Tax (Severance)
  - Interest owner
  - Party who severs the mineral from the ground

  - Matches the same valuation data used for Gross Products

Gross Products Tax

- Gross Products tax is a tax in lieu of tax on the land
- Gross Products tax is a de-facto property tax
- Gross Products tax is currently only a County Applicable Tax
- Gross Products tax is a creation of the Wyoming Constitution and is bound by the aforementioned constitutional constraints

Severance Tax

- The Severance tax is imposed for the privilege of severing or extracting minerals or valuable deposits
- The Severance tax is a de-facto excise tax
- The Severance tax is a state applicable tax
- The Severance tax is a creation of the statutes *not* the Constitution
- The Severance tax and Gross Products tax are applied to the same value (i.e Value of the Gross Product) but this is a statutory requirement for severance taxes while it is a constitutional requirement for Gross Products taxes

Constitutional Considerations

- Gross Product – exclusively volume based assessment, not tied to value may be problematic
- Value based – unit tax per volume independent of value may also be problematic
- Severance tax not married at the hip to Gross Products – is purely statutory.

Point of Valuation(POV)/ Mouth of Mine

- Each mineral has its own definition but in general all "solid minerals" i.e. anything other than oil and gas this point is the "mouth of the mine"

- W.S. 39-14-101 (a) (vi) "mouth of mine" means the point at which the mineral is brought to the surface of the ground and is taken out of the shaft pit or portal. For a surface mine this, this point shall be the top of the ramp where the road or conveying system leaves the pit. For an in situ mine, the point shall be the wellhead.

- Natural Gas and Petroleum Oil have more specific definitions for their respective points of valuation

POV Petroleum

- **OIL POV** W.S. 39-14-203 (b)(iii) The production process for crude oil or lease condensate is completed after extracting from the well, gathering, heating and treating, separating, injecting for enhanced recovery, and any other activity which occurs before the outlet of the initial storage facility or lease automatic custody transfer (LACT) unit

- **Natural Gas POV** W.S. 39-14-203(b)(iv) The production process for natural gas is completed after extracting from the well, gathering, separating, injecting and any other activity which occurs before the outlet of the initial dehydrator. When no dehydration is performed, other than within a processing facility, the production process is completed at the inlet to the initial transportation related compressor, custody transfer meter or processing facility, whichever occurs first;

Bona Fide Arm's-Length Sale

- 39-14-201 (a) (ii) 'Bona fide arm's length sale" means a transaction in cash or terms equivalent to cash for specified property rights after reasonable exposure in a competitive market between a willing and well informed and prudent buyer and seller with adverse economic interests and assuming neither party is acting under undue compulsion or duress;

Arm's-Length Market or Sale's Price

- W.S. 39-14-201 (a)(i) Arm's-Length Market or Sale's Price means the transaction price determined in connection with a bona fie arm's-length sale;

Deductions

- Transportation from POV to point of sale(s)
- Processing – beneficiation of mineral after the production process is complete
- Transportation and processing contracts ideally would all be arm’s-length transactions.

Exemptions

- **Exemptions from taxation**
  - **The property of the United States, the state, counties, cities, towns, school districts and municipal corporations, when used primarily for a governmental purpose, and public libraries, lots with buildings thereon used exclusively for religious worship, church parsonages, church schools and public cemeteries, shall be exempt from taxation, and such other property as the legislature may by general law provide.**
- **Royalties to Governmental Entities**
- **Statutorily defined**
  - Volumetric
    - New production, Renewed production (examples)
  - Severance Tax Rate Reduction
    - $.60 and $.30 coal

How do these concepts fit together in a practical sense?

- The ultimate goal is to determine value of a produced volume at a given point (POV).
- The constitution says "gross product" will be taxed, therefore only when it is produced will it be taxed, not reserves in place
- The constitution also states the value of the gross product will be taxed ***as prescribed by law***.
- Statutes prescribe fair market value to be determined using arms-length sales transactions at the POV
- When transportation and/or processing occur after the point of valuation, arm's-length processing and transportation transactions will be used to deduct from the fair market value to determine assessed/taxable value
- Exemptions as prescribed by the constitution and statutes determine what portion of the produced mineral will not be taxed

What Could Possibly Go Wrong?

