NEBRASKA ADMINISTRATIVE CODE

Title 350 - Nebraska Department of Revenue, Property Assessment Division ~~and Taxation~~

Chapter 13 - Mineral Interests Regulations

Effective Date ~~1/3/07~~

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Chapter 13 - Mineral Interests Regulations

REG-13-001 DEFINITIONS

001.01 Mineral shall mean an inorganic substance found naturally in the earth, including, but not limited to ore, gravel, oil, or natural gas.

001.02 Mineral interest shall mean the ownership of any minerals, mines, quarries, mineral springs, overriding royalty interest, and production payments with respect to oil and gas leases. The interest includes the executor rights to sell or lease the property, to receive bonus payments and delay rentals and to participate in the production through royalty payments.

001.02A A producing mineral interest shall be the interest created in a mine, quarry, mineral spring, or oil or gas wells at the time it has come into production and for which production payments are being made or received. Most mineral leases have a term specific until the property subject to lease is made to produce a specific mineral. These leases may be extended for as long as the lessee recovers the mineral subject to the lease in paying quantities.

001.02B A non-producing mineral interest is one in which there is no known activity related to the recovery of a mineral. A mineral lease commonly allows for a bonus rental and delay rentals to be paid to the lessor unless and until the lessee is able to extract in an economically feasible manner the specific mineral subject to the written agreement or lease.

001.03 Mineral lease shall mean a written agreement under which the owner of the mineral interest grants the lessee the right to use the land for mineral exploration. Production may be divided into royalty interests, overriding interests, and working interests.

001.04 Overriding royalty interest shall mean a given percentage of the gross production at the surface carved out of the working interest.

001.05 In regard to oil, gas and petroleum production leases, royalty interest shall mean a share of not less than 12.5 percent of either the gross production or the market value of such gross production at the leased premises. Such royalty is paid to the owner-lessor of the mineral interests.

001.06 Severed mineral interest shall mean a mineral interest in which ownership of the mineral interest is different from that of the surface interest.

001.07 Unit shall mean any single oil, gas, or other hydrocarbon well or any other mineral well or field, which has multiple ownership or any combination thereof, consolidated into a single operation.

001.08 Well shall mean an orifice in the ground made by drilling, boring, or in any other manner from which any mineral is obtained or obtainable or which is being made for the purpose of obtaining minerals.

001.09 Working interest shall mean the remaining percentage after royalty interests and overriding royalty interests. Such working interest is commonly 87.5 percent (87.5%) or less and belongs to the lessee and others involved in the production in regard to oil, gas and petroleum production leases.

(Neb. Rev. Stat. Sections 57-219, 57-234 through 57-236, R.R.S 2004 and Neb. Rev. Stat. Sections 77-103 and 77-702, ~~R.R.S. 2003~~ R.S. Supp., 2007.)

REG-13-002 ASSESSMENT

002.01 Mineral interests, either producing or non-producing, are real property and shall be valued for taxation as any other real property whether or not such mineral interests are severed from the surface interests. For more information, see Real Property Regulations, Chapter 10.

002.02 Any owner of land from which a mineral interest has been severed or the owner of a mineral interest which has been severed may file an application with the assessor of the county where such land is located to separate for purposes of assessment and taxes such severed mineral interest from the surface interest and place them separately on the assessment and tax roll of the county. When proof of ownership of the severed mineral interest is not made available to the assessor, the mineral interest shall be assessed to the owner of the surface interest. The applicant shall, at his or her own cost, provide to the assessor proof of ownership of the severed mineral interest and a record of the creation of the severed mineral interest, as shown by the records of the county clerk or register of deeds. Proof of ownership, the name and last known address of the owner or owners, the ownership interest including any fractional interest, legal description, and the record of creation of the severed mineral interests shall be provided in the form of an opinion by an attorney or a certificate prepared by a licensed abstracter.

002.03 The application requesting separate assessment listings of a severed mineral interest and surface interest must be filed with the assessor on or before January 1 of the year in which the interests are to be separately listed and assessed. The mineral interest will continue to be separately assessed without a new application regardless of any change of ownership of either the surface interest or the mineral interest. If after separate assessment the owner of the surface becomes the owner of the mineral interest, so that all interests in the surface and the mineral interest are the same, the

owner of the surface may request in writing, along with proof of recorded ownership, that the separate assessment cease. Upon receipt of the request and proof of recorded ownership, the assessor shall combine the values of the surface and mineral interest.

002.04 The assessor shall determine the actual value of all mineral interests, whether producing or non-producing, in the county by use of the applicable factors listed in Neb. Rev. Stat. Section 77-112. The three standard approaches to value are cost, income, and sales comparison. The summed total value of the mineral interest and any value established for the surface interest only, shall not exceed the value of the fee simple interest for the parcel of land as may be compared to properties with similar uses, geographical characteristics and/or geological potentials.

002.05 All items of real property, such as wells, buildings, fixtures, except trade fixtures, improvements, or mobile homes, that are used for the production of minerals and owned by parties other than the owners of the mineral and/or surface interests are real property and shall be assessed as improvements on leased lands.

