# **59 CAIL Annual Institute on Energy Law § 1.05**

***The Institute for Energy Law of The Center for American and International Law's Annual Institute on Energy Law* >  *Fifty-Ninth Annual Institute on Oil and Gas Law* > *CHAPTER 1 Notable and Quotable: The Annual Round-up of Non-Regulatory Oil and Gas Cases***

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**§ 1.05 Taxation**

1. **``Proved'' Reserves vs Purchase Price**

1. ***California Minerals,* *L.P. v. County of Kern*, 152 Cal. App. 4th 1016, 62 Cal. Rptr. 3d 1 (2007)**

The taxpayer in *California Minerals v. County of* ***Kern***,[[1]](#footnote-2)60 contested valuation of ***oil*** and gas mineral property interests, asserting the value should be zero because ``proved'' ***oil*** and gas reserves, as defined by the State Board of Equalization (SBE) rule, have not yet been established. However, the court ruled that the taxable value of a real property interest was presumptively the purchase price. In this instance, the property right was the mineral rights in 212,000 acres purchased for $17 million in 1998. Without taking into consideration the possible minerals under the parcels, the sale agreement allocated $6,009,465 of the purchase price to the ***Kern*** County parcels on a per acre basis. The absence of ``proved reserves'' does not in itself rebut the purchase price presumption. What is being taxed is the property right and that right is the right to explore for and produce ***oil*** and gas, not the ***oil*** and gas themselves; there is a separate rule for ***oil*** and gas producing properties.

1. **Timeliness of Appeal**

1. ***Chevron U.S.A., Inc. v. Department of Revenue*, 2007 WY 43, 154 P.3d 331**

In *Chevron U.S.A., Inc. v. Department of Revenue*,[[2]](#footnote-3)61 the court held that the taxpayer's appeal of a notice of valuation was untimely sent since it was mailed more than 30 days from the private postmark on the envelope sent by the Department of Revenue. Likewise, there was no procedural due process violation in applying the postmark rule in dismissing the appeal for being filed in an untimely fashion.

1. **Treatment of Royalties and Production Taxes**

1. ***RME Petroleum Co. v. Wyoming Department of Revenue*, 2007 WY 16, 150 P.3d 673**

Wyoming statutes deal with the determination of fair market value of mineral property for both severance tax and ad valorem tax purposes. The ``proportionate profits method'' of valuation is one of the methods authorized by Wyoming statute to value crude ***oil***, lease condensate, or natural gas production not sold in a bona fide arms-length sale at or prior to the point of valuation. The issue in the case of *RME Petroleum Co. v. Wyoming Department of Revenue*[[3]](#footnote-4)62 was whether royalties (both exempt and non-exempt) and production taxes are ``direct costs of producing,'' properly included in both the numerator and denominator of the direct cost ratio. The court held that pursuant to the Department's own regulations the Department may not include royalties and production taxes in the direct cost ratio. The court followed this also in *Wyoming Department of Revenue v. Exxon Mobil Corp.*[[4]](#footnote-5)63

1. **Ad valorem and Severance Taxes on Helium Produced from Federal Lands**

1. ***Wyoming Dept. of Revenue v. Exxon Mobil Corp.*, 2007 WY 112, 162 P.3d 515**

The case of *Wyoming Dept. of Revenue v. Exxon Mobil Corp.*[[5]](#footnote-6)64 concerns the power of the State of Wyoming to levy ad valorem and severance taxes on helium produced from deep gas wells on Federal lands in Wyoming. The Federal leases provide that ExxonMobil ``is granted the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all of the ***oil*** and gas deposits, **except helium gas**.'' These leases reserve to the federal government ``the ownership and the right to extract helium from all gas produced under this lease.'' When ExxonMobil constructed processing facilities for the natural gas, it negotiated an agreement with the federal government to purchase the helium, under which it pays the federal government a percentage of the proceeds received from its resale of the helium.

The court concluded that the doctrines of collateral estoppel and res judicata did not apply to bar ExxonMobil's declaratory judgment action; the issues presented here were not identical to those decided in *Amoco Prod. Co. v. State*.[[6]](#footnote-7)65 The Wyoming statutes levy the taxes on the owner of production. The Federal government was the owner of the helium at the time of production. In so far as helium was concerned, ExxonMobil was not a lessor, lessee, or assignee of a lessee and thus was not a taxpayer under the ad valorem tax statute. The severance tax statute is imposed ``on the value of the gross product extracted for the privilege of severing or extracting … natural gas in the state.'' The federal government did not assign or convey the privilege of severing or extracting helium to ExxonMobil, so the tax could not be levied on ExxonMobil.

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1. 60California Minerals, L.P. v. County of ***Kern***, 152 Cal. App. 4th 1016, 62 Cal. Rptr. 3d 1 (2007). [↑](#footnote-ref-2)
2. 61Chevron U.S.A., Inc. v. Dep't of Revenue, 2007 WY 43, 154 P.3d 331. [↑](#footnote-ref-3)
3. 62RME Petroleum Co. v. Wyo. Dep't of Revenue, 2007 WY 16, 150 P.3d 673. [↑](#footnote-ref-4)
4. 63Wyo. Dep't of Revenue v. Exxon Mobil Corp., 2007 WY 21, 150 P.3d 1216. [↑](#footnote-ref-5)
5. 64Wyo. Dep't. of Revenue v. Exxon Mobil Corp., 2007 WY 112, 162 P.3d 515. [↑](#footnote-ref-6)
6. 65Amoco Prod. Co. v. State, 751 P.2d 379 (Wyo. 1988). [↑](#footnote-ref-7)