Mineral Taxation: The Wyoming Problem as Compared with Other Western States

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MINERAL TAXATION: THE WYOMING PROBLEM AS COMPARED WITH OTHER WESTERN STATES

WYOMING, as every other state, is faced with a shortage of state tax revenues to satisfy the increasing demands being made upon state government. Coupled with this is the increasing cost of maintaining the status quo of state supported services and activities. In a February 14, 1968, speech before the Wyoming Taxpayers’ Association in Cheyenne, Wyoming, Governor Stan Hathaway emphasized this dilemma by stating that there is, “very clearly... a need for additional revenue. In this connection I have mentioned, for discussion purposes, three possible sources of new tax revenues.’” These sources include a state income tax, a gross receipt tax, and an extractive tax on the mineral industries.

This article will deal with the last of the three suggested new sources of tax revenue, the extractive tax on the mineral industries, or what is commonly referred to as a severance tax. It is not the purpose of this article to advocate this or any other new tax for Wyoming, but merely to discuss from a legal and an economic point of view the problems and implications of a severance type tax.

Any new proposed tax, especially a severance tax, becomes an immediate topic of heated political debate, with opinions being quickly formed, not necessarily on the basis of reason, but too often on preconceived ideas and emotion. It is hoped that this article will both rationally answer some of the questions raised by the consideration of a severance tax, and provide a guide to be used by those upon whom the ultimate decision rests as to whether Wyoming should enact a severance tax.

To accomplish this, consideration is given to existing taxes in Wyoming on mineral production plus the revenues

derived, as well as the existing constitutional framework into which any additional tax must fit. Consideration is also given to the two "severance" tax bills introduced in the 1967 Wyoming legislature, including the potential legal and practical problems involved should either be eventually enacted. A comparison is made of taxes imposed upon mineral industries in selected western states. Several of these states have what is commonly considered a severance tax, and it is important in this context to consider whether these taxes are in addition to, or in lieu of, another tax on minerals and mineral production. Wherever possible, data is presented showing the tax burden imposed on mineral industries in these states and this compares to the Wyoming burden.

Current Taxes on Minerals in Wyoming

The Wyoming Constitution art. 15, § 3 provides that:

All mines and mining claims from which gold, silver and other previous 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 land, 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.

A statute, implementing this constitutional provision almost verbatim, provides the primary source of tax revenue from mineral production. It is a tax on the gross product produced, with the taxable event being the severance of the mineral. This is the same event that is used as the taxable incident for most production or severance taxes imposed by other states. The distinction between the gross product tax and what is commonly referred to as a severance tax is what occurs in the next step in the taxing procedure. The value of the mineral at severance under the gross product tax is entered upon the tax rolls by the county assessor and taxed at the local mill levy rate. In the case of the severance tax, the rate is based on a percentage of the value of production, and the tax is independent of the property tax mill levy. The gross product tax is in lieu of taxes on the land,

but is in addition to any tax that may be imposed on the surface improvements.

For assessment purposes, the state board of equalization is delegated the responsibility to annually fix the value of production from each mine or mining claim on a per unit basis. The average per unit assessed valuation determined by the board for 1967 based on 1966 mineral production is shown in Table III, infra, p. 586. The per unit valuation is theoretically the cash value of the mineral produced. In the case of oil, however, the board generally relies on the posted field price to ascertain this value, although it must, by judicial decree, take into consideration the reasonable cost of truck transportation from the field to the nearest pipeline, if trucking is required to create a market for the oil.

This issue of valuation of minerals for the gross products tax was involved in Certain-Teed Products Corp. v. Comley, in the context of whether gypsite is a "valuable deposit" as that term is used in applicable constitutional and statutory sections. In deciding that it was not, and thus not subject to the gross product tax, the court considered the testimony of several experts, all of whom agreed that gypsite in its raw state and which has not been subjected to any manufacturing process has no monetary value. The taxpayer in this case objected to being taxed as a manufacturer of "brown plaster," while at the same time paying a gross products tax on the gypsite he "mined" which was one of the raw materials in the plaster. The Wyoming Supreme Court, in ruling for the taxpayer, stated that in the case of gypsite, "its approximate monetary value might have been shown by deducting from the sale value of the manufactured product the cost of manufacturing and sale, including overhead expenses, a reasonable profit and perhaps other proper items." The remainder would seem to be the actual value of the gypsite.

4. J. Ray McDermott & Co. v. Hudson, 370 P.2d 364 (Wyo. 1962). In this context the Wyoming Supreme Court held that an act of the Board of Equalization refusing to allow an oil producer to deduct his trucking costs of transporting oil to the nearest pipeline, a distance of 138 miles, in determining the value of oil for assessment purposes was a grave abuse of discretion and unconstitutional. The court said the general rule for determining the value of personal property for purposes of taxation is to estimate the fair actual cash market value, or the price that the property would sell for in cash in the usual course of business.
5. 54 Wyo. 79, 87 P.2d 21 (1939).
The court then further reasoned that if that value was $3 per ton, the gross products tax should be levied; but if the value was only 5 cents per ton the gross product tax would not be warranted since the court felt that would not constitute a "valuable deposit" within the meaning of the constitution. Underlying this reasoning is a concern expressed several times in the opinion that the gross products tax should not and cannot be levied if the long term result would be to prevent manufacturing in the state.

Although the Certain-Teed case does present some intriguing conceptual and semantic problems, the importance of what is or is not a "valuable deposit" from a tax revenue point of view is relatively unimportant to the state. Table III shows that the total taxes levied on minerals other than crude oil, natural gas, uranium, coal, and trona were less than 0.5 million dollars out of a total of nearly 18.6 million dollars.

At the time of this writing the state board of equalization is conducting a series of meetings with producers in an attempt to update the assessment policies for most minerals other than oil and gas. It appears that the current valuation of most minerals is the result of a hodgepodge of negotiations between the board and individual producers, and the valuations do not reflect current market conditions. Any changes in assessment methods resulting from these meetings, however, will have an insignificant effect on the total state tax picture, since, even if assessed valuations on minerals other than oil and gas were increased fifty percent, an unlikely event, the annual increase in tax revenue based on current rates of production and tax levies would be less than $250,000.

An example of the vague assessment policy of the board with respect to some minerals is coal production which has been assessed at something less than full value in recent years due to an administrative recognition of the depressed state of the industry. In 1967 assessments for coal production varied between $1.00 per ton and $2.26 per ton.7 A further example is uranium production which is allowed a 35 percent

development allowance from base prices received. Whether or not these administrative gratuities violate the equality and uniformity provisions of Article 1, Section 28 of the Wyoming Constitution has apparently never been raised.

One of the statutory duties of the board is to specify the amount of land that will be exempt from ad valorem taxes due to mineral production under the in lieu provisions of the gross products tax. The regulation promulgated by the board provides that legal subdivisions of forty acres are exempt for each mine, quarry, or well when a gross products tax is being paid on mineral production. If the production is located within the corporate limits of a city or town, only the lot or lots subject to production are exempt. In the case of production on duly platted areas or lots, other than ranch or farm sites, outside the corporate city or town limits, only the lot or lots are exempt provided they do not exceed 40 acres. Sub-section 2(d) of the chapter on rules for the assessment by the board for the ad valorem tax provides: "In no case shall the assessed value of the land exempted by reason of mineral production thereon, be permitted to exceed the assessed valuation of the mineral production from such land."

It is doubtful that the above administrative rule complies with the statute and constitution, since both provide that the gross products tax is in lieu of taxes on the land, and there is nothing to indicate even by implication that the proper construction of the statute is for an ad valorem tax on the land or the mineral production whichever is greater. While the policy behind the rule is probably desirable, the constitution explicitly makes the gross products tax in lieu of taxes on the land, hence relative values of land and mineral production are at least arguably immaterial.

It is important to note from Table III that in 1967 oil and gas accounted for over 92 percent of both the assessed.

8. Id. at 23. Assessment of uranium for the gross products tax in 1967 varied among producers between $3.723 and $14.955 per ton apparently depending on the quality of ore produced.
9. This section provides: "No tax shall be imposed without the consent of the people or their authorized representatives. All taxation shall be equal and uniform."
mineral valuation and total gross production tax levied. These two minerals would also bear approximately the same percentage of the total additional tax load that would be imposed through the adoption of an across-the-board severance tax on all minerals. Table III also points out that a selective severance tax on only oil and gas would produce nearly as much revenue as a severance tax on all minerals. Whether or not these percentages will change in the future is a matter of speculation.

In addition to the statistical data presented in Table III relating to mineral taxation, it is important to consider the significance of minerals in the overall tax picture of Wyoming. The following data compiled from the 1967 annual report of the Ad Valorem Tax Department of the Wyoming State Board of Equalization illustrate the proportionate tax load borne by the mineral industries in 1967.\(^\text{12}\)

Total Taxable Valuation of the State ............... $1,170,865,252  
Assessed Valuation of Minerals Produced ............. 369,356,174

Total ad valorem taxes levied in Wyoming in 1967 equalled $64.8 million of which the gross product tax on mineral production accounted for $18.6 million or 28.6 percent.

Percentage of taxable valuation of various classes of property related to the mineral industries to total assessed valuation of the state include:

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil and gas production</td>
<td>29.24%</td>
</tr>
<tr>
<td>Oil Refineries</td>
<td>1.36%</td>
</tr>
<tr>
<td>Uranium, gypsum plants, and steel mills</td>
<td>1.16%</td>
</tr>
<tr>
<td>Oil rigs, drilling equipment, tanks, gathering lines</td>
<td>1.03%</td>
</tr>
<tr>
<td>Oil and gas wells supplies and equipment</td>
<td>0.76%</td>
</tr>
<tr>
<td>Gas and carbon plants</td>
<td>0.44%</td>
</tr>
<tr>
<td>Coal</td>
<td>0.43%</td>
</tr>
<tr>
<td>Total</td>
<td>34.42%</td>
</tr>
</tbody>
</table>

Examples of other classes of property include:

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town lots and improvements</td>
<td>20.05%</td>
</tr>
<tr>
<td>Land and improvements</td>
<td>13.50%</td>
</tr>
<tr>
<td>Cattle</td>
<td>3.37%</td>
</tr>
<tr>
<td>Sheep</td>
<td>0.48%</td>
</tr>
<tr>
<td>Farm machinery</td>
<td>0.91%</td>
</tr>
</tbody>
</table>

\(^{12}\) See supra note 7, at 61, 62; and refer to Table III, infra p. 586.
The mineral industries, then are paying a substantial part of the ad valorem taxes in Wyoming, and they also account for an equally substantial part of the wealth of the state. Both factors must be considered when looking for new sources of tax revenue.

It must be recognized that state government receives only a small percentage of the revenue generated by the ad valorem tax. Article 15 Section 2 of the Wyoming Constitution limits the mill levy for state revenue to 4 mills, and in 1967 the state mill levy was 2.5 mills which placed only 4.52 percent of the ad valorem taxes collected under state control. Counties are limited by Article 15 Section 5 to a 12 mill levy except for payment of public debt and interest thereon. Section 6 limits incorporated cities and towns to 8 mills again except for payment of debt and interest. Section 15 provides a 6 mill limit for the statewide school foundation program. Section 17, a constitutional amendment which became effective January 17, 1967, provides for a 12 mill levy to be collected in each county for the support and maintenance of the school districts within the county as provided by the legislature.

The following tabulation shows average mill levies for 1967 for each of the four main governmental subdivisions and the percentage of the total collected ad valorem tax distributed to each. The tax collected under the foundation program is included in the percentage allocated to schools.

