

# MOUNTAIN MAYORS MEETING

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March 14, 2008  
The Snowmass Village *New* Town Hall  
11am-2:00pm

## Agenda Items

Time	Item	Purpose
11 am	Welcome	
	Next meeting date and location	Planning future meetings
	Open Discussion	Informational
12:00-12:15	Lunch	Discussion and Direction from Mayors
12:15-12:30PM	Regional Housing Update / Support for Division of Housing Grant (Regional Housing Strategy) Geneva Powell, Garfield County Housing Authority	Information and direction from Mayors
12:30-12:45	Smart Growth Grant Update	Informational
12:45-1:30	Open Discussion	
1:30-2:00	Policy changes to Colorado's severance tax Via phone - Tony Lewis and Matt Samelson Donnell-Kay Foundation	Informational
2:00	Adjourn	

# DONNELL KAY

Mountain Mayors Caucus:

We greatly appreciate you taking the time to review the following documents which explain why we believe policy changes to Colorado's severance tax on natural gas and oil are an appropriate method to address concerns in locally-impacted communities and the state's institutions of higher education.

Colorado's tax rate on natural gas and oil production is one of the lowest in the West. Our low tax rate is further eroded because the state has a tax loophole, unique to our state, which allows natural gas and oil producers to deduct their property tax against their severance tax.

This initiative closes that tax loophole and removes an exemption that allows most natural gas and oil wells in Colorado to avoid paying their state tax obligation. Just as important, the measure does not change or affect the amount of local taxes that the producers pay.

We understand that Governor Ritter and several members of the Colorado General Assembly are considering introducing a referred measure pertaining to the state's severance tax structure. Should a referred measure emerge from the General Assembly that addresses the policy issues raised in the attached initiative we will happily redirect our efforts to improve education and awareness about the issue.

Thank you for your time. We look forward to meeting with you on March 14.

Sincerely,

Tony Lewis and Matt Samelson  
Donnell-Kay Foundation  
720.932.1544



## ADDRESSING LOCAL COMMUNITY AND HIGHER EDUCATION NEEDS THROUGH THE SEVERANCE TAX

### **The Problem**

#### **Communities impacted by the oil and gas industry**

Colorado is experiencing unprecedented growth in the oil and gas industry. While similar boom times have occurred in the industry in the past, the current economic expansion has been more rapid and more widespread. But as with previous booms, local communities in and near the oil and gas fields bear the brunt of industry impacts.

- Local roads are crowded with traffic with commuting workers. Interstate off-ramps dangerously back up into highway traffic. Heavy equipment burdens county roads built for light traffic, not to transport tons of machinery.
- There is also an increased demand for housing and public services. While rising housing costs may be good for real estate speculators, increased costs can price out many families who have lived in the community for years. An increased demand for other services, like schools, public safety, water and health care is also draining the resources of these small communities.

Accelerated economic growth presents challenges to local communities. Local building and road infrastructure are used more heavily than they were designed to accommodate. Affordable or even attainable housing is difficult to find. These problems are aggravated by the cyclical nature of the oil and gas industry. Many community members who lived through other peak times know that drops in home prices, declining tax revenues and rising unemployment could be just another industry “bust” away.

Despite these challenges, local governments are not seeing a windfall in tax revenues that corresponds with the industry’s profits. Increased drilling and production of oil and gas in Colorado has generated \$19.1 billion in revenues for the industry in the last two years. But in the same time period, local communities only received \$18 million directly from a state tax on oil and gas production - one tenth of one percent of industry production.

#### **Higher education building construction and renovation**

Colorado is ranked 48<sup>th</sup> in local and state government support per student for higher education. Yet the state’s budgetary contributions to higher education tend to be first on the chopping block during economic downturns. The state would need to increase funding by \$750 million annually just to reach the national average of state funding. If another recession were to hit the state, Colorado’s higher education funding would surely be affected.

During the most recent recession (2002-2005), capital construction appropriations dropped to 3 percent of pre-recession numbers. Appropriations for higher education operations dropped by 22 percent for those budget years as well. Tuition increased by 30 percent even though existing reserve funds were raided and exhausted. With its reserve funds gone, University of Colorado President Hank Brown believes another recession would result in funding cuts of up to 50% for higher education.

### **The Solution**

Legislation introduced this year by state representative Kathleen Curry will create a new criterion to equitably direct more money to communities experiencing the most oil and gas development. This bill is an appropriate first step to directly address local impacts. But rearranging how existing money is directed will not solve this problem. Addressing the impacts of oil and gas development will require dedication of greater resources to impacted local communities.

Severance tax dollars can also create a trust fund dedicated to Colorado's higher education facilities. The trust fund would provide schools with a dedicated revenue source allowing them to weather economic downturns more easily. In 1974, Wyoming created such a trust, the Permanent Wyoming Mineral Trust Fund, which had a balance of \$3.3 billion in June 2007. New Mexico's Severance Tax Permanent Fund was established in 1973 and had a balance of \$4.7 billion in September 2007. These trust funds spin off significant amounts of interest which can be used to fund capital construction projects.