- Minerals are rarely sold at the point of valuation
- Sales, Processing, and Transportation Contracts are often non-arm’s length
- Variety of contracts contain portions that are not deductible
- Royalties are often paid on a volumetric basis that is different from the production and/or sales volume
- These scenarios require additional statutory guidance

Methods of Valuing Minerals

- Recognized appraisal techniques
  - Netback (arm's-length)
  - Comparable Value
  - Comparable Sales
  - Proportionate Profits
  - Modified Netback (non-arms-length)
  - Cost buildup

Netback (Arms-length)

- (Arms-length sales price) X (Volume) – Deductions-Exemptions = Taxable Value
  - – Sale at POV? No deductions
  - – Sale after POV?
    - Arms'-length processing and /or Arm's length transportation expense is deductible

Comparable Value

- Typically arises when the producer of the mineral transports and/or processes its own production.
- We then try to find what this producer charges other parties for transportation and processing in similar situations
- Or we try to find similar situations where the producer is being charged base upon arm's-length transportation or processing agreements

Comparable Sales

- Comparable sales methodology is invoked when there exist only non-arms-length sales at the POV

- Most sales occur beyond the POV in an arms-length scenario

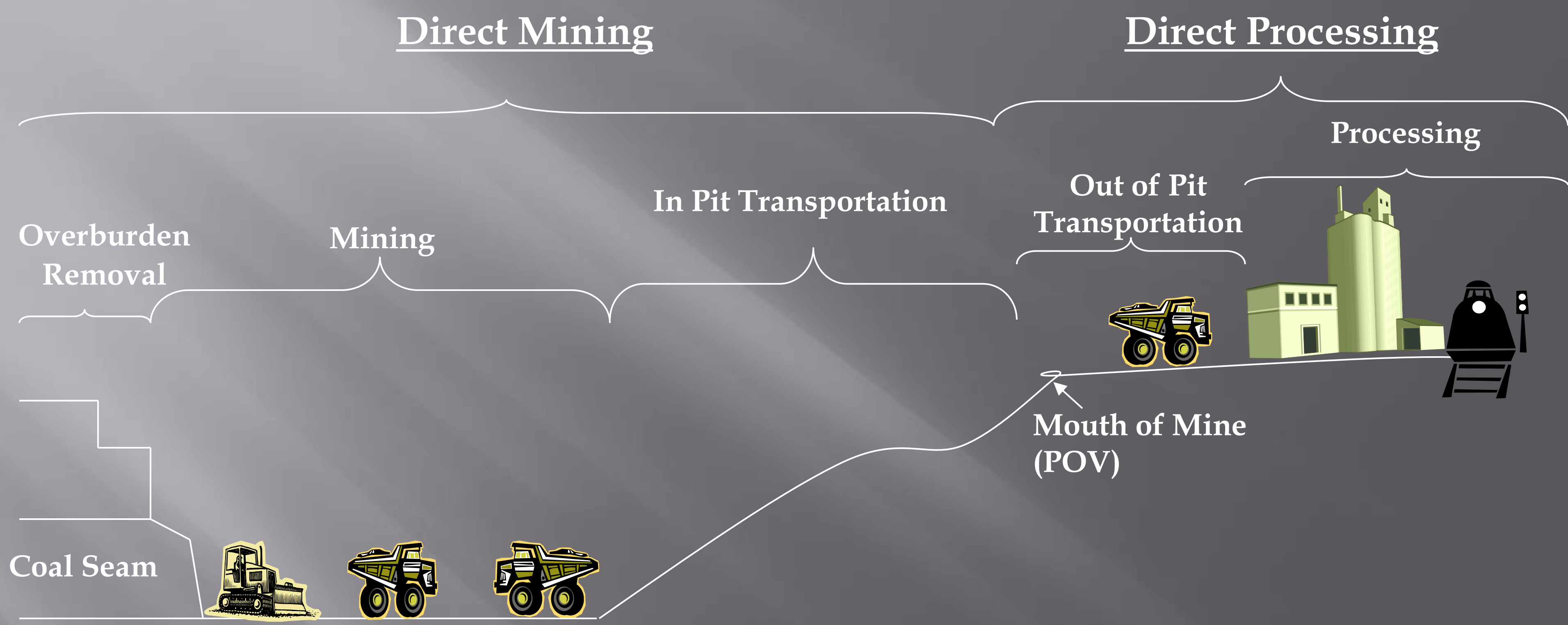
Proportionate Profits

- Used when non arms-length transportation and/or processing situations exist
- Used primarily for valuing coal
- Used for natural gas in the Modified Netback Method
- Used every fourth year as a true-up in Bentonite

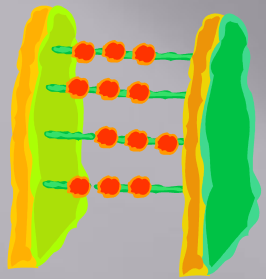
Proportionate Profits Method

- Ratio of "direct" mining costs divided by all "direct" costs including transportation and processing
- Ratio is called the direct cost ratio (DCR)
- Assumes every dollar of direct cost contributes equally to the profit of the project
- Multiply the sales revenue (less taxes & royalties) by the DCR . This simulates a deduction as if arms-length processing and transportation contracts exist.
