

MARQUETTE COUNTY
SEVERANCE TAX TALKING POINTS AND RECOMMENDATIONS

- As may already been stated, Marquette County Officials (schools, townships, County) recognize that the basis of a severance tax is to be less complicated by creating a single tax which provides the mining industry more certainty with its taxation.
- However, the devil is in the details and a confusing or complicated severance tax could be just as problematic. Marquette County officials have spent many months doing our best and working in good faith with state and mining representatives in an attempt to help develop a tax law that probably does not make anyone happy, but that is ultimately acceptable to mining, the state, and the locals.
- Mining has been and continues to be an important legacy of the Upper Peninsula. It is ingrained into the culture of our everyday lives. It has been and will continue to be a critical industry for many years to come. That is why it is so important to make sure that all impacted parties will continue to take time to deliberate because mistakes were made in the development of the business tax which has opened the door for some businesses to not pay various state taxes (corporate, income, use taxes).
- One cannot forget that the without the local's support that mining operations would have a much more difficult time moving forward. The local's also provide the many services that allow the mines to function and support the families. These include, but are not limited to police/fire, road maintenance/ airports/ other transportation needs, schools, etc....
- It is Marquette County's opinion that the current version of the severance tax bill(s) is complicated and includes deductions and credits that should be removed as well as language that is confusing. Furthermore, it does not hold the locals harmless which was a promise made by Rep. Huuki, Kennecott, and the Governor's representatives.

The following is a brief summary for your review and consideration on the main areas of concern that have been identified:

Summary of HB 6008, the Nonferrous Metallic Minerals Extraction Severance Tax Act

- A severance tax, at a rate of 2.75%, is imposed on the sale or transfer price of the minerals extracted and sold in a year minus "deductible costs". HB 6008, sec. 4 (2); sec. 2 (o). Tax applies only during the period of production and sales.
 - Exemption from all property tax, sales and use tax and corporate income tax.
 - Deduction for 40% of all environment obligations "assumed" by the taxpayer.

- Deduction for all taxpayer's transportation costs – in Michigan and interstate—necessary to transport minerals to purchasers out of the state.
- Credit for 2012 property taxes made over a 5-year period beginning in 2014.
- Phase-in of the minerals severance tax.
 - Payment of interim and partial minerals severance tax prior to and including the first year of production of minerals. The interim and partial severance taxes reduce property taxes by 50%.
 - Payment of the minerals severance tax does not begin until the second year of production and sales.
- Severance tax revenue distributed to local property tax collection units (60%) and to the rural development fund (40%).
- Reported to the State but collected by local units as property tax.

HB 6008: Severance Tax and Other States:

- Broad base, low rate. Severance taxes are broad-based taxes imposed on the extraction, production and sale of natural resources as measured by the value and quantity of the resource extracted, produced and sold. The tax is imposed at a low rate, with few, if any, deductions.
- Not in lieu. Severance taxes are generally in addition to all other taxes and replace, if at all, business taxes. For example:
 - Wyoming: the mining severance tax is in addition to general property tax on mines and mining claims. Wyo.Stat. 39-13-104.
 - West Virginia: The severance tax "shall be in addition to all other taxes imposed by law." W. Va. Code 11-13A3
 - Colorado: The coal and mineral severance taxes are "in addition to any other tax." Co. Rev Stat. 39-29-103, 106.
 - South Dakota: Severance taxes are not in lieu of property taxes. S.D. Codified Laws Section 10-39A-7.
 - Florida: "The excise tax on the severance of heavy minerals shall be in addition to any ad valorem taxes..." Fla. Stat. 211.3106 (4).
 - Utah: "These taxes (metals or minerals severance tax) are in addition to all other taxes provided by law." Utah Code Ann. 59-5-202 (4).

- Montana: The mining severance tax is in addition to property tax imposed on equipment, machinery, improvements and surface structures and in addition to the state tax franchise tax. Mont. Code Ann. 15-35-102 through 104; 15-38-101 through 127. At one time, Montana imposed a severance tax at 30% of the contract sales prices. *Commonwealth Edison v Montana*, 453 US 609 (1981).
- By contrast, HB 6008 *replaces all Michigan taxes* –sales, use, corporate income tax *and property taxes* and motor fuel taxes, with a single tax.
- By contrast HB 6008 *reduces property tax by 50% for the first two years, eliminates the property tax in 2012*, and, adds deductions for 40% of the taxpayers' environmental costs and deductions for all of the taxpayer's transportation costs mostly incurred outside of the state of Michigan.
- By contrast HB 6008 removes all the exemptions and deductions only after the mine has stopped producing and has a diminished or nonexistent property, sale, use, or income tax base. That is, the *deductions and exemptions are effectively permanent*.
- **Marquette County is requesting that HB 6008 be amended to conform to the normal operation of severance taxes in other states.**

Mineral Producing Property:

- **Section 2, subsection (g) i – vii** - Mineral Producing Property (pages 4 & 5) – **Marquette County is requesting that this section be redrafted to limit the mineral producing property to buffer lands.** The buffer to be defined and agreed upon by impacted parties.