### **Why Severance?**

Colorado's total tax rate on oil and gas production is one of the lowest of neighboring states. Colorado has a tax rate – meaning all revenue coming from severance, property, income and sales tax – of 5.7% for oil and natural gas producers. Neighboring states with significant oil and gas production have substantially higher tax rates according to the Colorado Legislative Council:

- Wyoming – 11.2%
- New Mexico – 9.4%
- Oklahoma – 7.0%

Eliminating a tax loophole that allows oil and gas producers to deduct their property tax against their severance tax would make Colorado's tax rate more comparable to surrounding oil and gas producing states. The loophole combined with a low tax rate means that **Colorado does not receive a fair return for its natural resources**. In 2005, for example, Colorado collected \$132 million in severance taxes. An identical amount of oil and gas production would have raised \$382 million in Wyoming and \$479 million in New Mexico.

For more information, please contact Matt Samelson of the Donnell-Kay Foundation at 720.932.1544 x103 or by email at [msamelson@dkfoundation.org](mailto:msamelson@dkfoundation.org).

## **Oil and Gas Tax Initiative for Local Communities and Higher Education**

### **The proposed initiative:**

- Dedicates new revenue directly to local communities that are socially and economically impacted by exploration, development, processing and transportation of natural gas and oil.
- Creates a trust fund dedicated to higher education capital, maintaining and constructing buildings for Colorado's community colleges, state colleges and universities.

### **The initiative allows the state to address these critical needs by:**

- Removing a tax credit that currently allows natural gas and oil producers to deduct 87.5% of their tax owed to the state of Colorado.
- Removing an exemption that currently allows 95% of all oil wells and 73% of all natural gas wells in Colorado (which collectively produced more than \$2 billion in natural gas and oil last year) to avoid paying their tax owed to the state of Colorado
- Decreasing the severance tax rate from 5% to 4.85%

### **Other key elements:**

- Removing these credits and exemptions would not unfairly burden the natural gas and oil industry in Colorado. Under the provisions of the initiative, the effective tax rate for natural gas and oil producers in Colorado would be closer to the tax rates of neighboring states such as New Mexico, Oklahoma and Wyoming.
- The initiative also provides tax relief to Colorado's royalty owners. Currently all royalty owners in Colorado must pay the state's severance tax. The initiative would not require royalty owners who earn less than \$300,000 from their royalty interests to pay severance taxes.

### **Money generated by removing credits and exemptions:**

- Had the provisions of the initiative been in place for the previous fiscal year, the state would have collected roughly \$200 million more in severance money for the year.
- The initiative dedicates roughly half the new revenue to local communities and half to higher education. Most of the higher education money will be placed in a trust fund, but a percentage will be available as annual appropriations for maintenance and construction of building Colorado's higher education institutions.
- A small portion of new revenue has been set aside for the Colorado General Assembly in order to direct money to the Department of Local Affairs and the Department of Natural Resources, current recipients of state severance taxes.

# PROPOSED INITIATIVE

Be it Enacted by the People of the State of Colorado:

**SECTION 1.** 39-29-101 (3), Colorado Revised Statutes, is amended to read:

**39-29-101. Legislative declaration.** (3) It additionally is the intent of the general assembly that a portion of the revenues derived from such a severance tax be used by the state for public purposes, that a portion be held by the state in a perpetual trust fund, ~~and~~ that a portion be made available to local governments to offset the impact created by nonrenewable resource development, AND THAT A PORTION BE MADE AVAILABLE FOR HIGHER EDUCATION CAPITAL CONSTRUCTION.

**SECTION 2.** Article 29 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**39-29-102. Definitions.** (8) "HIGHER EDUCATION CAPITAL CONSTRUCTION" MEANS ANY OF THE FOLLOWING ACTIVITIES FOR THE BENEFIT OF STATE INSTITUTIONS OF HIGHER EDUCATION AS DEFINED BY 23-18-102 (10) (A):

- (A) PURCHASE OF LAND, REGARDLESS OF THE VALUE THEREOF;
- (B) PURCHASE, CONSTRUCTION, OR DEMOLITION OF BUILDINGS OR OTHER PHYSICAL FACILITIES, OR REMODELING OR RENOVATION OF EXISTING BUILDINGS OR OTHER PHYSICAL FACILITIES;
- (C) SITE IMPROVEMENT OR DEVELOPMENT;
- (D) PURCHASE AND INSTALLATION OF THE FIXED AND MOVABLE EQUIPMENT NECESSARY FOR THE OPERATION OF NEW, REMODELED, OR RENOVATED BUILDINGS AND OTHER PHYSICAL FACILITIES AND FOR THE CONDUCT OF PROGRAMS HOUSED THEREIN UPON COMPLETION OF THE NEW CONSTRUCTION, REMODELING, OR RENOVATION;
- (E) PURCHASE OF THE SERVICES OF ARCHITECTS, ENGINEERS, AND OTHER CONSULTANTS TO PREPARE PLANS, PROGRAM DOCUMENTS, LIFE-CYCLE COST STUDIES, ENERGY ANALYSES, AND OTHER STUDIES ASSOCIATED WITH ANY CAPITAL CONSTRUCTION PROJECT AND TO SUPERVISE CONSTRUCTION OR EXECUTION OF SUCH CAPITAL CONSTRUCTION PROJECTS; AND
- (F) ANY ITEM OF INSTRUCTIONAL OR SCIENTIFIC EQUIPMENT IF THE COST WILL EXCEED FIFTY THOUSAND DOLLARS.