002.06 All taxable tangible personal property held or owned on January 1, which may include pipe, submersible pumps, sucker rods, fittings and any other equipment, trade fixtures, tools and items used for the production of minerals, shall be reported to the assessor where such property is located.

002.07 In the valuation of parcels of real property containing mineral deposits the assessor shall consider the likelihood of the mineral to be extracted or to begin extraction within a several year time frame. The assessor shall consider whether the present value of a mineral that will be extracted diminishes in value the more remote the extraction is likely to be in terms of time or certainty of occurrence.

002.07A If an income approach is used to value a mineral interest, it requires an estimate of the amount of mineral in place, an estimate of the time of commencement and period of extraction, a net dollar value per unit of the extracted mineral, a determination of continuity of production and the selection of an appropriate capitalization rate. The selection of the capitalization rate shall be based on market factors, including capital costs and risks based on the certainty of the existence or quality of minerals or the commencement and continuity of an extraction operation. The determination of the dollar value per unit of mineral should be based upon the prevailing local lease/royalty rate per ton (or other appropriate measure) for similar mineral, and the existence of considerations of abnormal expenses of extraction such as depth of overburden or restoration of the property.

002.07B The valuation of mineral interests shall be evaluated each year as part of the valuation process by the assessor for changes in the underlying assumptions contained in the present value calculation, such as the ongoing nature of the extraction operation, the likelihood of near term extraction of minerals, or a change in the quality and rate of extraction.

002.07C The net present value of the potential cash flow will be calculated based on the summation of the estimate of the individual cash flows discounted for time of production and time until commencement of extraction.

002.07D In those occurrences where extraction is so remote in time or probability of being extracted as to have little present value, the mineral interest shall have little or no measurable contributory value and is considered included in the total value of the fee interest assessed. The parcel's value shall be comparable to other parcels with similar uses, geographical characteristics, and geological potentials.

002.08 In the valuation of parcels of real property containing mineral deposits which would require the impairment of the surface interest in extracting the minerals, the assessor shall determine the value of such parcels in the following manner:

002.08A When the extraction of minerals diminishes or impairs the use of the surface of the parcel (open pit mining and sand and gravel pumping operations and subsurface mining susceptible to subsidence), the portion of the value of the parcel representing the surface use of the parcel will diminish as the extraction of minerals consumes the surface of the parcel or creates a subsidence hazard. As the surface is consumed, or the subsurface is removed creating a subsidence hazard, the portion of the value of the parcel represented by the mineral interests may increase as a percentage of the entire value of the parcel.

002.08B As minerals are extracted and mineral deposit is depleted on any portion of a property, the value of the mineral interests on that portion of the property will decrease. The assessor should seek to ascertain data regarding the extent of the minerals extracted and the likelihood of the parcel continuing to generate minerals at the same level in the future.

002.08B(1) Where the surface of the parcel is primarily used for the production of agricultural and horticultural products and the actual value of the parcel is influenced by nonagricultural or non-horticultural influences, including the potential for mineral extraction, the surface interest value may qualify for special valuation pursuant to REG. 11, Agricultural or Horticultural Land Special Valuation.

002.08B(2) In order for special valuation to apply to the parcel, in addition to the use of the surface primarily for agricultural or horticultural purposes, the parcel must meet all of the eligibility requirements set forth in REG 11-004.

002.08B(3) The extraction of minerals constitutes a change of use of the parcel or the portion of the parcel from which the minerals are extracted when such extraction disrupts the use of the surface of the parcel or the portion of the parcel. For parcels receiving special valuation, the extraction of minerals sufficient to disrupt the agricultural or horticultural use of the property shall constitute a disqualifying event pursuant to REG 11-006 for the portion of the parcel no longer primarily used for agriculture or horticulture.

002.08B(4) The parcel shall only be disqualified from special valuation to the extent of the portion of the parcel for which the primary use changes to mineral extraction. For example, if an 80 acre parcel, on which the primary use of the surface is for the production of agricultural or horticultural products contains minerals and the extraction of those minerals is begun on 10 of the 80 acres, the acres taken out of production (10 acres) shall be disqualified from valuation as agricultural property or for special valuation. The remaining acres, if being used primarily for agricultural or horticultural purposes, would not, by virtue of change in use of the 10 acres or a conditional use permit to extract on the remaining 70 acres, be disqualified for agricultural valuation or for special valuation.

002.08B(5) It shall be the duty of the owner, agent, guardian, or executor to notify the assessor of any change in status of the parcel or a portion of the parcel which will disqualify it from receiving special valuation, including an impairment of additional acres through increased extraction of minerals. The assessor shall continually verify, throughout the year, that all properties listed for special valuation continue to qualify and shall apply the recapture valuation to any properties which are no longer eligible.