- Production taxes are added back in but not the Federal, State, or Tribal Royalties. This allows for exempt production.

Diagram of Taxation Components



Note: In addition to the noted functions, reclamation currently being undertaken is also a direct mining expense.



Mathematically

$$TV=GV-(PT+ER+PR) * \left[\frac{DMC}{DMC+DPC}\right] + (PT+PR)$$

Where: GV=Gross Value

PT=Production Taxes

ER=Exempt Royalties

PR=Private Royalties

DMC=Mining plus In-Pit Transportation Costs

DPC=Processing plus Out of Pit Transportation Costs

TV=Taxable Value

PPM Calculation

		Mine "B"	Mine "A"
	Gross Sales	$300,000,000	$300,000,000
Less:	Exempt Royalty	$35,000,000	$35,000,000
Less:	Private Royalty	$1,500,000	$1,500,000
Less:	Production Taxes	$55,000,000	$55,000,000
	Net Sales	$208,500,000	$208,500,000
	In-Pit Transportation %	30%	40%
	In Pit Transportation	$12,000,000	$16,000,000
	Direct Mining	$102,000,000	$138,000,000
	In Pit Transportation	$12,000,000	$16,000,000
	Total Direct Mining	$114,000,000	$154,000,000
	Total Direct Costs	$155,000,000	$191,000,000
	Direct Cost Ratio	73.5484%	80.6283%
	DCR X Net Sales	$153,348,387.10	$168,109,947.64
Add:	Exempt Royalty	$35,000,000	$35,000,000
Add:	Private Royalty	$1,500,000	$1,500,000
Add:	Production Taxes	$55,000,000	$55,000,000
	Taxable Value	$244,848,387	$259,609,948
	Total Tax Due	$29,381,806	$31,153,194

Mileage ratio of in pit coal road to out of pit coal road

Transportation of $40 million times the in pit %

Mining+Processing+Transportation

Direct Mining Costs X Total Direct Costs

Taxable Value times severance and ad valorem tax rates of 6% each

Modified Netback (Non-arm's length)

- Two calculations are performed, one is the PPM (proportionate profits) and the other is a NAL Netback calculation
- Of the two, the calculation resulting in the highest taxable value is the one that is assessed
- NAL netback in certain conditions can result in a negative assessed value… therefore PPM establishes a floor value in those instances
- Used only for Producers that process and/or transport their own gas and no comparable processing and/or transportation contracts exist