<table>
<thead>
<tr>
<th>Tax</th>
<th>Average Mill Levy</th>
<th>Percent of Total Ad Valorem Tax Collected</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>2.500</td>
<td>4.52</td>
</tr>
<tr>
<td>County</td>
<td>10.988</td>
<td>19.86</td>
</tr>
<tr>
<td>School</td>
<td>32.808 }</td>
<td>70.14</td>
</tr>
<tr>
<td>Foundation Program</td>
<td>6.000 }</td>
<td></td>
</tr>
<tr>
<td>Municipal</td>
<td>11.471</td>
<td>5.48</td>
</tr>
</tbody>
</table>

The average tax levy for property in municipalities in 1967 was 68.052 mills, while the average levy for property not located in municipalities was 52.296 mills.

13. See supra note 7, at 61.
14. Enabling legislation enacted in 1967 at Wyo. Stat. § 39-70.1 and 39-70.2 (Supp. 1967) provides that the allocation is to be made by the state department of education to each school district within a county based on the proportionate share of classroom units within the county.
15. See supra note 7, at 61.
One other point should be made with respect to valuation. Most mineral production when assessed for the gross products tax is valued, as stated above, at cash market value. On the other hand, real property is assessed for property tax purposes at between 20 and 30 percent of actual value.\(^1^6\)

Shortly after the enactment of the gross products tax on minerals, it became necessary for the courts to determine the nature of the tax.\(^1^7\) This determination, as the following cases indicate, was important for several reasons and it is of interest to trace the evolution of the characterization of the gross products tax in the context in which the issue arose in each case. This is significant to the immediate problem of a severance tax because without the benefit of this case law it can be argued that due to the incident of taxation, the existing gross products tax is in fact a severance tax. However, there can be little doubt at this point that the gross products tax in Wyoming is judicially categorized as a personal property tax which is levied on the minerals after they are produced and when they are considered personal property.

*Buck Creek Oil Co. v. Miller*\(^1^8\) involved a dispute between an oil and gas lessor and lessee as to who should pay the taxes on the lessor's royalty interest. The court said that the tax was evidently a property tax, rather than a license, privilege, or occupation tax, and therefore in the absence of provisions in the lease pertaining to whom should pay the taxes, the gross product tax should be divided between them in proportion to oil owned by each, notwithstanding the fact that the lessor was not taking his payment in kind, but was accepting the "net returns from the sales."\(^1^9\)

The Tenth Circuit in 1934 cited *Miller* for the proposition that the gross product tax is not a severance tax, but is a tax on personal property.\(^2^0\) The question there arose in the context of the priority of liens in a receivership of a coal company, with the result being that the lien of the county for the payment of the gross product tax on the real estate

\(^1^6\) For a detailed analysis of property taxation in Wyoming with particular emphasis on the problem of uniform assessment see WYO. LEG. RESEARCH COMM. REP. NO. 6, PROPERTY TAXATION IN WYOMING (Dec. 1960).


\(^1^8\) 29 Wyo. 505, 229 P. 48 (1928).

\(^1^9\) Id., 229 P. at 44.

\(^2^0\) Board of Comm'r of Sweetwater County v. Bernardin, 74 F.2d 809 (10th Cir. 1934).
of the company was subject to and inferior to the lien of a first mortgagee. As the court pointed out, this is a more desirable classification for purposes of local taxation than a decision that it is a tax in the land, since much of Wyoming's mineral production comes from federally owned land which the court assumed was exempt from state taxation.

The question was again addressed to the court in 1952 and again involved an oil and gas lease in which it was stated that the lessee was to pay all the taxes on the land. When oil was subsequently discovered by the lessee, he deducted the taxes paid on the lessor's royalty share of production before paying the royalty. The court found it necessary to determine if the gross product tax is a tax on the minerals after they are severed, or a tax on the realty measured by the gross mineral product thereof. Deciding that minerals are personal property after being severed, the court interpreted the statute as clearly stating that the tax is on the product and not the land and is thus a personal property tax.

The J. Ray McDermott case starts with the basic premise that the gross product tax is a personal property tax and then explores the valuation problems of personal property assessments and applies them to mineral production.

Other state courts have held that a gross product type tax is not a personal property tax, but is an excise tax. However the cases involved different statutory and constitutional provisions, and the definitions generally evolve from decisions upholding the constitutionality of a particular tax that had been challenged by a taxpayer as violating constitutional requirements for equality and uniformity. By categorizing the tax as an excise tax rather than a property tax, courts have been able to rationalize the decisions sustaining tax statutes that do not strictly comply with the various state constitutional limitations pertaining to property taxes.

Of paramount importance to this area of classification of state taxation as it relates to the ability of a state to tax mineral production from federal lands is a recent Fifth Circuit decision which held that Louisiana cannot levy a

21. Id. at 814.
24. See supra note 17 and cases referred to in that article.
severance tax on oil and gas produced by a private lessee on an Air Force base. In so holding the court reversed its own 1956 decision involving the same parties on the same land under the same state statute. The court rationalized its complete reversal of position by relying on a 1964 Supreme Court decision, which refused to allow Louisiana to levy ad valorem personal property taxes on drilling equipment and pipelines located on the same Air Force base. The court reasoned that since the federal government had exclusive jurisdiction over the federal enclave that fact alone precluded any state taxation of property located thereon. Exclusive jurisdiction can only be waived by Congress, and the issuance by the Interior Department of a federal oil and gas lease to a private concern which contained a provision making the lessee liable for "all taxes lawfully assessed and levied under the laws of the State" could not be construed as a waiver of exclusive federal jurisdiction. The court further reasoned that (1) this clause was only inserted to prevent the federal government from being liable for "lawfully assessed" taxes against the lessee, and hence had no bearing on the issue since these were not "lawfully assessed" taxes, and (2) the Interior Department cannot waive exclusive jurisdiction through an oil and gas lease.

Seizing upon the Supreme Court's reasoning, the Fifth Circuit refused to distinguish between personal property ad valorem taxes and any other type of tax, specifically a severance tax, and held that without Congressional approval Louisiana cannot tax the production.

Does this reasoning apply to mineral production on all public lands? Probably not, since exclusive jurisdiction seems to be the key, and this does not exist on most of the public domain. However, if this distinction is incorrect, the implications of the decision could be disastrous to the existing tax structure of several western states including Wyoming.

25. Mississippi River Fuel Corp. v. Cocreham, 382 F.2d 989 (5th Cir. 1967).
28. Id.
Suffice it to say that the last has not been heard of the issue and remedial legislation is in order from Congress to clarify what has become, with the stroke of a judicial pen, an unsettled and muddied area.\footnote{30} 

**LEGISLATION INTRODUCED IN THE 1967 WYOMING LEGISLATURE** 

Although two "severance" tax proposals were presented to the 1967 session of the state legislature, neither was reported out of committee. A general discussion of the contents of these bills should be of value in illustrating some of the problems that would be created by the adoption of such taxes, and the revenue potentials of these proposals.

One proposal, House Bill No. 397, (hereinafter referred to as the severance tax) declares itself to be "AN ACT levying a severance tax upon oil, natural gas, and liquid hydrocarbons."\footnote{31} It provides that this broader tax base—not exclusively oil as in Bill No. 335 which is discussed below—be subjected to a levy of three percent of the taxable value as of the time and at the place where these products are severed from the soil.

Based on an assessed 1967 oil production value of $311,856,920 and an assessed 1967 gas production value of $30,479,313,\footnote{32} this tax would have generated approximately $10.3 million in revenue for the taxable period. This would be a total burden of approximately $.16 per barrel on oil and $.011 per thousand cubic feet on natural gas.

The other proposal, House Bill No. 335 (hereinafter referred to as the exportation tax) declares itself to be "AN ACT to provide for the levy of a crude oil exportation tax."\footnote{33} It would impose a four percent levy on the value—which is to be determined by the posted field price—of all oil pro-

\footnote{30. A similar classification of public lands was considered in FPC v. Oregon, 349 U.S. 435 (1955), which concerned whether the FPC had a better right to license water projects on federal reservations. The court concluded that federal control was appropriate when specifically "reserved" lands, as distinguished from "public lands"—lands subject to private appropriation under the public land laws—were included. Thus if this distinction applies to taxation, states should be able to continue to tax minerals produced from "public lands."


\footnote{32. See Table III infra p. 586.

\footnote{33. H. B. 335, 39th Wyo. Leg. (1967) (Emphasis supplied).}
duced from Wyoming lands and transported across the Wyoming state line in crude form.\textsuperscript{34}

Based on the 1966 production of 121,638,887 barrels\textsuperscript{35} at an average per barrel value of $2.56\textsuperscript{36} and on the fact that approximately seventy percent of this production was transported across the state line in crude form,\textsuperscript{37} this tax would have produced approximately $8.7 million in revenue for the taxable period. Since the burden of this levy is carried by the approximately 85,000,000 barrels of exported crude, it would mean a total burden on such barrels of approximately $.23 ($128 burden imposed by the gross products tax plus about $.10 imposed by the exportation tax).

The revenues collected under either tax would be subject to some reduction for the costs of assessment and collection; however, since the severance tax proposed a tax which is similar for assessment and collection purposes to the present gross products tax,\textsuperscript{38} there would be little additional expense and substantially all of this revenue would be available to the state. However, the exportation tax would impose a burden on an event not presently assessed and would require some additional expenditures for assessment and collection procedure and, therefore, would result in less net revenue for the state.

The exportation tax is also subject to a practical infirmity in that large producers with pipeline subsidiaries would be likely to ship the production of independent producers out of the state and refine their own within the state in an attempt to minimize their tax liability. Indirectly the bill partially provides for meeting this contingency because the state board of equalization is given the power to "promulgate rules and regulations for the reporting, assessment, and taxation of such crude production so transported." Therefore if the bill were construed to require the producer to pay the tax, the

\textsuperscript{34} Id. "[T]he taxable incident which shall render the tax due and payable shall be the crossing of the state line into an adjoining state of the oil in crude form."

\textsuperscript{35} See Table III infra p. 586. The table prepared by the Ad Valorem Tax Department, Wyoming State Board of Equalization. Note the total production presented is taxable production which excludes production credited to state and federal royalty interests.

\textsuperscript{36} Id.

\textsuperscript{37} WYO. OIL INDUSTRY COMM., THE OIL INDUSTRY IN WYOMING 3 (1965).

\textsuperscript{38} WYO. STAT. § 39-222 (1957).
board would be required to establish an equitable system whereby production exported from the state would be allocated back on a pro rata system to the actual producers, after allowing for some type of a deduction for crude oil refined in the state. This becomes even more complicated administratively when it is recognized that this pro rata allocation would include the myriad of net profit interests, oil payments, overrides and other fractional interests in production that exist in nearly all producing fields.

The other possible construction of the bill is to make the exporter responsible for the payment of the tax, and it would then become his responsibility to allocate the cost back to the producers should he so desire. Either construction is possible from the bill, since it is rather vague as to who will be responsible for paying the tax. Under either system the independent producer would be damaged more than the major oil company with pipeline and refining facilities, since the independent is totally dependent on the major or its subsidiaries for a market for his production.

The final aspect of these proposals which should be considered is their constitutionality. No particular constitutional problem is involved under the severance tax because it is modeled after existing legislation in several states. As will be illustrated later in the comparative section of this article, very few of these types of tax laws have been challenged constitutionally and where they have been challenged the tax has been upheld.

On the other hand, the exportation tax declares the taxable incident to be, "the crossing of the state line into an adjoining state of the oil in crude form." This would have the effect of exempting from taxation all crude oil refined in the state. The policy behind this levy is clearly to encourage refining crude in Wyoming, thus increasing the total payroll and capital investment in the state.

