



OIL & GAS STUDY

JUNE 2012

SEVERANCE TAX

- Implemented in 1977
- Imposed on the owner or operator of energy minerals for the privilege of severing energy minerals in the state (10-39A-1)
- 4.5% tax on the taxable value of energy minerals (10-39A-1)
- Energy minerals are any mineral fuel including coal, lignite, petroleum, oil, natural gas, uranium, and thorium and any combination of minerals used in the production of energy (10-39A-1.1)
- Taxable value is the sale price or market value of the energy mineral less any royalty payment belonging to the United States or the State of South Dakota or its political subdivisions. However, if the energy mineral has a posted field price at the point of production, that posted field price is the taxable value (10-39A-2 & 10-39A-2.1)
- Reported on quarterly tax returns (10-39A-5)

June 2012



REVENUE ALLOCATION

- 50% state, 50% county in which the energy minerals were severed (10-39A-8)
- State portion credited to general fund (10-39A-8)
- County portion may be used for school and road purposes to offset social, economic, or physical impacts resulting from energy development or production (10-39A-10)

June 2012



CONSERVATION TAX

- Implemented in 1983
- Additional .24% tax imposed on the severance of energy minerals (10-39B-2)
- Reported quarterly along with severance tax (10-39B-2)
- Revenues received are placed in the environment and natural resources fee fund (10-39B-2)

June 2012



SEVERANCE TAX

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Gross Collections	\$3,153,331.05	\$5,526,989.64	\$5,596,520.05	\$4,505,399.53	\$5,276,993.93
State Share	\$1,576,445.11	\$2,763,495.11	\$2,798,269.84	\$2,252,644.30	\$2,638,497.23
County Share	\$1,576,444.54	\$2,763,494.53	\$2,798,250.21	\$2,252,644.30	\$2,638,496.70
Barrels - Oil	1,448,653.55	2,065,159.55	1,824,598.71	1,463,889.17	1,559,580.17
Units - Gas	409,548.00	508,227.00	1,528,895.00	1,629,905.59	1,402,646.00
Companies Reporting	14	13	14	20	17

June 2012



REVERSION BY COUNTY

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Custer	-	-	\$7,957.10	\$1,690.80	\$1,700.78
Fall River	\$23,838.74	\$27,510.27	\$31,730.32	\$29,381.25	\$25,275.74
Harding	\$1,552,605.80	\$2,735,984.26	\$2,759,465.45	\$2,223,263.05	\$2,611,520.18

June 2012



CONSERVATION TAX

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Gross Collections	\$168,177.65	\$294,772.80	\$297,710.51	\$240,282.24	\$281,439.69

June 2012 

COMPARISON OF RATES

- Please see the handout from the National Conference of State Legislatures (NCSL) website
- Of surrounding states, Iowa and Minnesota do not impose a Severance Tax
- North Dakota's rate is generally 11.5%, but there are exemptions for certain production volumes
- Montana's rate varies from 0.5% to 14.8% according to the well and type of production plus conservation tax
- Wyoming's rate is 6% on crude oil, 4% on stripper oil
- Nebraska's rate is 3% plus conservation tax

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SALES TAX

Oil & Gas Field Services are subject to sales tax. Examples of taxable services performed at the well site are:

- Chemically Treating Wells
- Exploration
- Gas Compressing
- Fracturing
- Oil Sampling
- Plugging Wells
- Repairs
- Dismantling of wells
- Cleaning Wells & Tanks
- Drilling
- Hot Shot Services
- Derrick Building
- Pipe Testing
- Pumping
- Roustabout Services
- Surveying Wells

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OTHER SERVICES & EQUIPMENT

- An oil well operator's service is subject to sales tax.
- Equipment and other products brought into South Dakota to be used in oil and gas field services are subject to sales or use tax.
- Drilling Rigs Tools Construction Equipment
- Gravel Propane Diesel Fuel & Heating Oil
- When taxable equipment or other products are brought into South Dakota from another state, and no tax has been paid, use tax is due to South Dakota.

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TAX RATE & LICENSING

- The state sales tax rate is 4%, plus applicable municipal tax is due. Most of the well sites are outside city limits, so not much municipal tax is due on the services.
- Oil and Gas well operators and contractors are required to be licensed to report the sales or use tax due.
- If the owner of the land is leasing the mineral rights to an operator, and is only paid a royalty fee, the owner is not required to be licensed.
- Royalty fees are exempt from sales tax.