As drafted, the expanse of mineral rights, lands owned outright or lease is great. Refer to handout provided. Furthermore, the removal of all of these lands from the Ad Valorem property tax has not been reviewed as to the impact to a hold harmless number.

Deductible Costs HB 6008:

- **Section 2, (b) ii** (Page 2) – **Marquette County** again notes that there is nothing comparable to HB 6008's broad deductions found in any other state severance tax statutes. HB 6008 includes a deduction for "deductible costs". The deduction includes 40% of environmental costs without a clear definition of the costs and includes all transportation costs. The transportation costs includes transport of the minerals to out-of-state or international customers, all state, federal and international fuel taxes and license fees and the cost of equipment, rail transport, etc.

"Assumed" Environmental Cost Deduction HB 6008:

Section 2, (b) ii (Page 2, lines 4-18) – **Marquette County** proposes that the deductions be limited to current property tax exemptions: (Air Pollution Control) PA 451 of 1994; (Industrial Facility Rehabilitation), PA 198 of 1974; (New Personal Property) PA 328 of 1998; (Obsolete Property Rehabilitations Act) PA 146 of 2000; (Water Pollution Control) PA 451 of 1994.

Transportation Deduction HB 6008:

- **Section 2, (b) ii** (Page 2, lines 24-26) – **Marquette County is requesting that this deduction for transportation be removed from the bill.** This section allows for a deduction for moving product from the processing mine and the first point of sale or transfer. Product will most likely be sold out of the state of Michigan or even the country. It could also be interpreted further to include road/rail construction/repairs.

The deduction has little relationship with economic activity being measured in the severance tax. It has no relationship to a property valuation of the mine. The inclusion of property used to transport minerals between is neither site-specific nor activity-related. HB 6008, sec. 2 (g) (vii) and is inconsistent with the exclusion of the same property in HB 6008 sec. 2 (h) (i). The additional deduction is inconsistent with the definition of “taxable mineral value.” HB 6008, sec. 2 (o).

- **Section 2, (g) vii** (page 5, lines 3-5) – **Marquette County is requesting that these lines be removed.** This section also relates to trucking and transportation. Trucks under this mining operation should not be considered or looked at as personal property. The trucks will be licensed /over the road vehicles that are DOT regulated. They will be transporting materials on public roads and not strictly isolated to the mine/mill site. Other sources of transportation, such as rail, will also be regulated as they will be transporting materials over public areas.
- **Section 2, (o)** (page 6, lines 11-12) – This definition will need to be modified should the deduction be removed as noted above.

Interim and Partial Mineral Severance Tax HB 6008:

- **Section 3 (all), Section 4 subsections (6) & (7)** – **Marquette County is requesting,– Marquette County is requesting a modification to these sections.** Marquette County officials recognize and are appreciative of the intent of this language as it is working towards trying to stabilize the tax revenue generated over the life of the mine, and in particular the period prior to the mine extracting and being placed on the severance tax.

However, local officials are recommending that the mine, in this case Kennecott, pay minimum amount of tax based on the 2012 Ad Valorem assessment plus a 1% administrative fee. Further that the mine not receive the 50% reduction under Section 3 (2) or the partial tax under Section 4 (3) and not receive a credit for the payment (6) and (7). Marquette County officials would then expect that the upcoming assessment(s), where there is no extraction, to fall within the parameters of the Ad Valorem valuation, until extraction begins and the mine qualifies under the severance tax.

The language, as written, is essentially providing the townships, schools, and county a loan that would cost the locals more money. The credit that the mines will receive includes an interest of prime plus one. Current Wall Street Prime rate is 3.25%. Therefore, prime + 1 = 4.25%. Typical interest earned on investments has been below 2%.

- **Section 9, subsections (6) & (7)** may also be deleted should the modifications as described above be implemented.