Other states have attempted to promote local industry
facilities within a producing gas field which were used to collect gas produced from individual wells and to deliver the gas to a central point for transmission into a pipeline.\textsuperscript{40} In order to encourage the construction of plants for the removal of liquid hydrocarbons from the gas, a “gas gatherer” was defined as the first party taking or retaining the gas after its severance for the purpose of transmission by pipeline or otherwise;\textsuperscript{41} except when the gas was first transported to liquid removal plants. In that case the “gas gatherer” was the first party taking the gas for the purpose of transmission after liquid removal.\textsuperscript{42} Two interstate gas pipeline companies who purchased gas after liquid removal objected to the imposition of the tax contending that it was in direct violation of the federal commerce clause. The case reached the United States Supreme Court after the validity of the tax was upheld by the Texas courts.\textsuperscript{43}

The Supreme Court found the tax to be unconstitutional as a tax on an aspect of interstate commerce so integrated with that commerce as to be a tax on the commerce itself.\textsuperscript{44} In so holding, the court recognized the recurring conflict between the constitutional mandate of free flow of trade between the states, and a state’s rightful desire to require interstate business to bear its proportionate share of local government costs commensurate with benefits received. The distinction now well settled upon is that a tax imposed on a local activity related to interstate commerce is permitted. For example, “occupation” taxes on activities closely related to interstate commerce are valid on the distinction that the manufacturing and conduct into interstate commerce are separable events.\textsuperscript{45} Applying this distinction to the Texas statute, the court stated, “But receipt of the gas in the pipeline is more than its ‘taking’ ... in reality, the tax is, therefore, on the exit of gas from the state.”\textsuperscript{46} Significantly, this case was decided in 1954, long after “depression era” cases that greatly enlarged the power of states to impose taxes on

\textsuperscript{40} Michigan-Wisconsin Pipeline Co. v. Calvert, 347 U.S. 157 (1954).
\textsuperscript{41} Id. at 161.
\textsuperscript{42} Id.
\textsuperscript{43} Calvert v. Panhandle Eastern Pipeline Co., 255 S.W.2d 535 (Tex. 1953).
\textsuperscript{44} See Michigan-Wisconsin Pipeline Co. v. Calvert, supra note 40, at 167.
\textsuperscript{45} Herrold, Current Developments in State Taxation of Interstate Commerce, 47 MARQ. L. REV. 441 (1964).
\textsuperscript{46} See Michigan-Wisconsin Pipeline Co. v. Calvert, supra note 40, at 167.
certain activities of interstate businesses without running afoul of the commerce clause.

The possible burden on interstate commerce imposed by the Texas statute was much more subtle, and not nearly as obvious and direct as that contemplated by the exportation tax.

Also relevant to the exportation tax was a tax statute in Montana that imposed a license tax on natural gas produced in Montana but transported out of the state for distribution. The Montana Supreme Court held the tax to be an unconstitutional burden on interstate commerce in violation of the commerce clause of the federal constitution.47

On the basis of these decisions and the nature of the tax proposed by the exportation tax, it is clear such a tax is unconstitutional.

Comparative Taxation of Minerals in Selected Western States

Before deciding on the desirability of increased taxation of minerals in Wyoming, some consideration should be given to the taxes imposed on minerals in other western states with economic and tax problems similar to those in Wyoming. With regard to the legal analysis, it is important to recognize the various types of taxes employed by different states and how these taxes relate to the Wyoming situation. Moreover, from an economic viewpoint it is essential to understand the importance of mineral production as an industry and tax revenue source in other states and how this compares to Wyoming. Finally, state taxation is one of the factors considered by private industry in deciding where to locate. Thus in Wyoming’s attempt to lure mineral producers into the state, comparative tax burdens of the selected states becomes important in deciding whether or not increased mineral taxation in Wyoming would put the state at a competitive disadvantage.

Each state provides directly or indirectly by its constitution and directly by its statutes for taxation of minerals. There is no uniformity in the terminology employed by dif-

ferent states to label the various taxes levied. In reality however all the major state taxes on minerals are either a property tax or a production tax.

Under the property tax classification there are several methods employed to ascertain the value of the mineral that will be entered on the assessment rolls in the particular political sub-division where the deposit is located. These range from the Wyoming gross products tax, to a tax on the net proceeds of production, to an assessment of the value of the mineral reserve in-place. From an administrative viewpoint, the in-place reserve assessment would appear to be the most difficult to determine with the preciseness that is desired for uniform taxation. Variations among the states also exist concerning the relationship between the actual value of the mineral in-place or produced and the value of that mineral used for assessment purposes.

Some states impose additional taxes on mineral production that are not based upon the property tax levy, nor levied in lieu of property taxes. These taxes are broadly classified for purposes of discussion as production taxes. It is important to distinguish these taxes from the Wyoming type of gross products tax, since, as discussed above, the gross products tax is the property tax levied on minerals produced in Wyoming, and even though the valuation for determining the burden is based on production, it is not a separate production tax.

The nomenclature applied to production taxes varies and becomes quite confusing. These taxes are classified by different states as license, severance, excise, privilege, occupation, and in one case, income taxes. While these designations may have some technical distinctions, they are not important for the purposes of this article and will not be discussed. The label attached to a particular production tax in a specific state is the statutory designation used in that state's statutes. In nearly every case the taxable incident is the severance of the mineral from the earth, and the rate of the tax is usually a statutory percentage of the value of the mineral at the time of severance.

A multi-state analysis is further complicated by the elaborate system of tax credits employed by some states,
especially Colorado, whereby the tax liability imposed by
one tax is allowed as a total or partial credit or deduction
in computing the liability of the taxpayer under another tax.

It was originally hoped that this article would be able
to present definitive quantitative data concerning the relative
tax on a per unit of production basis for different minerals
in the states studied, comparable to that presented in Table
III for Wyoming. However after some detailed investigation
which included correspondence with the appropriate state
tax boards, it was realized that in many states this type of
information is not readily available except perhaps by a
detailed school district by school district analysis. Such a
study was beyond the scope of this article. Although this
limitation has made much of statistical data presented for
the various states somewhat general, some important compari-
sions are presented. The authors would like to thank the
various states, tax commissions for their response to our
inquiries, and in particular we would like to compliment the
tax boards of Wyoming, Montana, Oklahoma, and Nevada
who, in our opinion, do the best job of preparing reports that
detail the tax situation in their respective states.

Generally omitted from detailed consideration in this
study are those assessments on mineral production, primarily
oil and gas, that are used to defray the expenses of the par-
ticular state's oil and gas conservation commission. In nearly
every state having such taxes these funds are specifically ear-
marked to the commission and thus have no effect on the
overall tax revenues of the state. Wyoming's statute is
typical and provides a levy of not more than 2/5 of one mill
on the dollar value at the well of oil and gas produced.48 For
the fiscal year ending June 30, 1966, revenues collected from
this tax totaled $97,000.49

Arizona

As in most states, Arizona makes no specific provision for
mineral taxation in its constitution; it merely provides in
article 9 for a uniform ad valorem property tax on property
of the same class to help defray state expenses.

49. [1964-1966] WYO. STATE BD. OF EQUALIZATION, DEP'T OF REVENUE 24TH
   BIENNIAL REP. 35.
For the purpose of taxation, property is divided into twenty-six specific classes; producing oil and gas interests and patented and unpatented producing mines are two of these classes.\textsuperscript{50}

Arizona requires that all producing mines be reported at full cash value, which shall include personal property such as machinery located thereon, improvements, and any smelting facilities operated in conjunction with the mine.\textsuperscript{51} Although this provision suggests that assessment is on this value, the correspondence received from the Arizona state property valuation department indicates that in actual practice the assessment is only 60 percent of the full value.\textsuperscript{52}

Oil and gas properties are subject to valuation for property tax purposes by the gross products method similar in most respects to that used in Wyoming.\textsuperscript{53} Deductions are allowed for royalty interests to the State and United States and also for the value of any production re-injected for pressure maintenance programs. The value of the production after these allowances is referred to as the gross yield from the property and is the assessed valuation of the producing property entered on the tax rolls. It is also specifically provided that the gross production valuation shall be the exclusive valuation method for oil and gas properties.\textsuperscript{54} However machinery and improvements on oil properties are not included in this figure, as they were in the case of mining, but are assessed and taxed separately.\textsuperscript{55} Moreover, in cases where the producer is not the owner of the land, the property from which oil and gas is produced is subjected to other ad valorem methods of valuation.\textsuperscript{56}

\textsuperscript{50} ARIZ. REV. STAT. § 42-136 (Supp. 1967). Producing oil and gas interests are included as class eight properties, and patented and unpatented producing mines are included under class nine.

\textsuperscript{51} ARIZ. REV. STAT. § 42-124 (Supp. 1967).

\textsuperscript{52} Letter from Robert C. Headington, Arizona Department of Property Valuation to Lawrence H. Averill, Faculty Editor, \textit{Land & Water L. Rev.}, March 20, 1968.

\textsuperscript{53} ARIZ. REV. STAT. §§ 42-227.01 and 42-227.02 (Supp. 1967), defines gross yield as the amount realized from the gross product and provides that this method of valuation shall be in lieu of any other method of ad valorem valuation.

\textsuperscript{54} ARIZ. REV. STAT. § 42-227.02 (Supp. 1967).

\textsuperscript{55} ARIZ. REV. STAT. §§ 42-136 (Supp. 1967). These properties would be taxed as class twenty-five, improvements on real property not elsewhere included, and class twenty-six, tangible personal property not elsewhere included.

\textsuperscript{56} ARIZ. REV. STAT. § 42-227.04 (Supp. 1967).
In addition to the ad valorem property tax on minerals, Arizona also imposes a one percent privilege tax on a variety of business activities including mineral production. This tax is imposed on all those engaged in "mining, quarrying, smelting, or producing for sale, profit ... any oil, natural gas, limestone, sand, gravel, copper, gold, silver, or other mineral product." This is a levy of one percent of the gross proceeds or gross income of such businesses. Other business activities taxed include timbering, public utilities and carriers, contractors, newspapers and printing. The revenue is earmarked for the state government to pay state expenses and obligations, with any excess to revert to the counties and school districts. The original statutory intent of the privilege tax was to lower and hopefully eliminate state and county property taxes.

Based on the 1966 production value for oil and gas of $720,000 and a reported 1966 value of mineral production of $553,000,000, it is clear that oil and gas production is not a major mineral product in Arizona.

In 1966 the assessed valuation of all property in Arizona was $2,239 million of which $318 million or 14.2 percent was from all types of mining property. The comparable percentage for Wyoming was 34.42 percent. The one percent privilege tax produced approximately $5.4 million in tax revenue to Arizona in 1966.

**Colorado**

Unlike Wyoming, Colorado makes no specific provisions in its constitution for the taxation of minerals. Article 10 of the constitution calls for a uniform ad valorem tax on all property in the state. This provision has been interpreted to require uniformity only among a particular class of persons or corporations. Article 10 also makes the maximum burden of this tax for state purposes five mills per dollar of assessed valuation; the basic maximum being four mills with the

57. **ARIZ. REV. STAT. § 42-1310 (Supp. 1967).**
58. **INDEPENDENT PETROLEUM ASSOC. OF AMERICA, THE OIL PRODUCING INDUSTRY IN YOUR STATE—1967, at 14 (Hereinafter cited as IPAA).**
59. See supra note 52.
60. **Id.**
61. **City of Denver v. Lewin, 106 Colo. 331, 105 P.2d 854 (1940).**
allowance for the fifth mill for construction at state educational institutions.

Since the provisions of the statutes as to the taxes and burdens levied on mining operations and oil and gas production are separate, these two types of mineral properties are considered separately.

Colorado imposes an annual license tax on the operation of coal mines within the state. The tax ranges from ten to fifty dollars per mine depending on tonnage produced. There is also imposed a seven-tenths of one cent tax on each ton of coal produced, payable to the state general fund. While not so designated, this levy is, in effect, a privilege tax on coal production.

Like all other mining operations, coal is subject to the "tunnel tax." This tax provides that all tunnels dug by an excavator for exploration, discovery, drainage, operation or access for another's benefit shall be classified as real estate, assessed at full value, and included as part of the mineral operation for property taxation. This tax illustrates the preciseness that some states, notably Colorado and New Mexico, employ in their statutes to define property subject to taxation. All improvements on the surface and equipment used in the mining operation are separately valued for assessment without regard to the category of the mineral property on which they are situated.