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WORKING WITH OTHER AGENCIES

- DOR works with the Department of Environment and Natural Resources to review the list of oil and gas well operators licensed with their agency.
- The DENR list is reviewed to make sure the operators are properly licensed for tax.

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TITLE 10

Chapters

- 04. Property Subject To Taxation
- 05. Situs Of Property For Taxation
- 06. Annual Assessment Of Property

- 21. Payment And Receipt Of Property Taxes
- 22. Collection Of Delinquent Property Taxes
- 23. Sale Of Real Property For Taxes And Assessments
- 24. Redemption From Tax Sales
- 25. Tax Deeds

10-4-2. Definition of real property for ad valorem taxation purposes. Real property, for the purposes of ad valorem taxation, includes:

- (1) Land and all rights and privileges thereto belonging;
- (2) Improvements to land and all rights and privileges thereto belonging, consisting of items permanently affixed to and becoming part of the real estate. The term, permanently affixed, refers to the economic life of the improvement rather than perpetuity;
- (3) Mines, minerals, and quarries;
- (4) Buildings and structures which are on foundations, and improvements to buildings and structures including any heating system, air conditioning, ventilation, sanitation, lighting, or plumbing which is part of the building or structure; and
- (5) Mobile homes as defined in subdivision 32-3-1(8) which are on foundations.

For assessment purposes, a structure is anything constructed or erected from an assembly of materials, which requires a permanent location on or in the ground.

For assessment purposes, a building is a structure designed to stand permanently and cover a space of land which is enclosed by walls and is covered with a roof.

10-23-7. Time and place of annual sale--Adjournment from day to day--All taxable property subject to sale except certain homesteads. On the third Monday of December in each year, between the hours of nine a.m. and four p.m. the treasurer shall offer at public sale at the courthouse, or at the place of holding circuit court in his county, or at the treasurer's office where by law, the taxes are made payable, all lands, town lots, or other real property which shall be liable for taxes of any description for the preceding year or years, and which shall remain due and unpaid, and he may adjourn the sale from day to day until all the lands, lots, or other real property have been offered. No taxable property shall be exempt from levy and sale for taxes except as provided in § 43-31-1.

10-25-1. Period within which tax deed may be procured. In the case of any real property sold for taxes and not yet redeemed, the owner or holder of the tax certificate may conduct, or cause to be conducted, proceedings to procure a tax deed on the real property, as provided by §§ 10-25-2 to 10-25-12, inclusive. The proceedings shall be initiated no sooner than three years from the date of the tax sale or at any time thereafter within six years from the date of the tax sale subject to the provisions of §§ 10-25-16 to 10-25-19, inclusive. The time period applies equally to the county or any other purchaser of the tax certificate. Any assignee of a tax certificate shall take the certificate subject to the time period of the first owner of the tax certificate.

CHAPTER 10-39A

ENERGY MINERALS SEVERANCE TAX

- 10-39A-1 Severance tax imposed on energy minerals--Rate.
- 10-39A-1.1 Definition of terms.
- 10-39A-2 Taxable value based on sale price or market value--Governmental royalty interests deducted.
- 10-39A-2.1 Posted field price as taxable value.
- 10-39A-2.2 Uranium ore taxed on triuranium octa-oxide content.
- 10-39A-3 Collection and administration according to mineral severance tax procedures.
- 10-39A-3.1 Point of imposition of severance tax.
- 10-39A-4 Operator to be designated to file returns and pay tax--Tax withheld from owner--Designated operator.
- 10-39A-5 Quarterly filing of reports and remission of tax due--Forms--Violation as misdemeanor.
- 10-39A-6 Superseded.
- 10-39A-7 Severance tax in lieu of taxes other than sales, use, and property taxes.
- 10-39A-8 Division of tax proceeds between county and state.
- 10-39A-8.1, 10-39A-8.2. Repealed.
- 10-39A-9 Vouchers and warrants for payments to counties.
- 10-39A-10 County trust and agency account--Purposes for which proceeds used by counties.
- 10-39A-11 Prepayment of county share of tax.
- 10-39A-12 Prepayment to be voluntary--Compulsion as malfeasance.
- 10-39A-13 Prepayment limited to county portion of tax.
- 10-39A-14 Computation of tax due--Credit for tax prepaid.
- 10-39A-15 Superseded.
- 10-39A-16 Action by secretary for collection of delinquent taxes--Exemption from execution.
- 10-39A-17 Lien of tax--Filing and recording--Indexing.
- 10-39A-18 Inspection of books and records--Authority of secretary--Violation as misdemeanor.
- 10-39A-19 Inspection of books and records--Authority of county commissioner--Violation as misdemeanor.
- 10-39A-20 False statement under oath as perjury.
- 10-39A-21 Repealed.

