

## **Local Severance Tax Working Group Kick-off Meeting (May 8, 2012)**

### **Notes**

#### **Craig Burns, Tax Commissioner**

- Introductions

#### **Senator Puckett**

- Background on legislation
- Would like to see an agreement for a uniform method of assessment over all localities
- Legislators do not want to dictate any resolution and would like for issues to be resolved without legislation

#### **Mark Haskins**

- Overview of the working group
- Background materials – have been handed out and will be posted on the website
- Overview of the work plan – no questions/ comments
- Legislation requirements – gross receipts, valuation, alternative taxes, other related issues
- History of BPOL uniform ordinance provisions
  - o The Department and the Attorney General have opinions that the BPOL statute applies to the severance tax

#### **Where we are with the Local Ordinance Revisions**

- Localities are working towards a unified ordinance
  - o Wise, Dickenson, and Russell have already adopted an ordinance or are in the process of adopting an ordinance
- Most localities have already sent out the notices and publicized in newspapers and plan to have an ordinance adopted no later than June
- Buchanan adopted an ordinance in December and would need to amend it to incorporate the uniform ordinance provisions, which may not be feasible by July 5
- Have not seen any resistance from Board of Supervisors for adopting the ordinances
- Seven commissioners are working to adopt a uniform application and return

## Should the severance tax be part of the BPOL Tax?

- Consensus seems to be that this is a different type of tax than what is normally thought of as a BPOL Tax and that a separate chapter for severance tax may be clearer

## Issues with the Severance Tax on Coal

- Any locality ever looked at different way of taxing? Revenue estimates?
  - o The Department asked that if any locality has any relevant information to provide it to the Department
- Mention was made that coal is a commodity and the price will change – a % rate accommodates changes a price, and a rate per ton may be unfair to one party or the other
  - o Indexing the rate would accommodate price changes in a rate per ton
  - o Another issue is that all coal is not the same – intrinsic properties can change value
- Contract mining
  - o Is it truly an arms-length contract- if not, should the value be based on gross receipts to the contract miner as it is currently?
  - o Is legislation necessary to define contract mining? (to either clarify or reverse AG's opinion)
  - o Without contract mining would mining stop on some mines because the margin is so thin?
- Is one alternative to define valuation as some % of sales price?
- 95% of issues seem to be when/how do you determine value
  - o Appeals wouldn't be an issue if valuation wasn't an issue
- Uniformity, clarity and certainty in determining valuation is necessary for both taxpayers and localities
  - o There should be equity and fairness for taxpayers – uniform enforcement
- No change regarding valuation or contract mining should be retroactive
  - o Agreement that only prospective changes will be considered by the working group
- Any change recommended should be revenue neutral
  - o Suspect that any change will have winners and losers (both taxpayers and localities)
  - o Kentucky and W. Va. use a rolling average of price
  - o Tonnage w/ revenue neutral today then adjustment annually based on market price?
- How much processing in localities other than the locality with mine?

- Does this make a significant difference as far as different tax liabilities between business models?
- Is coal “used” by blending or burning or is the tax mostly determined when transported outside of the locality?

**Should the gas and coal sections be bifurcated (for both the working group and in the statutes)?**

- Agreed that the next meeting will probably be split into two – one for coal and one for gas
- Splitting the statute between coal and gas would mean that amending the section for one particular industry would not cause unintended consequences for the other
  - Coal and Gas companies do not necessarily have the same interests or issues

**Issues with the Severance Tax on Gas**

- Valuation is still the issue
  - When is valued determined - moving and selling?
  - Gas is processed as coal is, but may be farther along the distribution chain
- No contract operators for gas
- Measure the gas at the wellhead?
  - Some states, but not the majority, tax at a rate per volume
- Should coalbed methane gas be considered severing gas in connection with mining?
  - Should there be different rules for gas severed in connection with mining?
  - Consensus seems to be that the rules should be the same
- Four major issues with gas
  - how do you measure gas to apply the severance tax
  - depreciation
  - valuation of wells
  - deductions – what are the deductions, when can they be taken, how can they be taken
- Property Tax issues
  - While this is an issue between taxpayers and localities, probably outside the scope of this working group

**Next Steps**

- Will split the working group into coal and gas sections for the second meeting

- Localities please send any data they have on tons of coal produced/ volume of gas produced and revenue collected to the Department if possible. Would like to have information by Memorial Day.
- Please send issues and any possible solutions that should be considered or not considered to the Department
- Also please send any places or facilities that may be more convenient for the second meeting.