The mineral property itself is divided for valuation purposes into two categories, producing and non-producing. However, mines, as defined for the purpose of this classification, exempts mines valued primarily for coal, asphaltum, rock, limestone, dolomite, stone, gravel, clay, sand or earths. Producing mines are then defined as all mines producing more than five thousand dollars in annual gross proceeds. Gross proceeds are the gross value less the costs of treatment, reduction, transportation and sale. Net proceeds are defined as the gross proceeds less the costs of extraction.

63. Black's Law Dictionary 1860 (4th ed. 1957). See also the discussion of New Mexico's statutory scheme, infra p. 564 which states that a similar tax is on the privilege of extracting minerals.
Producing mineral properties are assessed for tax purposes at twenty-five percent of the gross proceeds or the value of the net proceeds whichever is greater. Non-producing mineral property and mines exempted from the producing—non-producing classification because of the minerals produced are assessed in the same manner as other real property. Since all oil, sulfur, or gas wells are excluded from the term "mines," these mineral properties are also assessed for ad valorem tax purposes on the fair market value of the property, and not on a production basis.  

In addition, an income tax is imposed on oil and natural gas production with a full credit granted for all ad valorem taxes paid, except those paid on surface improvements and machinery, storage facilities, and pipelines. These are assessed separately as real estate and taxed on their full assessed value. Since this is a graduated income tax, the burden will vary depending upon the total amount received by a producer from all his oil and gas properties. Under this section the income tax rates on the gross income of a person which is derived from oil and gas production are:

- under $25,000: 2%
- $25,000 and under $100,000: 3%
- $100,000 and under $300,000: 4%
- $300,000 and over: 5%

This income tax is in addition to the regular Colorado graduated income tax.  

The tax figures received by the authors from the Colorado Tax Commission deal only with property taxes for the year 1966. These figures report the 1966 assessed valuation of all metalliferous mining properties as $50.7 million and the assessed valuation of oil and coal properties as $101.2 million. The total assessed property valuation was $4.2 billion in Colo-

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68. Colo. Rev. Stat. § 137-6-10 (Supp. 1965); see also § 137-6-161 and 137-2-17(3) which excludes from the fair market valuation method, "mines or mining claims bearing gold, silver, lead, copper or other precious metals." (Emphasis added).


70. This statement follows from the language of the statute, which states all oil and gas production which may be attributed to any one producer.

71. 1966 Colo. Tax Comm'n Rep. 120. The $101.2 million figure for oil and coal assessed valuation was arrived at by subtracting the $3.8 million reported on p. 112 under agriculture as "other" from the $105.0 million reported on p. 120 as timber, oil, and coal property valuation. Oil property includes both oil and gas property.
rado while, the total taxes to be collected were $306 million.\textsuperscript{72} If the proportion 306 million/4.2 billion is applied to mineral properties, the approximate revenue from this source is $11 million or about 3.6 percent of the total revenue from ad valorem taxes. Thus, minerals are not a major source of tax revenue. This conclusion is substantiated by the 1966 Wyoming Tax Study which gives a figure of .9 percent as the total state and local revenues derived from minerals. The Colorado approach of additional taxation on oil and gas producers through a special income tax is unique and no figures are available to show its effect as a revenue raizer.

\textit{Idaho}

The Idaho Constitution, article 7, provides that the legislature shall raise all needed revenue by providing a uniform tax on property held within the state. It also allows imposition of license taxes on natural and artificial persons. Effective January 1, 1965, there can be no general state ad valorem property tax while a sales tax is in force.\textsuperscript{74}

A license tax such as that allowed by the constitution is imposed on mining operations.\textsuperscript{75} The burden of this tax is three percent of the value of the extracted products. This value is defined as the amount received from sale after deduction of expenses, including depletion and depreciation, and in essence the tax is a net proceeds license tax.

Assessment for property taxation of the net profits of all mines within the state is also provided.\textsuperscript{76} Net profit for ad valorem purposes is determined by subtracting from gross receipts the costs of (1) extraction, (2) transportation, (3) reduction and refining, (4) sales, (5) expenditures for necessary labor, machinery, and supplies used in mining operations, (6) all necessary expenditures for improvements.

The net proceeds valuation does not exempt from property taxation improvements, buildings, erections, structures or machinery placed on the mining claim or used in conjunction with the operation.

\textsuperscript{72} Id. at 8.
\textsuperscript{73} BUEHLER, WYOMING TAX STUDY 136 (1966) (Hereinafter cited as BUEHLER).
\textsuperscript{74} IDAHO CODE ANN. § 63-422 (Supp. 1967).
\textsuperscript{75} IDAHO CODE ANN. §§ 47-1201 & -1202 (1947).
\textsuperscript{76} IDAHO CODE ANN. §§ 63.2801-2802 (1947).
Non-producing mines are assessed at the patent price paid the United States, but in no case less than five dollars per acre.

The Idaho Supreme Court upheld the constitutionality of the license tax on minerals and rejected the argument that it was discriminatory by saying that legislatures may select businesses to be taxed. The license tax was categorized as a privilege tax and thus not a double ad valorem tax. This case is important to the Wyoming situation due to the probable similarity that would exist between the taxable event now subject to the gross products tax and any severance tax. Note also that Idaho specifically provides for license taxes in its constitution, while Wyoming's constitution at most recognizes license taxes by implication.

Idaho which has no oil or gas production does require a one hundred dollar license permit to drill an oil or gas well, and is ready to levy a five mill per barrel or per 50,000 cubic feet of gas conservation tax.

Since Idaho at the present time does not produce oil or gas, these minerals make no revenue contributions to the state. In 1965, Idaho derived $1,447,000 from ad valorem taxes on mineral production net proceeds. No accurate figures are available pertaining to the proceeds from the three percent license tax.

Kansas

The Kansas Constitution provides that the legislature shall provide for equal and uniform rates of assessment and taxation, except that certain property including mineral products may be separately classified and taxed uniformly.

Kansas requires that all properties not specifically exempted shall be subject to the ad valorem property tax, and further requires that for the purposes of valuation, real property, real estate and land shall be construed as inclusive

78. See Wyo. Const. art. 15, § 16; a 1954 amendment providing for the disposition of fees, excise and license taxes levied on vehicles and gasoline.
81. See Buehler, supra note 73, at 136.
of all improvements, fixtures, mines, minerals, quarries, mineral springs, wells, and appurtenant rights and privileges. 88

For the purposes of valuing property subjected to this ad valorem tax, all real or personal property is valued at its justifiable money value, apparently the present market value. 84 Personal property is also given a two hundred dollar exemption from the assessed value figures. These general property valuation statutes are pertinent since all oil and gas leases and all producing oil and gas wells or such wells capable of production are classified as personal property. 86 However, when the surface interest and mineral interest are held by different parties, they shall be separately valued and assessed. 86

Kansas is the only state of those studied which has unsuccessfully attempted to levy a severance tax. 87 However, the tax was held unconstitutional on a void for vagueness ground rather than on the principle of a severance tax being unconstitutional. 88 Therefore Kansas imposes no special production taxes on minerals. The only tax burden on mineral production is that imposed by the ad valorem property tax and the basis for assessment is the value of the mineral deposit thus necessitating a valuation of the mineral in-place.

No tax revenue figures on the amount paid by mineral producers in Kansas were available to the authors. Kansas is a significant oil and gas producing state, and in 1966 the total value of all hydrocarbon production was $452 million, $110 million more than Wyoming. 89

Montana

The Montana Constitution gives the legislature the power to levy a uniform rate of assessment and taxation and to prescribe regulations to secure a just valuation for taxation of all property. 90 The legislature may also impose a

84. KAN. STAT. ANN. § 79-1406 (1964).
86. KAN. STAT. ANN. § 79-420 (1964).
88. Id.
89. See IPAA, supra note 58, at 28.
90. MONT. CONST. art. 12, § 1.
license tax upon persons and corporations, and a graduated and progressive income tax. The constitution also provides that mines and mining claims shall be taxed at the price paid the government for the land unless the surface is more valuable for another use, and then it shall be taxed at its value for such other use.\footnote{91} All machinery and surface improvements are to be taxed, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law.\footnote{92}

Montana has elaborate statutory provisions for classifying property for assessment for taxation. One class includes the annual net proceeds of mines and mining claims, the value of the mining claims at the price paid the government, and the exploration or prospecting value of a severed mineral estate.\footnote{93} The taxable values of the mining claims at the price paid the government vary between $2.50 and $20.00 per acre.\footnote{94} All such property is assessed at 100 percent of true and fair value.\footnote{95}

The surface improvements including the mining machinery and equipment are taxed at 30 percent of fair and true value.

Net proceeds from mines are calculated by deducting from the value of the gross product the following: royalties, labor, machinery, supplies, improvements, and repairs of the mines and milling and reduction works, depreciation at the rate of six percent on the milling and reduction works, ore transportation from the mine to the mill or place of sale, fire insurance, workmen's compensation, and payments made to retirement funds.\footnote{96} Repairs, improvements and betterments to the mine are deducted at ten percent per year, but no deduction is allowed on the investment in the mine unless the property represented by such investments are on the tax rolls of the county assessor.

In addition to the net proceeds from minerals being placed on the county assessment rolls for the property tax,
Montana also has license taxes on mineral production and the rates vary for different minerals. All revenues from the mineral license taxes go to the state general fund.

The license tax on oil is two percent of the gross value produced each quarter from each lease not in excess of 450 barrels times the number of producing wells on the lease.\(^7\) Production in excess of this amount is taxed at the rate of 2\(\frac{1}{2}\) percent of the gross value.

The metal mines license tax is determined from the gross value of the produced ore or mineral and no deduction is given for smelting or reduction in arriving at the gross value.\(^8\) The first $100,000 of gross production is tax exempt, the next $150,000 pays a tax of \(\frac{1}{2}\) of 1 percent, the next $150,000 pays \(\frac{3}{4}\) of 1 percent, the next $100,000 pays 1 percent, and all gross production over $500,000 pays 1\(\frac{1}{4}\) percent.\(^9\)

Other mineral production subject to a license tax in Montana includes: coal—5 cents per ton on production over 50,000 tons annually, and on coal imported and sold, carbon black—\(\frac{1}{8}\) of 1 cent per pound, cement—4 cents per barrel, gypsum and vermiculite—5 cents per ton, natural gas—\(\frac{1}{2}\) cent per thousand cubic feet distributed in the state.\(^10\)

Montana's license taxes on minerals are severance taxes since in nearly every instance the taxable event is the production of the mineral. While Wyoming has a gross products tax in lieu of property tax, Montana imposes a net proceeds tax on minerals for property tax purposes and in addition imposes the license tax all of which goes to the state general fund.

The following statistics show the taxes imposed on minerals by Montana based on 1966 fiscal year production.\(^11\) The assessed value of all property in Montana for 1966 was approximately $2.8 billion, while the taxable valuation was $824 million. Of this total $59 million or 7.26 percent was derived from the net proceeds of mines, including oil and

\(^7\) MONT. REV. CODES ANN. § 84-2202 (1966 Replac.).
\(^8\) MONT. REV. CODES ANN. § 84-2003 (1966 Replac.).
\(^9\) MONT. REV. CODES ANN. § 84-2004 (1966 Replac.).
\(^10\) See supra note 94, at 14.
gas. The $59 million total value of net proceeds from minerals includes $42 million from oil and $12.7 million from metal mines, primarily copper. With respect to oil, through the use of the gross products tax, Wyoming assessed oil at an average value of $2.56 per barrel in 1967, while in Montana on the basis of the net proceeds tax the average per barrel value in 1966 was $1.39. The average mill levy for the state, county, and school taxes in Montana for fiscal 1966 was 106 mills, while the average comparable mill levy in Wyoming for 1967 was 52.3 mills. These are, however, not necessarily comparable figures for all purposes since the methods of valuation for assessment purposes may vary between the states, and if, for example, property is assessed at a lower value in Montana a higher mill levy would be required to generate the same tax revenue. From the data available it is not possible to arrive at a per barrel tax on oil in Montana on the net proceeds since this is largely related to the school district mill levy in which the production is located. However, based on the average statewide mill levy of 106 mills and the average net proceeds value of $1.39, a barrel of oil would pay $1.47 ad valorem tax. However, the largest oil producing county in Montana in 1966, Fallon, also had the state’s lowest mill levy, 57.54 mills. Thus in Fallon County the average ad valorem tax on the net proceeds of a barrel of oil was $.08 (57.54 mills x $1.39 per barrel) which is probably comparable to the Wyoming gross products tax levied in some counties with high oil production and low mill levies.

