

Publications

State and Local Tax Alert: Changes to Taxation of Oil and Gas Reserves

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CLIENT ALERT | 8.23.2016

The Ohio Tax Commissioner recently issued a memorandum to county auditors regarding significant changes to the taxation of oil and gas reserves starting in tax year 2016. These significant changes include:

- Elimination of filing forms 6 and 6A.
- Values will now be based upon production volumes reported to the Ohio Department of Natural Resources (ODNR). After hearing from industry representatives, the Ohio Tax Commissioner acknowledged that this approach may lead to higher values than statutorily permitted in some circumstances. Accordingly, the Ohio Tax Commissioner announced a temporary fix to address this circumstance.
- The new approach will overvalue oil and gas reserves in some circumstances because amounts reported to ODNR are produced amounts, whereas O.R.C. 5713.051 requires that values be based on volumes “produced and sold.” The temporary fix is re-instatement of DTE form 6A for the limited purpose of ensuring that producers will be permitted to challenge any overassessment based on the difference between “produced” and “produced and sold.” If producers wish, they can file a DTE form 6A with each county auditor where there is a difference between “produced” and “produced and sold.”
- Tax bills will be issued **only** to producers; royalty interest holders will no longer receive tax bills. As a result, producers will be responsible for collecting taxes owed by royalty interest holders.
- The memorandum confirms that minerals bartered as a form of payment are considered sold and should be reported as taxable production.

On September 1, 2016, the final iteration of the ODNR file will be released. If producers find discrepancies in taxable volume amounts, they may file DTE form 6A with the applicable county auditor or auditors no later than October 3, 2016. If DTE form 6A is filed, the auditor shall use the amended values for 2016 if the taxable value has not decreased more than ten percent from the ODNR information. If

the difference is more than ten percent, the auditor is directed to bill based upon the ODNR data and the taxpayer will need to file a formal complaint with the board of revision and present evidence to establish the reason for the difference.

Going forward, the changes discussed above will significantly change how the ad valorem tax is collected. As such, it will be very important to accurately report production volume to ODNR, accurately track shrinkage, and confirm that ODNR is accurately attributing volume to each active production site. In the event that there are discrepancies with the information, it will be essential for producers to file complaints regarding the valuation, and it will be the producers' burden to prove that the data reported to ODNR and the resulting calculation is incorrect.

Vorys has extensive experience in state and local tax and the oil and gas industry. Contact your Vorys attorney with questions or concerns about the ad valorem tax and how it impacts your business.