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Tom White and Ted Boettner: Study of coal property tax issue declined

The state Tax Department's Property Valuation Training and Procedures Commission has declined to act on a request by the Assessors Association to develop a plan to appraise and tax coal under lease by coal producers.

At a hearing on Nov. 19, the assessors' lawyer Nick Casey gave a presentation indicating that a great deal of value that should be appraised and taxed by statute is being missed by the Tax Department.

Casey said that Appalachian coal often has two owners, the landholder and the coal producer or operator. The landholder has a real estate interest and can collect a royalty (on average about 6 percent of revenue from clean tons mined). Under the current system, the landholder pays taxes on coal reserves based upon a formula centered around that royalty interest. This process is called the Reserve Coal Valuation Model, and it was developed after lengthy litigation over reserve coal taxation in the 1990s. Active coal currently being mined also is valued based upon the royalty rate to the landowner under a different rule.

But Casey said the lease-holder, or coal producer of active coal, also has a personal property interest in coal the company is mining. This is called chattel real interest. The term refers to personal property associated with leased land. It is supposed to reflect the value associated with that property interest over a period of time.

Casey said that if the royalty rate for coal averages about 6 percent, then logically the state is failing to appraise, assess and tax on the remaining 94 percent of the revenue from production of that coal -- the chattel real. He said that the current tax structure for producing oil and gas currently appraises and assesses taxes on both the royalty land-owner and the chattel real gas producer. Two property owners, two tax bills. But under the current system, where there are two owners of producing coal property, there is only one tax bill to the landowner.

Casey asked the commission and Tax Department to investigate how to develop a similar tax system for coal to capture taxes from both landowners and lease-holders. He said chattel real coal taxation would only apply to active coal properties, not to reserve coal currently not being mined. The commission tabled the matter indefinitely and it's unclear what will happen next.

Also left unclear is how much money is represented by that missing 94 percent chattel real value. Calculations by the WV Center on Budget and Policy estimated that total revenue of West Virginia coal mined and sold in 2008 was approximately \$9.5 billion. Tax Department figures estimate combined value of active and reserve coal in the ground for Tax Year 2008 and 2009 at only about \$2.7 and \$3.8 billion respectively.

Undoubtedly the main reason for the discrepancy is production costs. Coal in the ground obviously is worth a lot less than mined coal on a train or barge. At Friday's hearing a coal industry representative said production costs typically consume about 90 percent of market value.

A joint study by the Bureau of Business and Economic Research and Marshall University said the state collected \$90.8 million in real and personal property revenue from the coal industry in 2008. The Center on Budget and Policy calculates that with suggested average levy rate of 2.06 percent that equates to an assessed value of \$4.4 billion and an appraised value of \$7.3 billion, much of which appears to be for tangible personal property like machinery.

To reflect chattel real value, a multiplier of generated revenues, together with depreciation factors would likely have to be calculated.

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