All this illustrates that quantitative comparison between Wyoming’s gross product ad valorem tax and Montana’s net proceeds ad valorem plus license taxes is difficult, and can only be accurately done by a comparison of specific taxing districts in each state.

The total tax revenue generated in Montana by the license or severance tax was only 5 percent of the revenue raised by the net proceeds tax on minerals. Montana’s license tax on oil production raised $1.99 million in fiscal 1966 and that state produces approximately 30 percent as much oil as Wyoming. The metal mines license tax amounted to $1.14

102. See supra note 94, at 119.
103. Id.
million, while during the same period Montana collected over $21 million from an individual income tax and $7 million on a corporation license tax.

Nebraska

Article 8 of the Nebraska Constitution provides for uniform taxation within a particular class of all tangible property and franchises within the state. This section also impowers the legislature to levy taxes in addition to property taxes. Like Idaho, Nebraska, through an amendment adopted in 1954, prohibits any property tax for state revenue purposes when either a general sales or income tax is in effect.  

Nebraska provides that tangible or real property shall be valued at actual value and assessed at 35 percent of this value for tax purposes. Mineral interests in Nebraska are valued for assessment purposes the same as other property and thus Nebraska is a state that requires valuation of minerals in-place.

In addition, Nebraska imposes a two percent severance tax on the value of all oil and gas produced; the value of these products being the value at the time and place of severance. Based on a 1966 value of Nebraska’s oil and gas production of $40.8 million, the two percent severance tax would produce approximately $800,000, all allocated to the State Permanent School Fund. No production tax is levied on other minerals. Nebraska ad valorem property tax revenues from mineral production were estimated at $850,000 for fiscal 1965.

Nevada

The Nevada Constitution contains the usual provisions for uniform assessment and taxation of real, personal, and possessory property. In addition, article 10 provides that in the case of unpatented mining claims the proceeds alone shall be assessed and taxed, and when patented, each patented mine shall also be assessed at not less than $500, except when

104. Neb. Const. art. 8, § 1 A.
107. See supra note 58 at 46.
108. See supra note 73, at 136.
$100 of labor has been performed on the patented mine within the year. The policy behind this provision as it relates to mines is to tax the net proceeds from all mines and in addition to encourage development of patented claims by providing an exemption from the $500 assessment for labor performed.\textsuperscript{110}

Net proceeds from mines are determined in Nevada by computing the gross yield and deducting the following costs: actual extraction costs; transportation costs from the mine to the place of reduction refining and sale; reduction, refining, and sale costs; cost of marketing and delivering the product; cost of maintenance and repairs; depreciation not to exceed 10 percent per year; fire and industrial insurance; unemployment and social security taxes; cost of development work; and royalties. The royalties paid shall be part of the gross yield of the mine for determining the net proceeds upon which a tax shall be levied against the person receiving the royalty.\textsuperscript{111}

The Nevada net proceeds tax is considered a personal property tax for the same purpose that Wyoming's gross production tax is considered a personal property tax, that is to allow the state to tax minerals produced from federal lands.\textsuperscript{112}

The Nevada approach is exceedingly simple since all proceeds from mines are included and there is no enumeration of certain minerals and no reference made to valuable deposits as in Wyoming. Net proceeds from oil wells are also included in the net proceeds tax according to the Nevada attorney general.\textsuperscript{113}

For the fiscal year ending June 30, 1967 the net proceeds from mines were $27.6 million or 1.70 percent of the total assessed valuation of the state. Mill and mine improvements accounted for $22.8 million or 1.40 percent of the total, while patented mining claims had an assessed valuation of $4.8 million or .3 percent of the total.\textsuperscript{114} For fiscal 1965 the net proceeds tax on minerals in Nevada generated

\textsuperscript{110} Goldfield Consol. Mines Co. v. State, 35 Nev. 178, 127 P. 77 (1912).
\textsuperscript{111} NEV. REV. STAT. § 362.120.
\textsuperscript{112} 9 Op. Nev. ATT'Y GEN. (1940).
only $66,300.\textsuperscript{115} Nevada oil production is less than 1,000 barrels per day and in 1966 the state produced only 307,000 barrels.\textsuperscript{118} With the exception of some open pit copper mining, Nevada is not a major mineral producing state, and taxes on minerals are not an important tax revenue source.

Nevada does not impose any additional production, license, or severance type taxes.

\textit{New Mexico}

The New Mexico Constitution contains no specific reference to taxation of minerals. Article 8 provides that all property in the state shall be subject to uniform ad valorem taxation. An attempt is made to impose mill levy maximums for taxation, but numerous exceptions render them somewhat meaningless.\textsuperscript{117}

For the purpose of assessment for the levy of the ad valorem property tax, mineral properties are divided into three classes: (1) mineral lands held in fee by private parties, (2) severed mineral products held by possessory title under the laws of the United States, and (3) severed mineral products held under lease or contract from land belonging to the State or United States.\textsuperscript{118}

All properties falling into class one are further classified as being productive or non-productive; productive being defined as those properties operated for the value of the product, with reasonable continuity, in accord with the posture of the market.\textsuperscript{119} All productive properties may be assessed on the market value of their average annual production less allowances for costs of production, preparation and sale.\textsuperscript{120} At the option of the producer, the average annual production can be either an average for the preceding five

\begin{itemize}
\item \textsuperscript{115} See Buehler, supra note 73, at 136.
\item \textsuperscript{116} See IPAA, supra note 58 at 51.
\item \textsuperscript{117} N.M. Const. art. 8 § 2 imposes a four-fold limit on mill levies. First, the basic levy for state purposes is not to exceed four mills; second, this can be increased to ten mills for certain enumerated purposes; third, the total levy on most classes of tangible real and personal property is twenty mills; and fourth, the limit can be exceeded when approved by a majority of the voters in an election.
\item \textsuperscript{118} N.M. Stat. Ann. § 72-6-7(2) (1961 Replac.).
\item \textsuperscript{119} N.M. Stat. Ann. § 72-6-7(3) (1961 Replac.).
\item \textsuperscript{120} N.M. Stat. Ann. § 72-6-7(6) (1961 Replac.), deductions are not allowed for salaries paid those not actually engaged in the operation, or amounts paid for improvements.
\end{itemize}
years or simply the previous year’s production. Valuation of these productive class one properties also includes a reasonable reserve quantity which is determined and assigned by the tax commission. The commission then has the option of using this type of net proceeds valuation for assessment purposes, or it may determine the value of the mineral property through an in-place reserve valuation.

Non-productive properties are assessed by Commission appraisal and productive properties whose value of production is less than actual cost of production may be assessed on the same basis as non-productive properties at the discretion of the Commission. Class two and class three properties are assessed on the basis of the market value of the average annual production.

In all cases, the value of surface improvement and machinery is separately assessed and taxed on the full value of this assessment.

New Mexico imposes a “severance” tax on all natural resource products except oil, natural gas or liquid hydrocarbons which are taxed separately through a related tax. The severance tax is levied on the gross value defined as the sales value at the first marketable point after severance or the posted field price at the point of production when such a price exists or, in the case of processed mineral products, the proceeds from the first sale after processing. The heaviest burden under this tax falls on potash, which is taxed at two and one-half percent. Other rates include: copper—½ percent, uranium—1 percent, timber, coal, all other nonmetallic minerals, and all other metals—½ percent.

In addition to the ad valorem property and severance taxes on minerals, a “Resources Excise Tax” is levied on the privilege of severing natural resources. This particular tax does not apply to all minerals since the statute specifically exempts oil, natural gas, or liquid hydrocarbons from its

121. N.M. STAT. ANN. § 72-6-7(7) (1961 Replac.).
122. Compare N.M. STAT. ANN. §§ 72-6-7(8), (9), (10) (1961 Replac.).
123. N.M. STAT. ANN. § 72-6-7(11) (1961 Replac.).
124. N.M. STAT. ANN. § 72-6-7(13) (1961 Replac.).
126. N.M. STAT. ANN. § 72-18-2(B) (1961 Replac.).
provisions.\textsuperscript{128} The tax is levied at a rate of three quarters of one percent on all minerals except potash, which is subjected to a three percent burden. Taxable value for the purpose of this tax is the total value of money or other consideration received after severance or the reasonable value of any amount not sold.\textsuperscript{129} It is further provided that any amounts not taxed by the above provisions which are severed by one party from lands owned by another shall be subject to a "service tax" on the same basis and at the same rate as the Resources Excise Tax.\textsuperscript{130} This tax has the same general effect as the former sales tax on minerals which was repealed and replaced by this section in 1967.\textsuperscript{131}

Oil and gas producers\textsuperscript{132} are subject to four specific production taxes: the ad valorem production tax, the conservation tax, the severance tax, and the emergency school tax. These levies are in addition to the liability under the general ad valorem property tax.

The ad valorem production tax is levied on the assessed value of all oil, natural gas or other liquid hydrocarbon products.\textsuperscript{133} Value for the purpose of this tax is the actual price received for the production at the production unit site. The taxable value is the gross value less deductions for, (1) royalties due or paid the State or United States, (2) royalties due or paid to any Indian tribe, Indian pueblo, an Indian who is a ward of the United States, (3) reasonable transportation costs from the production unit to the first market, and (4) fifty percent of the value after the first three deductions as an allowance for costs and amortization. After the value of the properties is thus determined, the local taxing district mill levy is applied to determine the actual tax due.

It is also provided that the state commission,\textsuperscript{134} may determine the value in cases where, (1) the operator and

\begin{itemize}
\item \textsuperscript{128} These minerals are subject to the emergency school tax discussed \textit{infra}.
\item \textsuperscript{130} N.M. Stat. Ann. § 72-16A-25 (Supp. 1967).
\item \textsuperscript{131} The practical effect was to increase the rate from one-half of one percent to three quarters of one percent on all minerals subject to the tax except the rate for potash which increased from two to three percent.
\item \textsuperscript{133} N.M. Stat. Ann. §§ 72-22-1 through 72-22-27 (1961 Replac. and 1967 Supp.).
\item \textsuperscript{134} N.M. Stat. Ann. § 72-22-6 (1961 Replac.).
\end{itemize}
purchaser are affiliated, (2) the sale and purchase are not arm's length transactions and (3) when the products are severed from the production unit site without any value determination. In all cases where the commission does make the value determination, the determined value must be commensurate with the actual value received in the same field or area.

The oil and gas conservation tax is a levy on the value, defined as the actual price received at the production unit, of all products severed and sold. The rate of imposition is fourteen one-hundredths of one percent of the taxable value. Revenues raised by this tax go to administer the oil and gas conservation commission.

An additional 2½ percent severance tax is placed on the taxable value of oil and gas production. Taxable value is defined in much the same terms as it is for other taxes and allows deductions for royalties and trucking to place of first market. This is a companion tax to the severance tax on other minerals discussed above.

The oil and gas emergency school tax imposes still another 2.55 percent tax on the privilege of engaging in the business of severing oil and gas. The taxable value under this act is the market value of these severed products less the exemptions granted under the provisions imposing the severance and conservation taxes.

In summary, New Mexico has a very complicated statutory valuation procedure for mineral properties for the purpose of assessment of general property taxes. For minerals other than oil and gas there is imposed in addition to the property tax: (1) a severance tax at different rates for different minerals, and (2) an excise tax which is 3/4 of 1 percent on all minerals except potash which is 3 percent.