10-39A-1. Severance tax imposed on energy minerals--Rate. For the privilege of severing energy minerals in this state, there is imposed on the owner or operator of any energy mineral an excise tax, to be termed a "severance tax," equal to four and one-half percent of the taxable value of any energy minerals severed and saved by or for the owner or operator.

Source: SL 1977, ch 93, § 1; SL 1978, ch 81, § 1; SL 1979, ch 78, § 1; SL 2008, ch 37, § 94.

10-39A-1.1. Definition of terms. Terms used in this chapter mean:

- (1) "Energy minerals," any mineral fuel including coal, lignite, petroleum, oil, natural gas, uranium, and thorium and any combination of minerals used in the production of energy;
- (2) "Market value," the price at which the property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the facts;
- (3) "Operator," a person who directly or physically severs minerals from the land;

- (4) "Owner of interest" or "owner," an owner of a landowner's royalty, of an overriding royalty, or of profits and working interests, or any combination thereof. The term does not include an owner of federal, state, or local governmental royalty interest;
- (5) "Sale price," the total consideration received in exchange for energy minerals;
- (6) "Secretary," the secretary of the South Dakota Department of Revenue;
- (7) "Severing," the mining, extracting, or producing of any energy minerals in South Dakota;
- (8) "Severor," a person engaging in the business of severing energy minerals that the person owns or a person who is the owner of energy minerals and has another person performing the severing of such energy minerals, except that the term does not include the State of South Dakota or its political subdivisions.

Source: SL 1978, ch 81, § 2; SL 1979, ch 78, § 2; SL 2003, ch 272 (Ex. Ord. 03-1), § 82; SL 2008, ch 37, § 95; SL 2011, ch 1 (Ex. Ord. 11-1), § 161, eff. Apr. 12, 2011.

10-39A-2. Taxable value based on sale price or market value--Governmental royalty interests deducted. Except as otherwise provided in this chapter, the taxable value of any energy mineral which has been sold is the sale price of such mineral less any rental or royalty payment belonging to the United States or the State of South Dakota or its political subdivisions and the taxable value of any severed and saved energy mineral which has not been sold is the market value of such mineral less any rental or royalty payment belonging to the United States or the State of South Dakota or its political subdivisions.

Source: SL 1977, ch 93, § 1; SL 1978, ch 81, § 4.

10-39A-2.1. Posted field price as taxable value. When any energy mineral has a posted field price at the point of productions, the taxable value of such mineral is the posted field price.

Source: SL 1978, ch 81, § 5.

10-39A-2.2. Uranium ore taxed on triuranium octa-oxide content. The taxable value of severed and saved uranium-bearing material is the sales price per pound of the content of triuranium octa-oxide contained in the severed and saved uranium ore or processed yellow-cake concentrate, regardless of the form in which the product is actually disposed of. However, if the severed and saved uranium ore or processed uranium yellow-cake concentrate is not sold, the taxable value is the market value of the triuranium octa-oxide in such material.

Source: SL 1978, ch 81, § 6.

10-39A-3. Collection and administration according to mineral severance tax procedures. The tax provided for in this chapter shall be collected and administered as provided in chapter 10-39. However, §§ 10-39-24 to 10-39-26, inclusive, §§ 10-39-28 to 10-39-31, inclusive and § 10-39-35 do not apply to the tax imposed by this chapter.

Source: SL 1977, ch 93, § 3; SL 2008, ch 37, § 96.

10-39A-3.1. Point of imposition of severance tax. An energy mineral is subject to the severance tax when it is sold or consumed, whichever occurs first.

Source: SL 1978, ch 81, § 7; SL 1991, ch 93.

10-39A-4. Operator to be designated to file returns and pay tax--Tax withheld from owner--Designated operator. Each owner of interests in energy minerals produced from a single well or mine shall designate an operator to file all required returns and to pay the tax due under this chapter. The tax, subject to any provisions to the contrary in any written contract, lease, or other form of agreement, shall be withheld from distributions that would otherwise be made to each owner by the operator for payment to the state. If any owner of interests in energy minerals produced from a single well or mine fails to designate such an operator, then the person designated as operator by the owner of the working interest in the well or mine, or, if no such person has been designated, then the person holding the greatest portion of the working interest in such well or mine, is the designated operator for purposes of this section.