NAL/"Modified" Netback

	(All Post POV Expenses)	
1	Total Revenue	$125,000,000
2	Labor Expense	($3,000,000)
3	Fuel Expense	($5,000,000)
4	Electrical Expense	($8,000,000)
5	Supplies	($3,750,000)
6	Maintenance	($5,800,000)
7	Maintenance Equipment	($4,150,000)
8	Warehouse	($1,250,000)
8	Environmental	($500,000)
9	Insurance	($7,500,000)
10	Royalties	($8,500,000)
11	Total Direct Expenses	($47,450,000)
12	Indirects = 10% of Direct Expenses	($4,745,000)
13	Gross Investment	$225,000,000
14	Rate of Return	10.00%
15	Return on Investment	($22,500,000.00)
16	Taxable Value = 1-11-12-15	$50,305,000.00

Cost Buildup

- Cost buildup is basically the counterpart to NAL Netback

- All expenses incurred prior to the point of valuation are added together to determine the value of the produced mineral.
- No statutory reference to this method, only in DOR rules as a recognized appraisal technique.

History of Mineral Taxation in Wyoming

- Constitution established that minerals will be taxed in Wyoming
- Through 1969 only the ad valorem (gross products) tax was levied on mineral production
- During this initial stage, the state levied its own mills just like the counties
- In 1969 the statewide severance tax was enacted and made distinct from the ad valorem tax
- Through the late 80’s the statutes provided that the DOR use recognized appraisal techniques when dealing with sales not occurring at the POV

History (Cont.)

- In 1986 the Mineral Tax Division was formed
- In 1988 the Wyoming Department of Audit was formed including the Minerals Division
- This timeframe was the beginning of much more oversight of the minerals industries from a tax perspective than had previously been imposed
- Industry vigorously resisted the Department's application of recognized appraisal techniques
- The legislature passed numerous laws in this timeframe removing the DOR's discretion relative to valuation and adopted specific valuation statutes according to mineral type

1991-Present

- Adoption of new statutes resulted in a new type of litigation
- The new disputes were about implementation of taxation methodologies rather than the selection of methodologies by the DOR
- Coal
  - Proportionate profits definitions
  - Point of Valuation
  - Indirect costs
  - Allocation of costs
  - Additional consideration
  - Lease bonus payments
  - Reclamation accruals
  - Additional consideration to be included in sales value

1991-Present (cont.)

- Petroleum
  - Proportionate Profits Method definitions
  - Taxes and Royalties to be include in PPM ratio
  - Point of Valuation
    - Custody transfer meter, processing facility, dehydrator, transportation related compressor
  - Definitions
  - Comparable Value Cases
  - Buy/Sell and Swap arrangements to be included in sales value
  - Exemption calculations
  - Taxability of helium

1991-Present

- Bentonite, Uranium, Misc.
  - Almost no appeals but issues have been handled rather than litigated
- Trona

-A few revenue related appeals

-Industry Factor set in statutes in in 2003 @32.5%

Evolving Mineral Valuation Environment

- Summer of 1997 there were 71 Mineral Valuation appeals on the SBOE Docket waiting for a hearing.
- Currently the SBOE is in the process of writing two mineral tax related opinions and 1 more is on the docket to be heard.
- SO everything should be great right?
- Well, while through litigation we have much more direction on how to apply the existing statutes, complexities have been exposed and sometimes created by that very litigation.
- This makes it difficult to determine the proper value in the first instance (certification).

Petroleum Issues

- Value based Assessment
- Complex Valuation Scenarios
- Multiple Valuation scenarios within a single company
- Valuation scenarios for a given group change over time
- There can be multiple POV's within a single mineral group
- A field with multiple mineral groups can have multiple POV's
- Prior period adjustment (PPA's)
- Transportation Deductions
- Processing Deductions
- A single processing or transportation contract can contain both production(non-deductible) and post POV (deductible) expenses. Contract has to be allocated
- Calculation of Exemptions
- Allocations to wells
- Operator & TIK Reporting
- Lease Fuel Exemption

Petroleum Issues(Cont.)