Oil and gas producers pay the general property tax plus: (1) an ad valorem production tax, (2) a 2½ percent severance tax, (3) a 2.55 percent "privilege" tax for the Emergency School Fund, and (4) the usual small conservation tax.

The only quantitative data available on New Mexico is from the 1966 Wyoming Tax Study which indicates that in fiscal 1965, New Mexico collected $5.14 million from the ad valorem oil and gas production tax, and $22.5 million from the severance, privilege, and conservation taxes on all minerals. These figures apparently do not include general property taxes collected from mineral producers.

In this same period New Mexico derived 11.0 percent of its total state and local tax revenue from the mineral industries, second only to Wyoming's 16.8 percent for the states studied by Beuhler.\textsuperscript{138}

New Mexico is a major mineral producing state, producing $813 million in minerals in 1966, of which oil and gas accounted for $469 million, potash $109 million, and copper $79 million.\textsuperscript{139} It is arguable that New Mexico is a case in point where high local and state taxes do not adversely affect mineral exploration and production.

\textit{North Dakota}

Article 11 of the North Dakota Constitution provides for the uniform taxation of the assessed valuation of all taxable property in the state. The constitution makes no specific reference to minerals or to their method of valuation for taxation.

For ad valorem property taxes, real property includes all mines, minerals, and quarries in and under the land itself.\textsuperscript{140} Specific provisions are made for the assessment of severed mineral interest, and the assessed value of the mineral property for the purposes of taxation is defined as the price that the property would sell for at a fair voluntary sale for cash. The actual tax levy, however, is based on fifty percent of the assessed valuation, except when the tax being levied is for the payment of a bonded or warranted indebtedness and then the full and true value is used.\textsuperscript{141}

A tax on severed mineral estates of three cents per acre without regard to the type of mineral, its quantity or value

\textsuperscript{138} See Beuhler, \textit{supra} note 73, at 136.
\textsuperscript{140} N.D. CENT. CODE § 57-02-04 (Supp. 1967).
\textsuperscript{141} N.D. CENT. CODE § 57-02-28 (1960).
was held void for failure to abide by the constitutional requirements of uniformity and classification of property.142

The ad valorem tax on mineral reserves is not important to oil and gas production since North Dakota imposes a five percent gross value tax on all such production and it is in lieu of all ad valorem taxes imposed by the state, counties, cities, towns, school districts, or other municipalities.143 Gross value is the sales price at the field or well head. All production facilities and equipment actually needed and utilized in the production of oil and gas at the well site are also exempt from the ad valorem tax under the statute. Drilling rigs, gasoline extraction and absorption plants are specifically not included in the exempted property.

No in lieu production taxes are provided for minerals other than oil and gas. Consequently all other minerals and apparently non-producing known reserves of oil and gas are subject to the ad valorem tax, thus requiring a valuation of the mineral reserve in-place.

North Dakota has also provided some rather unique apportionment and uses for the oil and gas production or severance tax.144 One percent of the gross value of the production of each well goes to the state general fund. The next two hundred thousand dollars annually collected in any county is allocated seventy-five percent to that county and twenty-five percent to the state general fund. The next two hundred thousand dollars annually collected is divided equally between the county and the state general fund, and any amount collected above that is divided twenty-five percent to the county and seventy-five percent to the state general fund.

Furthermore the revenues allocated to the counties are divided forty percent to the county road and bridge fund, forty-five percent to the school districts within the county on the basis of average daily attendance among the districts, and the remaining fifteen percent is allocated among the incorporated cities and towns on the basis of population. A recent amendment to the statute allows the county commis-

143. N.D. CENT. CODE § 57-51003 (1960).
sioners to use part of the forty percent allocated to the road and bridge fund for surface and sub-surface water reclamation projects.\textsuperscript{145}

Under this approach, some degree of equalization may be obtained and more of the tax revenue from production in oil rich counties is funneled back to state government than under the Wyoming tax structure. The mill levy is in essence 50 mills on all oil and gas production within the state with no variation from county to county depending on the tax needs of each county.

\textit{Oklahoma}

Article 10 of the Oklahoma Constitution provides that property taxes shall be uniform and assessment for taxation is to be at fair cash value. Section 9 prohibits an ad valorem property tax for state purposes and originally the constitution limited the total ad valorem tax to 15 mills for all other purposes.\textsuperscript{146} The legislature is also given specific power to levy and collect license, franchise, gross revenue, excise, income, inheritance, legacy and succession taxes.

Under this basic constitutional structure, Oklahoma imposed a gross production tax on minerals which in its original form excepted coal from its coverage. This was held constitutional against a challenge that it violated the uniformity provision of the constitution.\textsuperscript{147}

Oklahoma levies a gross production tax of $\frac{3}{4}$ of one percent on the gross value of all production of asphalt, ores containing lead, zinc, jack, gold, silver and copper; while a five percent gross production tax is imposed on oil and natural gas.\textsuperscript{148} In 1955, Oklahoma added a five percent gross production tax on uranium. The gross production tax is in lieu of all taxes imposed by the state, counties, cities, towns, school districts and other municipalities. Like North Dakota, actual production facilities and equipment are also exempt from the ad valorem tax by the payment of the gross production tax.

\textsuperscript{146} Like New Mexico, this general 15 mill limitation has been rendered meaningless due to an almost continuous series of constitutional amendments allowing mill levies for specific purposes.
\textsuperscript{147} In re Gross Production Tax of Wolverine Oil Co., 53 Okla. 24, 154 P. 362 (1916).
Oklahoma also provides a 7/32 of one cent per barrel excise tax on oil and 2/100 per 1000 cubic feet excise tax on natural gas, the proceeds from which go to the conservation fund and the Interstate Oil Compact Fund of Oklahoma.149 These two excise taxes are comparable to the Wyoming conservation tax.

Oklahoma perhaps more than any other state studied has had a wealth of litigation on whether a state can levy either a gross production tax or an excise tax on oil produced from federal lands, specifically in Oklahoma Indian reservations. The United States Supreme Court initially held both taxes invalid when applied to production from Indian lands,150 and then in a series of cases finally came to the conclusion that such taxes were not immunized by the constitution and could therefore be levied by the states.151

An overriding issue in all these cases was the nature of the gross production tax. The latest, but not necessarily the final, judicial classification was pronounced rather emphatically by the Oklahoma Supreme Court when it stated, "Without question the gross production tax levied by virtue of [the statute] is a property tax levied in lieu of an ad valorem tax."152

Like North Dakota, Oklahoma provides for the disposition of gross production tax proceeds by statute.153 Seventy-eight percent of the monies collected from all minerals except natural gas goes to the state revenue fund, ten percent goes to the county highway fund, ten percent is divided among the school districts within the county, and two percent goes to the Oklahoma Tax Commission fund for administrative purposes. Seventy-eight percent of the natural gas gross production tax is earmarked to the Oklahoma Teachers' Retirement Fund.

Some interesting comparisons can be made between the tax burden on oil and gas production in Wyoming and Oklahoma both of which levy a gross production tax, but

which in Wyoming is tied to the local mill levy, while in Oklahoma the tax is a uniform 5 percent of gross value regardless of the local mill levy for ad valorem taxes.

The Oklahoma 5 percent gross production tax is equivalent to a 50 mill levy in Wyoming. Table III shows that the average tax levy in Wyoming in 1967 was almost exactly 50 mills for oil and gas production. This indicates that current taxes on mineral production in the two states are approximately equal. Oklahoma's excise tax on oil and gas did raise $800,000 revenue in fiscal 1966-67 as compared to $97,000 in Wyoming under a comparable tax. In either case however, as previously pointed out, these revenues are earmarked for the state oil and gas regulatory bodies and therefore do not influence the revenue picture of the state, and in neither case can they be considered a significant burden on the industry.

The average field price of oil in Oklahoma is $.35 per barrel higher than in Wyoming ($2.91 v. $2.56) which is an important consideration to the industry in deciding where to invest in production. Oklahoma is a major oil producing state, producing in total dollar value, nearly 2.7 times as much as Wyoming in 1966, and hence must be considered as a competitive state if Wyoming is attempting to lure the oil industry to accelerate production and exploration in the state. At the present time the five percent Oklahoma gross production tax is approximately equal to the average gross products tax levied on an ad valorem base in Wyoming. What effect an additional tax on oil in Wyoming would have on this tax must be given serious consideration.

South Dakota

The South Dakota Constitution in article 6 calls for the usual uniform general property tax and no specific reference is made to mineral taxation.

South Dakota provides for the assessment of all property at its true and full value, but only sixty percent of this value is considered as the taxable value. In the case of mines

154. See IPAA, supra note 58, at 62. The total value of Oklahoma oil and gas production in 1966 was $914 million, oil accounting for $743 million and gas, $180 million. See Table III infra p. 589 for the Wyoming production in 1966.

and quarries the full and market value is the voluntary cash sale price of the property. Mineral properties in South Dakota are valued and assessed for property tax purposes the same as any other property.

South Dakota's statutes also provide for a tax on the value of any finished ore or other valuable mineral product severed from and procured in the state. If the severing party and the processing party are not the same, then the amount each party owes shall be determined by the Revenue Commissioner. In these instances, the Commissioner shall cause the tax on the value at the time and place of production to fall on the producer and the tax above this amount to fall on the processor. Although it is not expressly dealt with in the statute, it would appear that this formula would conveniently be applied in cases where the refining occurred out of state; the state of South Dakota being limited to revenue from the value at the time and place of production. The basic burden of this tax was two and one-half percent, but this was changed effective March 9, 1967. Under the amendment the tax rate is one percent of the value of the article produced; with the provision that when the base price of the mineral increases twenty-five percent above the price of March 9, 1967, the rate shall increase to four percent. However, the one percent tax will not be imposed between July 1, 1968 and July 1, 1970 unless the four percent rate applies.

As in the case of a majority of the states studied, South Dakota realizes a minimal amount of revenue from mineral production. The most recent reported figure shows that only two-tenths of one percent of all state and local revenues are from mineral taxation. South Dakota mineral production in 1966 totaled $52.7 million with $21.2 million of this total from gold mining in the Black Hills. Oil and gas production was limited to 29 wells that produced $479,000 worth of oil.

157. S.D. Code § 57.3702 (Supp. 1960) requires that these levies are due and payable before sale, removal from the place of production or before removal from the state.
159. See Buehler, supra note 73, at 136.
161. See IPAA, supra note 58, at 66.
Utah

Article 13 of the Utah Constitution provides in broad terms for the assessment and taxation of all tangible property. The provision relating directly to minerals provides in part that metalliferous mines and mining claims shall be assessed as provided by the legislature, which shall include a $5 per acre assessment which could not be changed until January 1, 1935, and which has not yet been changed. In addition all other mines, mining claims, and valuable mineral deposits, including lands containing coal and hydrocarbons, plus machinery and surface improvements, plus the surface of all mines and mining claims that are used for other than mining purposes shall be assessed as other tangible property.

Utah has distinguished for purposes of taxation metalliferous mines and other types of mineral production. In the case of metalliferous minerals, the mine or claim is assessed at $5 per acre plus an amount which is equal to twice the average net annual proceeds of either the three preceding years or the number of years the mine has been operating, whichever is less. The statute also provides an exception which eliminates the valuation of the net annual proceeds in the year if there were no gross proceeds in the preceding year. This exception was adopted as an amendment to the basic statute in 1963 and from that date until 1967 applied only to uranium and vanadium mines, but was expanded to include all metalliferous mines in 1967.