002.08C When minerals have been extracted from a parcel and mining operations have been discontinued, the assessor shall consider the following factors in estimating the value of the parcel:

002.08C(1) The damage to and ability to use the surface of the parcel, including the cost to restore the parcel and risk to surface use caused by existing and potential subsidence from subsurface mining or other affects of mining; and

002.08C(2) The existing use of the parcel and readily available uses or practical potential uses of the surface of the mined-out parcel. In determining the readily available uses or practical potential uses of the parcel, the assessor shall consider whether those potential uses are physically possible, legally permissible, financially feasible, and the most productive use of the parcel. Within consideration of these factors, the cost to realize such use, the time to commence and complete conversion to the potential use, regulatory approval of the alternative or potential use, the time to

convert the parcel to such use, capital cost and risk to convert, and existing demand for the alternative or potential use.

002.08C(3) The value of parcels or portions of parcels of real property adjoining mined-out parcels may be affected by the proximity to the mined-out parcels. The assessor shall consider the impact on the adjoining parcels including "buffer" or "open space" acres, caused by their proximity to the mined-out parcels.

002.08C(4) Where no readily available or practical potential uses of the impaired parcel meet the four part test for highest and best use of the parcel described in this section, the value of the parcel shall consider the valuation of "waste acres" in the county or other parcels with similar characteristics regardless if they are associated with an agricultural or horticultural parcel of land.

(Neb. Rev. Stat. Section 57-236, R.R.S. 2004, ~~and~~ Neb. Rev. Stat. Sections 77-112 and Neb. Rev. Stat. Section 77-702, ~~R.R.S. 2003~~ R.S. Supp., 2007.)

REG-13-003 TAXATION

003.01 All property taxes levied against mineral interests shall be due and payable on December 31 following the levy date, and commencing on that date shall be a first lien on the mineral interest until paid.

(Neb. Rev. Stat. Sections 77-203 and 77-702, R.S. Supp., 2007 ~~R.R.S. 2003~~.)

REG-13-004 COLLECTION OF TAXES

004.01 For mineral interests belonging to multiple owners and operated as a unit, the owner of each fractional interest in such unit shall be liable for the same proportion of the tax levied against the real property of the unit that the fractional interest therein bears to the total of all interests in the unit. Each owner shall also be liable for the tax levied against his or her taxable value in the tangible personal property of the unit.

004.02 The unit operator shall collect from the owner or owners the taxes levied against the real or tangible personal property of the unit and remit the tax to the county treasurer of the county in which the unit or portion of the unit is located.

004.03 The unit operator may deduct and withhold, from royalty payments or any other payments made to any owner or owners either in kind or in money, the estimated amount of the tax to be paid. Any difference between the estimated tax withheld and the actual tax due by any owner or owners may be accounted for by adjustments in royalty or other payments made to the owner or owners after the actual tax is determined.

004.04 At the request of any unit operator who does not disburse payments to the owner or owners, the first purchaser shall collect the tax from the owners and transfer such proceeds to the operator who shall remit the taxes to the county treasurer. The first purchaser shall collect from the owner using the same procedure as outlined for the unit operator under REG-13-004.03.

004.05 Failure of the unit operator to collect and remit the tax shall not preclude the county treasurer from utilizing lawful collection and enforcement procedures against the interest of the owner or owners to collect the tax owed, pursuant to Chapter 77, Article 18 and Article 19.

004.05A Any non-operating owner shall not be subject to penalty or interest under Neb. Rev. Stat. Section 45-104.01, unless the owner fails to remit such tax within 20 days after notification by the county treasurer pursuant to Neb. Rev. Stat. Sections 57-234 and 77-1726 that the operator defaulted in payment of the taxes and the taxes are delinquent.

004.06 The lien for real property taxes applies only against the interest upon which the taxes are delinquent. No other interests shall be affected upon which the taxes have been paid.

The following is an example illustrative of the above regulation and is provided as a general guideline. In utilizing this example, all relevant factors of each particular case must be considered.

(1) EXAMPLE - A owns the surface interest and B and C own the mineral interest. A has paid the real property taxes on the surface interest and the operator has paid the real property taxes on C's fractional interest of the mineral interests. The lien for taxes and foreclosure proceedings can only be brought against the interest of the mineral interests owned by B.

(Neb. Rev. Stat. Sections 45-104.01, 57-227 and 57-234, R.R.S. 2004, ~~and~~ Neb. Rev. Stat. Section~~s 77-702 and~~ 77-1726, R.R.S. 2003 and Neb. Rev. Stat. Section 77-702, R.S. Supp., 2007.)

Reg-13-005 APPEALS

005.01 A protest of the determination of the assessor of whether the applicant has met the requirements for listing severed mineral interests separately from the surface estate for property tax purposes shall be made to the county board of equalization.

005.02 A protest of the assessor's determination of value shall be made to the county board of equalization as protests of the valuation of other real and personal property pursuant to Real Property Regulations, Chapter 10, and Personal Property Regulations, Chapter 20.

005.03 All appeals of the determination of the county board of equalization shall be made pursuant to Neb. Rev. Stat. Section 77-5013.

(Neb. Rev. Stat. Section 57-238, R.R.S. 2004, ~~Neb. Rev. Stat. Sections 77-702, 77-1233.06, R.R.S. 2003and~~ Neb. Rev. Stat. Sections 77-1502~~, 77-1504~~ and 77-5013, R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-702, 77-1233.06 and 77-1504, R.S. Supp., 2007.)