Minerals Severance Tax HB 6008:

- **Section 4 subsections (6) & (7)** – Marquette County is requesting that HB 6008 be property tax revenue neutral by establishing a minimum amount, payable to local units, which is equal to the property tax based on the mine's assessed value as of the first year of operation, plus a 1% tax administrative fee. The base line holds Marquette and local school districts harmless from a revenue shortfall under the new tax, and, at the same permits Marquette and the State to share in additional revenue that may be generated once the mine is commercially operational.
- Under HB 6008, most of the tax deductions and exemptions arise is the first three years. Local and state governments entirely bear the risk of revenue loss if the mine does not become operational or is only operational for a short period of time. A minimum payment amount protects local and state governments in the event the mine is abandoned before it is fully operational or is operational for only a short time.

Transition from a Minerals Severance Tax HB 6008:

- **Section 6**– Marquette County is requesting that the minimum severance tax amount be the property tax levy for every tax year during which the severance tax was imposed; and further, that the minimum severance tax continue to be imposed through December 31 of the year in which the Department provides notice that the mine is no longer producing. On December 31 a new property tax value would be set and assessment would follow the normal property tax calendar. For these same reasons the taxpayer should be subject to all other taxes at the earlier of the next calendar year or the taxpayer's next fiscal year.

Local Tax Distribution HB 6008:

- **Section 9, subsections (3)** (page 14, lines 2-12) – Marquette County is requesting that this section should also be amended to reflect the minimum tax. The subsection would provide that local government units would collect the minimum tax and any additional tax not to exceed

60% of the severance tax revenue. The rural development fund would receive the remainder of severance tax revenue not to exceed 40% of the total severance tax revenue.

- **Section 9, subsection (3) (a) & (b)**, (page 14) – Marquette County is requesting that the severance tax allocation hold the locals harmless. Marquette County’s Deputy Equalization Director, with approximately 37 years of experience in taxation has identified that the proposed allocation of 60% of the severance tax to the locals and 40% to the Rural Development fund does not hold the locals harmless. Marquette County’s analyses shows that a 92% allocation to the locals and 8% to the Rural Development fund will meet the hold harmless threshold. Spreadsheets have been provided to the Committee for its reference.

Additionally:

* Future non-ferrous mining operations in Michigan will also be providing an allocation to the Rural Development Fund.

* The State of Michigan will also be collecting a 7% royalty on approximately 50% of the extracted ore.

- **Section 9, subsection (1) (page 13, line 15)** – Marquette County is recommending that the word “allowable” be inserted between the words “all deductible”.
- **Section 9, subsections (6) & (7)** may also be deleted should the modifications as described above be implemented.

Administration of the Severance Tax: HB 6008:

- **Section 6, subsections (2) (page 12, lines 10-24); Section 11 (page 15-16)** – Marquette County is requesting that all initial property tax values be determined or approved and all determinations of tax be reviewable by the Michigan Tax Tribunal. HB 6007 eliminates section 24 of the general property tax act which provided for state valuation of the mine by the State Geologist. The County agrees with the revision because section 24 arose out of time when the State Tax Commission had ultimate authority over determining values in the state. That authority was given to the Tax Tribunal who has experience, expertise and procedural integrity to evaluate appraisals of the property. The Tax Tribunal allows all interested parties – local units, the taxpayer and the State of Michigan to participate in setting the value and is a better forum than local boards of review.
- **Section 11 (page 15-16)** – Marquette County is requesting that this section be amended to specify that the Revenue Act is applicable when the taxpayer has failed to pay or report as required under HB 6008, that it is applicable when the department issues a notice that a mine qualifies or that it no longer qualifies to pay the severance tax. HB 6008 does not establish an administrative scheme to enforce the tax. HB 6008 relies on MCL 211.24 of the general property

tax act to set the initial property tax assessment values. Yet, HB 6007 eliminates section MCL 211.24. HB 6008 states that the general property tax act is inapplicable but then requires local units under the general property tax act to enforce and collect the severance tax. HB 6008, p.13, Sec. 9 (1). The amendment would specify when the Revenue Act will be used and when other procedures will be used.

- **Marquette Count recommends that the enforcement provisions under Revenue Act be utilized.** Under the general property tax act, local units have no ability to maintain a personal collection on real property taxes but instead collect delinquent taxes through the forfeiture and foreclosure process. This process requires the County to front money to local units to cover the delinquencies. The forfeiture and foreclosure process may be a problematic for local units to assume a forfeited mine with substantial environmental issues.

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