Net annual proceeds of a metalliferous mine are defined as the gross proceeds realized from the sale or conversion into money or its equivalent of all ores extracted from the mine less certain itemized deductions. The tax commission is also given the authority to set the fair cash value of the gross proceeds when the ore is sold between a parent and subsidiary or in some other related transaction. Deductions allowed include: labor, tools, appliances, supplies; technical and administrative salaries; actual costs of machinery, buildings, structures and other improvements and their installation; the actual costs of reduction works and mills and improvements in the operation during the year in which the

162. Utah Const. art. 13, § 4.
money was expended; reasonable ore transportation costs; charges for sampling, assaying, reducing, and smelting the ore; state and local taxes paid and compensation insurance. These deductions are basically the same as those provided for by other states employing the net proceeds approach to mineral taxation, except for some minor differences with respect to depreciation and insurance other than workmen's compensation which other states, including Montana, allow as a deduction.

Mining companies in Utah contribute approximately 11 percent of the total ad valorem taxes collected.\textsuperscript{165}

The State code also provides that all other mines and mining claims (other than metalliferous) and other valuable mineral deposits, including coal and hydrocarbons shall be assessed at thirty percent of their reasonable fair cash value.\textsuperscript{166}

Because of this language it is necessary in Utah to valuate in-place mineral reserves which would include not only a quantitative valuation of reserves in-place, but also the fair cash value of the deposit. This type of assessment is precluded in Wyoming by its constitution. Oil and gas companies contribute only about two percent of the total ad valorem taxes collected in Utah, including taxes collected for personal property of these companies.\textsuperscript{167} However to place the tax in the proper perspective, the total value of Utah's oil and gas production in 1966 was 70.6 million dollars, or slightly more than one-fifth of Wyoming's.\textsuperscript{168}

It is also specifically provided that there shall be separate assessment and taxation of severed mineral estates as well as assessment and taxation of the surface of mines and mining claims if they are used for purposes other than mining.\textsuperscript{169}

Utah's severance tax is classified as an occupation tax.\textsuperscript{170} In the case of metalliferous ores or metals sold, the tax is one percent of gross value of the ore or metal sold after allowing for deductions for treatment charges, refining, samp-
ling and assaying, and transportation from the mine to the purchaser. Uranium and other fissionable minerals are also included and the sale is the delivery of the ore to the Atomic Energy Commission. An annual $50,000 exemption is provided for each mine.

The same statute provides a two percent occupation tax on the value at the well of oil, gas and other hydrocarbons produced, saved, and sold or transported from the oil or gas field where produced. The only deduction provided for in the case of oil and gas is royalties paid to tax-exempt interests (federal and state royalties primarily). The $50,000 annual exemption is applied to each field, which is defined as one or more wells within an oil and/or gas structure, whether containing one or more producing zones. The single exemption must be prorated among the various interest owners of the field in proportion to their respective interests in the production, including royalty interest, working interest, production payments, or any other interest.

The occupation or severance tax amounted to 3.1 million dollars in fiscal 1965. As stated above, the total mineral industries account for approximately 13 percent of the total ad valorem taxes collected by Utah.

Summary of State Comparative Study

The comparative study can best be summarized by reference to the two tables that follow. These tables illustrate: (1) the methods used by various states to assess producing mineral properties for general property tax purposes, or as substitutes for property taxes; and (2) additional taxes on minerals which are based on production and categorized as production taxes.

Note that Wyoming is the only state studied that exclusively uses the gross production assessment method in lieu of property taxes, and then ties that value back into a general property tax mill levy rate. The North Dakota and Oklahoma methods of imposing a uniform tax based on a percentage of gross production value regardless of local mill levies are

172. See Buchler, supra note 73, at 136.
unique, and have merit in that they should accomplish a degree of statewide equalization.

In those states that use the in-place reserve or the fair market value of mineral property assessment method, the percentage of the value that is used for assessment purposes is indicated for those states that, either through statute or through administrative regulation, apply a percentage. For those states where no percentage is indicated, the authors were unable to obtain a figure from that state’s tax commission.

Both property taxes and production taxes must be considered together for any state, since it is rather meaningless to compare production taxes between states without also attempting to compare property tax valuation methods and levies.
### TABLE I

**OIL AND GAS PRODUCTION**

(excluding conservation taxes)

<table>
<thead>
<tr>
<th>State</th>
<th>Basis of assessment for purposes of general property tax</th>
<th>Additional Taxes Based on production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>none</td>
</tr>
<tr>
<td>Arizona</td>
<td>1</td>
<td>1% privilege</td>
</tr>
<tr>
<td>Colorado</td>
<td>3</td>
<td>2-5% graduated income tax with full credit for property taxes</td>
</tr>
<tr>
<td>Idaho</td>
<td>2</td>
<td>3% privilege on net proceeds</td>
</tr>
<tr>
<td>Kansas</td>
<td>3</td>
<td>none</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
<td>Oil—2-2½% license</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gas—½ cent/MCF license</td>
</tr>
<tr>
<td>Nebraska</td>
<td>35% of 3</td>
<td>2% severance</td>
</tr>
<tr>
<td>Nevada</td>
<td>2</td>
<td>none</td>
</tr>
<tr>
<td>New Mexico</td>
<td>either 2 or 3, at option of tax commission</td>
<td>ad valorem production</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2½% severance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2.55% privilege</td>
</tr>
<tr>
<td>North Dakota</td>
<td>4</td>
<td>none</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>4</td>
<td>none</td>
</tr>
<tr>
<td>South Dakota</td>
<td>60% of 3</td>
<td>none</td>
</tr>
<tr>
<td>Utah</td>
<td>30% of 3</td>
<td>2% occupation with $50,000 annual exemption per field</td>
</tr>
</tbody>
</table>

**NOTE**—The numbering system used in column two is explained following Table II, infra.
### TABLE II

**MINERAL PRODUCTION OTHER THAN OIL AND GAS**

(excluding conservation taxes)

<table>
<thead>
<tr>
<th>State</th>
<th>Basis of assessment for purposes of general property tax</th>
<th>Additional Taxes Based on production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>none</td>
</tr>
<tr>
<td>Arizona</td>
<td>60% of 3</td>
<td>1% privilege</td>
</tr>
<tr>
<td>Colorado</td>
<td>25% of 1 or all of 2, whichever is greater</td>
<td>Coal—$10-$50/year mine license; 7/10 of $.01/ton license; Other non-hydrocarbons—none</td>
</tr>
<tr>
<td>Idaho</td>
<td>2</td>
<td>3% privilege on net proceeds</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
<td>metals—1/2-1 1/4% grad. license; coal—$.05/ton over 50,000 tons; minor taxes on lesser minerals</td>
</tr>
<tr>
<td>Nebraska</td>
<td>25% of 3</td>
<td>none</td>
</tr>
<tr>
<td>Nevada</td>
<td>2</td>
<td>none</td>
</tr>
<tr>
<td>New Mexico</td>
<td>either 2 or 3 at option of tax commission</td>
<td>Potash—2 1/2% sev. 3% excise Uranium—1% sev. 3/4% excise Others—1/8% sev. 3/4% excise</td>
</tr>
<tr>
<td>North Dakota</td>
<td>50% of 3</td>
<td>none</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>5</td>
<td>none</td>
</tr>
<tr>
<td>South Dakota</td>
<td>60% of 3</td>
<td>1% privilege which is suspended until 7/70 unless mineral price increases more than 25% and then rate is 4%</td>
</tr>
<tr>
<td>Utah</td>
<td>twice 2</td>
<td>1% occupation with $50,000 exemption per mine</td>
</tr>
</tbody>
</table>

**NOTE:** Key to Column 2: 1—value of gross production 2—value of net proceeds 3—value of in-place mineral reserve 4—tax is 5% of value of gross production 5—tax is 4% of value of gross production, except uranium which is 5%.
CONCLUSIONS

It seems clear from the information compiled and discussed in this article that there are generally no legal problems involved in imposing production or severance taxes on minerals in addition to existing ad valorem taxes. Specifically in Wyoming, the legality of a properly drafted severance tax would be upheld even though the basis for assessment for property taxation of minerals is also determined by value at severance. Moreover, based on the legislative experience of other states, there is little doubt that a severance tax on selected minerals such as oil and gas would be constitutional. However, any attempt to tax only minerals being exported from the state before refining would fail under the commerce clause of the federal constitution.

The real problems behind the imposition of a severance or production tax are political and economic. Any discussion of political determination would be speculation of the highest degree and is clearly beyond the scope of this article. Moreover, while a complete discussion of the various parameters which must be considered for a sound determination of the economic question is not possible, certain variables are apparent and will be mentioned.

First, it must be recognized that mineral extraction as a whole, and oil and gas production specifically, is both a major industry and a major source of tax revenue for Wyoming. This is not as true in any other state studied except New Mexico. Second, while it is the general opinion that Wyoming presently has a more favorable tax climate for mineral producers than most of the other states studied, the study suggests that the climate is in reality not significantly more favorable; in short the burden Wyoming places on minerals is about the same burden which other states place on minerals, with the exception of New Mexico. This is because in most of the states studied that impose a severance

173. See Schwer, Wyoming's Trona Industry: Its Economic Significance, WYO. TRADE WINDS, no. 43, Sept.-Dec. 1967, at 21, for a detailed discussion of the economic importance of one mineral extraction industry to the state. Of more general interest is a table (at 25) prepared by the author from U.S. Commerce Dept statistics showing that 16.6 percent of the civilian income received by persons employed in Wyoming comes from the mining (apparently including oil and gas) industry. This compares to a national average of 1.2 percent, and Montana—4.2 percent, Idaho—1.9 percent, Colorado—2.5 percent, Utah—4.8 percent.
type tax, the method of assessment for property tax purposes can impose less of a burden than does Wyoming’s gross production tax. For example the Montana, Idaho and Utah severance taxes are levied in conjunction with a property tax based only on net proceeds of mineral production. Furthermore, Wyoming is the only state that uses the gross products method of assessment for all mineral production. The relative tax climate of various western states must be taken into account before deciding on the desirability of additional taxation of minerals since the tax structure of a state is one of the many factors weighed by potential mineral producers.

Third, many of Wyoming’s minerals are contained in low grade deposits. This is especially true for minerals such as phosphate, coal, iron ore, and to some extent, oil. Fourth, costs of producing, transporting and marketing minerals in Wyoming are generally greater than in many other mineral

174. U.S. BUR. MINES, MINERALS YEARBOOK, vols. I-II (1966). For example, the average value of bituminous and lignite coal produced in the U.S. in 1966 was $4.54 per ton, and in Wyoming $3.23 per ton. (see pages 628 and 629). Other states include Colorado—$4.29; Montana—bituminous—$7.10, lignite—$1.96; New Mexico—$3.31; North Dakota—$1.97; Utah—$5.77. The values are f.o.b. mine.

The value of crude petroleum at the well head averaged $2.88 per barrel in the U.S. in 1966. (page 851). Representative major oil producing states include: Wyoming—$2.55, Colorado—$2.91, Kansas—$2.55, Louisiana—$3.11, Montana—$2.44, New Mexico—$2.84, North Dakota—$2.55, Oklahoma—$2.91, Texas—$2.97, Utah—$2.64.

Important in the context of low grade mineral deposits is a recent U.S. Bureau of Mines survey of heavy crude oil reserves of the U.S. (U.S. Bur. Mines IC 5552, Heavy Crude Oil (1967)). For purposes of the survey heavy crude oil is defined as crude having an API gravity of 25° or less. In 1965, 14 percent of the oil produced in the U.S. was heavy crude, while for the period from 1962-66, 33 percent of Wyoming’s production was heavy crude. (Id. at 8 and 53). The significance of this as a low grade mineral deposit is that heavy crude due to its low viscosity and other unfavorable physical characteristics is more expensive to produce and less valuable to a refinery than lighter crudes.

The Bureau of Mines estimates that Wyoming has 5,280 million barrels of heavy crude oil reserves, primarily in the Big Horn Basin, (Id. at 7 and 52) which ranks the state fourth behind only California, Texas, and Louisiana. The report recognizes that most of these reserves are not presently economical and improved technology such as steam injection into the reservoir to make the oil more mobile will be required before the full production potential of these reserves can be realized.