Source: SL 1977, ch 93, § 4; SL 1978, ch 81, § 8; SL 2008, ch 37, § 97.

10-39A-5. Quarterly filing of reports and remission of tax due--Forms--Violation as misdemeanor. Within thirty days after the close of each quarter ending respectively on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year, each owner of severed energy minerals or person designated to remit the tax on behalf of the owners shall file with the secretary of revenue under oath a report of the amount of energy minerals which became subject to the severance tax in the previous quarter and the amount of tax due under the provisions of this chapter and shall remit with such report the amount of tax thereof shown to be due. Any report made shall be on forms and in accordance with rules promulgated by the secretary of revenue pursuant to chapter 1-26. A violation of this section is a Class 1 misdemeanor.

Source: SL 1977, ch 93, § 2; SL 1978, ch 81, § 9; SL 1987, ch 82, § 17; SL 1992, ch 158, § 3; SL 2003, ch 272 (Ex. Ord. 03-1), § 82; SL 2011, ch 1 (Ex. Ord. 11-1), § 161, eff. Apr. 12, 2011.

10-39A-6. Superseded.

10-39A-7. Severance tax in lieu of taxes other than sales, use, and property taxes. This tax is in lieu of the tax provided in § 10-39-24 and in lieu of all other occupational, excise, income, privilege, franchise taxes, and any other mineral taxes levied by the State of South Dakota, but is not in lieu of sales, use, and property taxes.

Source: SL 1977, ch 93, § 1; SL 2008, ch 37, § 98.

10-39A-8. Division of tax proceeds between county and state. All taxes, interest and penalties imposed and collected by the secretary of revenue under this chapter shall be distributed as follows:

- (1) One-half shall be returned to the county in which the energy minerals or mineral products were severed;
- (2) One-half share shall be paid into the state treasury and credited to the general fund.

Source: SL 1978, ch 81, §§ 11, 12; SL 1979, ch 77, §§ 4, 5; SL 1981, ch 96; SL 2003, ch 272 (Ex. Ord. 03-1), § 82; SL 2007, ch 28, § 1; SL 2011, ch 1 (Ex. Ord. 11-1), § 161, eff. Apr. 12, 2011.

10-39A-8.1, 10-39A-8.2. Repealed by SL 2007, ch 28, §§ 2, 3.

10-39A-9. Vouchers and warrants for payments to counties. Funds paid to counties under this chapter shall be paid out on warrants drawn by the state auditor on vouchers approved by the director of the Office of Economic Development or his designee.

Source: SL 1978, ch 81, § 13; SL 1979, ch 77, § 2.

10-39A-10. County trust and agency account--Purposes for which proceeds used by counties. Upon receipt of any funds paid to a county under the provisions of this chapter, the county treasurer shall deposit the funds in a trust and agency account. The county auditor shall at the direction of the board of county commissioners, allocate the funds to be distributed by the county treasurer for school and road purposes to offset social, economic, or physical impacts, either direct or indirect, resulting from energy development or production in the county.

Source: SL 1978, ch 81, § 14; SL 1979, ch 77, § 3.

10-39A-11. Prepayment of county share of tax. Any person or corporation intending to mine or extract minerals may, upon the request of the board of county commissioners of the county in which the mine or extraction of minerals is to occur, prepay an amount equal to five times the county share of the estimated severance tax which would be due the year the mine or mineral extraction facility is at peak production.

Source: SL 1980, ch 88, § 1.

10-39A-12. Prepayment to be voluntary--Compulsion as malfeasance. Nothing in §§ 10-39A-11 to 10-39A-14, inclusive, obligates any person or corporation to prepay a severance tax except under voluntary agreement. Any action by a county commissioner or any other public official to compel involuntary prepayment of severance tax constitutes malfeasance of office.

Source: SL 1980, ch 88, § 2; SL 2008, ch 37, § 100.

10-39A-13. Prepayment limited to county portion of tax. No agreement for prepayment of severance tax may involve funds other than those to be returned to a county under the provisions of subdivision 10-39A-8(1).

Source: SL 1980, ch 88, § 2; SL 2008, ch 37, § 101.

10-39A-14. Computation of tax due--Credit for tax prepaid. If a mineral subject to the severance tax is mined or extracted, the severance tax obligation shall be computed, in accordance with this chapter except that the prepaid severance tax shall be credited against the county share of the severance tax pursuant to subdivision 10-39A-8(1) which the person or corporation would have paid without a prepayment agreement. The tax credit shall cease when the amount of prepaid severance tax is equal to the county apportionment of severance tax due without a prepayment agreement.