- 40,000+ mineral groups means a lot of opportunity for error
- Different departments within major Petroleum companies are responsible for different aspects of valuation. No one individual controls how it all works together. Revenue accountants book revenue. Contract personnel handle transportation and processing fees, production personnel report volumes and property tax departments often handle gross products reporting but not severance. DECENTRALIZATION of critical knowledge
- Use of Tax Agents
- Failure of companies to act on audit findings going forward
- Royalty reporting (exemption piece) incongruous with Tax reporting. Royalties are reported on a lease basis while tax is reported on a group basis
- Oil and Gas properties are routinely sold
- New production reported under existing groups for the first few months to avoid interest and later reallocated to new groups
- Nature of natural gas markets, nominations
- Takes vs entitlements
- Gas balancing
- Pool pricing
- 3 years to amend, reconcile, audit
- ALL Result in NOVC's (Notice of Valuation Changes)

Coal Issues

- Influences beyond Legislative control have had impacts on Coal Valuation
  - Sarbanes/Oxley   deferred overburden
  - Coal Lease bonus impact on depletion
- Expense based Issues
  - Proportionate Profits Method is complex
  - Allocations of expenses
  - 1% change in the DCR on $500,000,000 in taxable value can cost $1,000,000 in tax and interest on a "judgement call"
- Only Wyoming uses PPM to value coal
  - New Producers to Wyoming have difficulties initially
  - Change in accounting systems impacts allocations because costs are grouped differently
  - Change in accounting personnel with new/different allocation ideas

Administrative Issues with Complex Valuation Structure

- Certification
- Valuation Changes
- Time lags – Statute of limitations –Distribution-Collection Issues
- Delinquent taxpayers
  - Who pays for back taxes?
  - Mortgage holders have precedence

Certification/NOV Process

- NOV (Notice of Value)
  - Yearly notification to taxpayers of all their mineral properties values after DOR has processed the Gross Products (GP) returns
  - GP returns due February 25th of the year following the year of production
  - Extensions usually granted through April 25th
  - All returns are to be processed and values issued to the respective counties "Annually, on or before June 1, or as soon thereafter…"
  - The Counties are then notified of their values in a document called the "Certification"
  - Mineral Values are added to local and state assessed properties for the counties to set their next budget
  - 40,000+ properties to be certified. Overwhelming majority of returns are processed within one month of the April 25th filing date
  - Cursory electronic tolerance checks are performed (price ranges, deduction percentages, transportation and processing rates, etc.)

NOV (Cont.)

- WYO mineral tax system is referred to as a self reporting system
- DOR doesn't know the details of valuation for each individual property
- Mineral tax valuation is unlike State Assessed Property Tax where information is provided and the State uses appraisal techniques to impute a value
- The Department of Audit's function is to verify the accuracy of the value ascribed to mineral properties <u>*AFTER CERTIFICATION*</u>

NOVC's (Notice of Valuation Change)

- The Statutes allow mineral property values to be corrected by the taxpayer for **three years** from the initial reporting deadline. W.S. 39-14-208 (b)(iii)
- The Statutes allow for the DOR to perform reviews and the Department of Audit to perform audits
- These changes can have huge impacts on the counties' budgeting and fiscal operations
- The increase NOVC's come with additional interest to the producers

Problems Created by Complex Taxation Methodologies

- Producer's Perspective (Interest)
  - $91,153,340 interest collected on delinquent ***severance tax*** 2000 production year through December 2014 activity
- Counties' Perspective (Uncertain cash flows and budgeting issues) (Notice of Valuation Changes)

NOVC DATA

Production Year	# NOVC Properties	Value Change	% of Total Value Changed	Tax Dollars (Approx.)
2003	7,038	$673,966,833	7.820%	$87,615,688.29
2004	10,262	$1,021,578,289	9.390%	$132,805,177.57
2005	10,628	$2,163,193,616	14.510%	$281,215,170.08
2006	16,728	$1,335,830,299	9.160%	$173,657,938.87
2007	16,544	$916,101,150	6.620%	$119,093,149.50
2008	14,424	$1,132,646,240	5.500%	$147,244,011.20
2009	22,448	$638,614,099	5.070%	$83,019,832.87
2010	10,445	$284,892,435	1.840%	$37,036,016.55
2011	2,504	$69,687,597	0.430%	$9,059,387.61
2012	2,725	$54,210,334	0.400%	$7,047,343.42

NOVC DATA (Cont.)

