

White Paper Taxation of Potash and Related Products in North Dakota

A. Point of Taxation: Tailgate of the Processing Plant

- Tax potash and potash by-products produced at the tailgate of the plant using a flat rate
- May be in lieu of other taxes.
- Potash producers and purchasers familiarity with taxation at the tailgate of the processing plant.
- Other states use the tailgate of the processing plant as the point of taxation.
- Marketable by-products of potash include magnesium, sodium chloride, and hydrochloric acid.

B. Valuation Method

- Option 1: Tax On A Flat Per Ton Or Other Quantifiable Volume Basis Of Potash.
 - o A flat value per ton concept similar to that used for the coal severance tax could have the production costs taken in to account when determining the tax rate.
 - o Use an adjusted producer price index to determine tax rate.
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- Option 2: Tax Using Fair Market Value
 - o Possible Methods of Determining Fair Market Value:
 - Use an Adjusted Producer Price Index.
 - Rate or index could be adjusted at predetermined intervals as set by statute, similar to the gross production tax on gas.
 - By-products would be taxed on a similar flat (but adjustable) basis because there are not market indexes for the by-products.
 - Use Producer's Arms-Length Contracts.
 - Industry familiarity with this valuation method.
 - Difficult to verify and audit based on the State's experience with the gas gross production tax.
 - Because of limited market for potash and the by-products this may be a more viable method of valuation
 - Is a similar method appropriate for the by-products produced when processing the potash?

C. Allocation of Tax Proceeds

- Potash is a non-renewable state resource that supports allocation to the state general fund or other funds as created by the Legislature.
- Consideration should also be given to county level strain on infrastructure.
- Cross-County Production. If potash mining extends beyond the county in which the processing plant is located (i.e., the wellhead and the pipelines carrying the brine solution to the processing plant cross county lines) the infrastructure impact and possible allocation to those counties may need to be considered.
 - o Possible allocation method between affected counties could be based on barrels of brine solution produced at the wellhead.

D. Property Tax or In Lieu Based Taxation

- Regardless of whether the property is locally or centrally assessed, consideration should be given to whether the tax on potash production is in lieu of other taxes.
 - o Determination must be made as to the taxes for which the potash tax is in lieu of
 - o If potash tax is in-lieu of other taxes, consideration must be given to property tax assessment of the processing plant
 - Central- or local valuation and assessment of processing plant.
 - Similar assessment method for brine solution pipelines as exists for the oil and gas pipelines, which are centrally assessed.

E. Additional Considerations

- Parity with Other Extraction, Severance, and Production Taxes: is this a concern that must be addressed when establishing both a point of taxation and valuation method?
- Royalty Interests: are they a concern from a taxation point of view?
- Cavern Storage of CO2 and Wind Energy: what tax implications arise from these revenue generating activities?
 - o Does underground storage create a valuation issue for property tax purposes?
 - o Severance tax may not be appropriate because use of the caverns does not involve the removal of a nonrenewable state resource.
 - o Cavern storage may only affect the royalty rate.
- Adjustments: should the value be adjusted by production costs or other industry appropriate adjustments?
 - o For example, New Mexico tax reduces gross value by the costs of hoisting, crushing, and loading mined potash.
 - o Solution mining adjustments has other costs associated with solution mining of potash, such as solution evaporation.
 - o A flat value per ton concept similar to that used for the coal severance tax could have the production costs taken in to account when determining the tax rate.
- Applicability to Other Mineral Production: when developing the taxation model for potash mining, should consideration be given to the taxation of other minerals such as uranium, molybdenum, germanium, and kryptonite?