Source: SL 1980, ch 88, § 3.

10-39A-15. Superseded.

10-39A-16. Action by secretary for collection of delinquent taxes--Exemption from execution. All delinquent taxes imposed by this chapter shall constitute a debt due to the State of South Dakota and may be collected by action brought by the secretary in the name of the state against the delinquent tax debtor in any court of competent jurisdiction. No exemptions from the execution of a judgment so obtained may be permitted except those made absolute by the exemption laws of this state.

Source: SL 1982, ch 100, § 2.

10-39A-17. Lien of tax--Filing and recording--Indexing. A tax due and unpaid under this chapter is a lien upon all the property of the taxpayer against whom the taxes are assessed. A lien is perfected by the filing and recording of a notice of lien with the register of deeds of the county where the taxpayer resides or has property and constitutes constructive notice to purchasers of the existence and superiority of the lien. A notice of lien shall contain the name of the tax debtor, the amount of taxes claimed to be due, and a description of the property against which the lien is claimed. The register of deeds of the county in which such a lien is filed shall index the lien in the same form and manner and in the same book as provided for the indexing of income tax liens in chapter 10-43, except that the entry in the index shall show that the lien is a severance tax lien. Upon payment of the tax, the secretary shall release the lien.

Source: SL 1982, ch 100, § 3.

10-39A-18. Inspection of books and records--Authority of secretary--Violation as misdemeanor. The secretary may inspect or examine any books, waybills, inventories, correspondence, and memoranda relating to or used in the transaction of the business of a person subject to the tax imposed by this chapter. It is a Class 1 misdemeanor for any person having charge, control, or possession of those papers, books, or records to neglect or refuse the secretary full and free access to any books, papers, or records that he requires for the purposes of this chapter.

Source: SL 1982, ch 100, § 4.

10-39A-19. Inspection of books and records--Authority of county commissioner--Violation as misdemeanor. The board of county commissioners of the affected county may inspect or examine any books, waybills, inventories, correspondence, and memoranda relating to or used in the transaction of the business of a person subject to the tax imposed by this chapter and severing energy minerals within that county. It is a Class 1 misdemeanor for any person having charge, control, or possession of those papers, books, or records to neglect or refuse the board full and free access to any books, papers, or records that it requires pursuant to this section.

Source: SL 1982, ch 100, § 4A.

10-39A-20. False statement under oath as perjury. Any person, required by this chapter to make or

file a statement or to verify it under oath, who intentionally makes or verifies under oath a false statement is guilty of perjury with punishment, upon conviction, as provided by law.

Source: SL 1982, ch 100, § 5.

10-39A-21. Repealed by SL 1992, ch 158, § 4.

CHAPTER 10-39B

CONSERVATION TAX ON SEVERANCE OF ENERGY MINERALS

10-39B-1 Legislative findings.

10-39B-2 Imposition of tax--Rate--Payment--Disposition--Collection.

10-39B-1. Legislative findings. The Legislature finds that:

- (1) Exploration for and development of energy minerals in this state may from time to time require the expenditure of state funds in the administration of the rules and statutes; and
- (2) The State of South Dakota should be compensated for those reasonable costs incurred in carrying out the duties as set forth in chapters 45-9, 45-6B, and 45-6D.

Source: SL 1983, ch 313, § 1; SL 2009, ch 13, § 6.

10-39B-2. Imposition of tax--Rate--Payment--Disposition--Collection. There is imposed on the severance of energy minerals in this state an excise tax, to be known as a conservation tax, equal to two and four-tenths mills of the taxable value of any energy minerals severed and saved. The tax shall be paid by the operator as defined in subdivision 10-39A-1.1(3). An operator may not pass the tax on to the owner of the energy minerals. The tax provided for in this chapter shall be placed in the environment and natural resources fee fund established pursuant to § 1-40-30 and collected in accordance with chapter 10-39A except that §§ 10-39A-1, 10-39A-3, and 10-39A-7 to 10-39A-14, inclusive, do not apply to the tax imposed by this chapter. The tax collected from the production of oil or gas may be used to carry out the duties as set forth in chapter 45-9. The tax collected from the production of coal or uranium may be used to carry out the duties as set forth in chapters 45-6B and 45-6D.

Source: SL 1983, ch 313, § 2; SL 1984, ch 80; SL 1994, ch 23, § 3; SL 2009, ch 13, § 7.