Production Year	# NOVC Properties	Value Change	Net TV Change
2003	7,038	$673,966,833	$147,106,049
2004	10,262	$1,021,578,289	-$14,873,411
2005	10,628	$2,163,193,616	-$290,438,840
2006	16,728	$1,335,830,299	$49,688,861
2007	16,544	$916,101,150	$211,113,150
2008	14,424	$1,132,646,240	$329,303,270
2009	22,448	$638,614,099	$63,812,791
2010	10,445	$284,892,435	$9,197,885
2011	2,504	$69,687,597	-$3,622,785
2012	2,725	$54,210,334	$28,059,352

2011 NOVC Activity Since September 2014

Production Year	Date of NOVC Data	# of NOVC Properties	Absolute Value Change	Net Taxable Value Change
2011	SEPTEMBER 2014	2,504	$69,687,597	($3,622,785)
2011	MARCH 2015	9,984	$176,552,857	($11,665,383)

Summary

- Wyoming's Mineral Taxation System Has Two Components that Mutually Compound Each Other's Negative Effects
  - Complex valuation mechanisms that while labelled "Fair Market Value" in reality attempt to achieve "Exact Market Value"
    - Contracts, relationships, production, processing, transportation, and royalty scenarios are evaluated precisely on a case by case basis rather than broadly
  - Retrospective and retroactive analyzing and verification processes
    - What comes in the front door looks different exiting the back
    - Can't we get it right the first time?

Severance Tax vs Gross Products Tax Reporting and payment

- For any taxpayer having over $30,000 in yearly severance tax liability, the severance tax is reported and paid the 25th of the second month after the month of production (January production tax is paid March 25th)

- Gross products tax is reported February 25th of the year following the year of production. The first payment (50%) of the gross products tax is due November 10th of the year following the year of production. The last half payment is due May 10th of the second year following the year of production.
- The greater time lag in gross products reporting to payment has created greater delinquency issues for the county than what the DOR has experienced.

Who is responsible for delinquent back taxes- current owner/operator of past?

- Sales tax statutes has clarified this issue W.S. 39-15-103 (c) (iii) any tax due under this article constitutes a debt to the state from persons who are parties to the transaction…
  - This means the State can collect from either party
- Responsibility for back production taxes is not set forth is statutes
- What is DOR policy
  - Whomever is willing to pay the DOR will accept payment

Mineral Statutes Organization

- 39-14-100's through 39-14-700's addresses individual minerals or mineral classes
- 39-14-100's Coal
- 39-14-200's Petroleum
- 39-14-300's Trona
- 39-14-400's Bentonite
- 39-14-500's Uranium
- 39-14-600's Sand and Gravel
- 39-14-700's Other Valuable Deposits
- 39-14-800's Severance Tax Distribution Account

Sections Within Each Article (Coal Example)

- 39-14-101 Definitions
- 39-14-102 Administration, confidentiality
  - DOR requirements to assess and inform counties of location, confidentiality
- 39-14-103 Imposition
  - Imposition of the severance tax, specify methods of valuation
- 39-14-104 Tax rate
  - Specifies tax ratrs
- 39-14-105 Exemptions
  - Specifies production and circumstances where production is exempt
- 39-14-106 License; permits
- 39-14-107 Compliance; collection procedures
  - Filing and payment requirements
- 39-14-108 Enforcement
  - Audits, timelines, interest, penalties, liens
- 39-14-109 Taxpayer remedies
  - Interpretations, appeals, refunds, credits, escrow
- 39-14-110 Statute of Limitations
- 39-14-111 Distribution