

PROPERTY TAX APPLICATION TO POTASH AND OTHER SUBSURFACE MINERALS

The Taxation Committee is considering a bill draft to provide for taxation of potash produced in North Dakota. The bill draft provides that the potash and byproducts tax is in lieu of property taxes on those minerals. The question was raised whether failure to enact the bill would make potash in place in the earth subject to property taxes. The law and practice regarding taxation of minerals in place in the earth create an unusual situation which means the answer to the question is . . . probably not.

Article X, Section 4, of the Constitution of North Dakota, provides in part:

All taxable property except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law.

Article X, Section 5, of the Constitution of North Dakota, provides in part:

Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. **The legislative assembly may by law exempt any or all classes of personal property from taxation** and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. . . . Except as restricted by this article, the legislative assembly may provide for raising revenue and fixing the situs of all property for the purpose of taxation. (emphasis supplied)

North Dakota Century Code Section 57-02-03 provides "[a]ll property in this state is subject to taxation unless expressly exempted by law."

Section 57-02-04 provides in part that real property, for the purpose of taxation, includes the land itself . . . and all "mines, minerals, and quarries in and under the same . . ."

Section 57-02-11 provides that "[a]ll real property subject to taxation must be listed and assessed every year with reference to its value, on February first of that year."

Section 57-02-08(32) provides a property tax exemption for "[m]inerals in place in the earth which at the time of removal from the earth are then subject to taxes imposed under chapter 57-51 or 57-61." Chapter 57-51 is the oil and gas gross production tax, and Chapter 57-61 is the coal severance tax.

All of these constitutional and statutory provisions would lead to the conclusion that minerals are real property and should be subject to assessment and property taxes unless an exemption is provided. An exemption has been provided which covers only oil, gas, and coal because those minerals are subject to special taxes upon removal from the earth.

In practice, subsurface mineral interests in general have not been, and are not being, subjected to assessment and property taxes in North Dakota. It is not possible to state that there are no assessors in the state assessing subsurface minerals, but there are no assessments being made that we are able to identify. In addition, passage of 2009 Senate Bill No. 2089 repealed what were called obsolete provisions for assessment of severed mineral interests.