Related to rate of production is the percentage of oil in-place that can be economically recovered. In those heavy crude reservoirs presently being produced recovery usually does not exceed 10 percent of the oil in-place which means that 90 percent of the oil in the ground must await improved recovery mechanisms before it can be produced.

The magnitude of these reserves can be better appreciated by comparison with the IOC reserve figures shown infra note 176. The heavy oil reserve in Wyoming is over four times the total crude oil reserve that can be recovered economically by present production methods.

Economics provide the key for heavy crude oil production and the effect of increased taxation in this context should and must be given serious consideration.
producing states. For example, as shown by the following pipeline tariff rates for crude petroleum from various origins to Chicago, Wyoming crude is at a competitive transportation disadvantage compared to crude produced in the southwest.[175]

<table>
<thead>
<tr>
<th>Origin</th>
<th>Pipeline tariff per barrel</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Texas</td>
<td>$.29-.31</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>.22</td>
</tr>
<tr>
<td>Eastern Wyoming</td>
<td>.33</td>
</tr>
</tbody>
</table>

Bearing these factors in mind, minerals will be divided into two categories for discussion—(1) oil and gas, and (2) all others.

There are two primary activities of the oil and gas industry that vitally affect Wyoming’s economy and tax revenues, exploration and production. Refining and marketing are less significant and are not the type of activities that can be either stimulated or eliminated through reasonable taxation. This statement is not intended to minimize the fact that Mobil Oil Company recently closed its Casper refinery, but only to point out that taxation or lack of it was not a major factor in the economic considerations which led to that decision.

It can be said with reasonable certainty that a moderate severance tax will not have an immediate effect on oil production in Wyoming. Existing fields will be developed and produced and additional taxation of production will have only a limited initial effect. However, the possible consequences may be felt in the future when decisions must be made concerning possible secondary or even tertiary recovery projects on individual properties. At this point additional taxation becomes an added cost item and will be taken into consideration in determining whether the large capital expenditure required for most such projects can be justified on the basis of projected return or whether this capital could be more advantageously invested elsewhere. For those producing properties already under stimulation, which in Wyoming is nearly two-thirds of the production,[176] additional taxation will also be a factor in determining when to terminate the project.

175. Id. at 839.
176. See U.S. Bur. Mines, IC 8362, Depth and Producing Rate Classification of Oil Reservoirs in the 14 Principal Oil-Producing States 5 and 12 (1967). This circular categorizes oil producing reservoirs in the major oil producing states and distinguishes between primary and stimulated production. Stimulated production is defined as that oil produced after injection of any
Perhaps more important to the future of Wyoming is the effect that severance taxes would possibly have on oil and gas exploration. Diligent successful exploration is of necessity the bulwark of the industry. The importance of accelerated exploration in Wyoming becomes especially significant when it is recognized that the state’s proven recoverable oil reserves have been decreasing steadily since 1961 and in 1966 were less than in any year since 1953.¹⁷⁷ The primary reasons for this decline are twofold: (1) domestic exploratory drilling is declining in favor of foreign exploration, and (2) major oil fields are becoming harder to find with the result that more dry holes are required before a significant discovery is made.

There are a multitude of factors that determine where an oil company will spend its exploration dollars. Geologically, Wyoming is still a very attractive state in which to explore for oil and gas as none of the major sedimentary basins have been fully explored. For example, the Bell Creek discovery in southeastern Montana in late 1967, triggered a great increase in exploratory drilling in the Powder River Basin of Montana and Wyoming. While Bell Creek type discoveries are the best stimulant to oil exploration, they are the exception and cannot be relied on to sustain “wildcating.” In the overall picture, taxation in the context of a limit on the return on the dollar invested enters the picture and greatly increased taxation could further decelerate exploration.

These observations concerning the oil and gas industry in Wyoming are intended neither to convey the impression that the industry is on its “last legs,” nor to be interpreted as statements made by alarmists designed to muddle and dis-

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<table>
<thead>
<tr>
<th>Year</th>
<th>Millions of barrels</th>
<th>Year</th>
<th>Millions of barrels</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td>1,122</td>
<td>1960</td>
<td>1,476</td>
</tr>
<tr>
<td>1954</td>
<td>1,380</td>
<td>1961</td>
<td>1,523</td>
</tr>
<tr>
<td>1955</td>
<td>1,364</td>
<td>1962</td>
<td>1,481</td>
</tr>
<tr>
<td>1956</td>
<td>1,424</td>
<td>1963</td>
<td>1,388</td>
</tr>
<tr>
<td>1957</td>
<td>1,417</td>
<td>1964</td>
<td>1,364</td>
</tr>
<tr>
<td>1958</td>
<td>1,471</td>
<td>1965</td>
<td>1,297</td>
</tr>
<tr>
<td>1959</td>
<td>1,460</td>
<td>1966</td>
<td>1,263</td>
</tr>
</tbody>
</table>
tort the overall picture. Rather the statistics do point out that while the oil and gas industry in Wyoming is still generally a highly profitable business, there are serious economic and technological problems with which the industry must cope in order to maintain and expand the present rate of exploration and development. Caution then becomes the key word in so far as additional taxation is concerned, and a careful weighing of the need for immediate new tax revenues versus the possible deterrent effect these taxes would have on future development of the oil and gas industry in the state must be made.

Mineral extraction other than oil and gas are presently less important industries and sources of tax revenue. They do have the potential for development which would make them major revenue sources, but realization of this potential is highly dependent upon the cost/return ratios which presently exist. It is arguable and, in fact as certain industry and governmental sources have indicated to the authors, probable that the addition of a substantial severance tax burden would be sufficient to reduce this ratio to a point at which the development would not take place, or at least be delayed.

Coal is a prime example, and in this context the importance of the fact that Wyoming is a low grade mineral state must be re-emphasized. It is common knowledge that Wyoming has vast coal reserves; but, the quality of these deposits is quite another matter. Coal in the ground is of no value to the economy of the state and is not a tax revenue source. Coal only becomes important when it can be mined and used as a source of energy either in the form of coal, or for steam-coal electricity generation, or converted into liquid hydrocarbons. Wyoming has future potential in all of these uses; however, as previously pointed out the cost/return ratio is delicate and in the legislature’s search for additional tax revenue caution should be exercised.

Trona is another example, especially in Sweetwater County. Although the trona deposits were discovered in 1938, it was not until 1947 that development was begun, and not until the late 1950’s that trona production on a large scale

178. See supra note 174 as it relates to coal.
While there are several reasons for the delay in development, one of the most important was the inability of Wyoming trona to compete in the Eastern market areas with synthetic production. Developments in mining and transportation were responsible for closing the gap thus making this Wyoming natural resource industry a reality.

The industry is now faced with a new competitor in caustic soda which is produced as a by-product of chlorine. In this process, the primary product of interest is chlorine, and since the demand for chlorine exceeds the need for caustic soda, the current trend in that industry is to convert the excess caustic soda into soda ash and thus be in direct competition with Wyoming's trona which is also refined into soda ash. Future trona development in this state will depend on the ability of soda ash producers to compete with both caustic soda and existing synthetic soda ash producers. This becomes purely and simply a matter of economics, and although increased taxation through a severance tax may not destroy the industry, it could easily retard development and eliminate some future expansion.

From these examples, it can logically be concluded that the imposition of a severance tax on minerals other than oil and gas could possibly have the effect of delaying for Wyoming the needed benefits of increased development of these minerals.

Finally, while the politically expedient thing to do in a tax crisis, such as Wyoming finds itself, may be to look toward the mineral industry to pay the added cost of government, caution is in order since the goose that lays the golden eggs may not always be fertile.

Donald K. Roberts
John A. Gordnier
## APPENDIX

### TABLE III

**WYOMING MINERALS FOR 1967**

(Prepared by the Ad Valorem Tax Department, Wyoming State Board of Equalization)

Taxable Production, Valuation & Taxes on 1966 Production

(Special District Taxes Not Included If Levied on Partial Districts)

<table>
<thead>
<tr>
<th>Minerals</th>
<th>Total Units of Taxable Production</th>
<th>Total Assessed Valuation</th>
<th>Average Assessed Valuation Per Unit</th>
<th>Average Tax Levy (Mills)</th>
<th>Total Taxes Levied</th>
<th>Average Tax Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crude Oil</td>
<td>121,638,887 Bbls.</td>
<td>$311,856,920</td>
<td>$2.563</td>
<td>49.811</td>
<td>$15,534,049</td>
<td>$.12770</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>216,263,811 MCF</td>
<td>30,479,813</td>
<td>.14094</td>
<td>50.714</td>
<td>1,545,733</td>
<td>.007147</td>
</tr>
<tr>
<td>Uranium</td>
<td>916,415 Tons</td>
<td>9,002,244</td>
<td>9.828</td>
<td>55.905</td>
<td>503,279</td>
<td>.54918</td>
</tr>
<tr>
<td>Coal</td>
<td>3,670,704 Tons</td>
<td>5,003,580</td>
<td>1.363</td>
<td>48.919</td>
<td>244,772</td>
<td>.06368</td>
</tr>
<tr>
<td>Trona</td>
<td>2,147,390 Tons</td>
<td>4,831,628</td>
<td>2.25</td>
<td>57.060</td>
<td>276,693</td>
<td>.12839</td>
</tr>
<tr>
<td>Taconite</td>
<td>4,102,497 Tons</td>
<td>3,897,372</td>
<td>.95</td>
<td>60.080</td>
<td>234,154</td>
<td>.05708</td>
</tr>
<tr>
<td>Bentonite</td>
<td>2,081,352 Tons</td>
<td>2,081,352</td>
<td>1.00</td>
<td>50.803</td>
<td>105,741</td>
<td>.05080</td>
</tr>
<tr>
<td>Iron Ore</td>
<td>576,982 Tons</td>
<td>1,465,534</td>
<td>2.54</td>
<td>55.380</td>
<td>81,161</td>
<td>.14066</td>
</tr>
<tr>
<td>Phosphate</td>
<td>184,935 Tons</td>
<td>231,169</td>
<td>1.25</td>
<td>48.880</td>
<td>11,300</td>
<td>.06110</td>
</tr>
<tr>
<td>Sand, Gravel, Rock,</td>
<td>1,831,309 Tons</td>
<td>183,133</td>
<td>.10</td>
<td>49.139</td>
<td>8,999</td>
<td>.004913</td>
</tr>
<tr>
<td>Dolomite, etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limerock</td>
<td>161,866 Tons</td>
<td>161,866</td>
<td>1.00</td>
<td>38.996</td>
<td>6,312</td>
<td>.03900</td>
</tr>
<tr>
<td>Gypsum</td>
<td>100,821 Tons</td>
<td>50,411</td>
<td>.50</td>
<td>47.383</td>
<td>2,386</td>
<td>.02367</td>
</tr>
<tr>
<td>H. D. Aggregate</td>
<td>75,305 Tons</td>
<td>45,183</td>
<td>.60</td>
<td>37.270</td>
<td>1,684</td>
<td>.02236</td>
</tr>
<tr>
<td>Limestone</td>
<td>157,034 Tons</td>
<td>39,258</td>
<td>.25</td>
<td>61.129</td>
<td>2,400</td>
<td>.01528</td>
</tr>
<tr>
<td>Clay</td>
<td>45,696 Tons</td>
<td>22,849</td>
<td>.50</td>
<td>47.470</td>
<td>1,085</td>
<td>.02374</td>
</tr>
<tr>
<td>Shale Pit</td>
<td>5,735 Tons</td>
<td>2,868</td>
<td>.50</td>
<td>59.500</td>
<td>171</td>
<td>.02982</td>
</tr>
<tr>
<td>Sodium Sulphate</td>
<td>966 Tons</td>
<td>1,494</td>
<td>1.50</td>
<td>53.460</td>
<td>80</td>
<td>.08032</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$369,556,174</strong></td>
<td><strong>$18,558,999</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>