**SECTION 3.** 39-29-105, Colorado Revised Statutes, is amended to read:

**39-29-105. Tax on severance of oil and gas.** (1) (a) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing prior to ~~January 1, 2000~~ JANUARY 1, 2009, a tax upon the gross income of ~~crude oil, natural gas, carbon dioxide, and~~ ATTRIBUTABLE TO THE SALE OF oil and gas severed from the earth in this state; EXCEPT THAT OIL PRODUCED FROM ANY WELLS THAT PRODUCE FIFTEEN BARRELS PER DAY OR LESS OF OIL AND GAS PRODUCED FROM WELLS THAT PRODUCE NINETY THOUSAND CUBIC FEET OR LESS OF GAS PER DAY FOR THE AVERAGE OF ALL PRODUCING DAYS FOR SUCH OIL OR GAS PRODUCTION DURING THE TAXABLE YEAR SHALL BE EXEMPT FROM THE TAX; ~~except that oil produced from any wells that produce ten barrels per day or less of crude oil for the average of all producing days during the~~

~~taxable year shall be exempt from the tax.~~ Nothing in this paragraph (a) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for crude oil, natural gas, carbon dioxide, and oil and gas shall be at the following rates of the gross income:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%

(b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after ~~January 1, 2000~~ JANUARY 1, 2009, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; ~~except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax.~~ Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

<del>Under \$25,000</del>	<del>2%</del>
<del>\$25,000 and under \$100,000</del>	<del>3%</del>
<del>\$100,000 and under \$300,000</del>	<del>4%</del>

- (I) UNDER THREE HUNDRED THOUSAND DOLLARS SHALL BE ZERO PERCENT; AND
- (II) THREE HUNDRED THOUSAND DOLLARS AND OVER SHALL BE 4.85 PERCENT OF THE ENTIRE GROSS INCOME.

**39-29-105. Tax on severance of oil and gas.** (2) ~~(a)~~ With respect to ~~crude oil, natural gas, carbon dioxide, and~~ oil and gas, there shall be allowed, as a credit against the tax computed in accordance with the provisions of paragraph (a) of subsection (1) of this section for each taxable year commencing prior to ~~January 1, 2000~~ JANUARY 1, 2009, an amount equal to eighty-seven and one-half percent of all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers upon ~~crude oil, natural gas, carbon dioxide, and~~ oil and gas leaseholds and leasehold interests and oil and gas royalties and royalty interests for state, county, municipal, school district, and special district purposes, except such ad valorem taxes assessed or paid for such purposes upon equipment and facilities used in the drilling for, production of, storage of, and pipeline transportation of OIL AND GAS ~~crude oil, natural gas, and carbon dioxide~~. However, no credit shall be allowed for ad valorem taxes paid or assessed on OIL AND GAS PRODUCTION THAT IS EXEMPT FROM THE STATE SEVERANCE TAX PURSUANT TO SUBSECTION (1) OF THIS SECTION. ~~wells that produce ten barrels per day or less of crude oil for the average of all producing days during the taxable year.~~

~~(b) With respect to oil and gas, there shall be allowed, as a credit against the tax computed in accordance with the provisions of paragraph (b) of subsection (1) of this section for each taxable year commencing on or after January 1, 2000, an amount equal to eighty-seven and one-half~~

~~percent of all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers upon oil and gas leaseholds and leasehold interests and oil and gas royalties and royalty interests for state, county, municipal, school district, and special district purposes, except such ad valorem taxes assessed or paid for such purposes upon equipment and facilities used in the drilling for, production of, storage of, and pipeline transportation of oil and gas. However, no credit shall be allowed for ad valorem taxes paid or assessed on oil and gas production that is exempt from the state severance tax pursuant to subsection (1) of this section.~~

**39-29-105. Tax on severance of oil and gas.** (3) THE PROCEEDS OF THIS TAX AND INVESTMENT INCOME RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION THEREON SHALL BE COLLECTED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING LIMITATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, OR ANY OTHER LAW, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUE THAT MAY BE COLLECTED AND SPENT BY THE STATE OR ANY DISTRICT.

**SECTION 4.** 39-29-108 (2), Colorado Revised Statutes, is amended to read:

**39-29-108. Allocation of severance tax revenues.** (2) (a) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article EXCEPTING THOSE REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (b) ON AND after ~~June 30, 1981~~ JANUARY 1, 2009, fifty percent shall be credited to the state severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(b) OF THE REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (b):

(I) FORTY PERCENT OF SUCH REVENUES SHALL BE DEPOSITED IN A HIGHER EDUCATION CAPITAL CONSTRUCTION TRUST FUND CREATED AND ADMINISTERED IN THE OFFICE OF THE STATE TREASURER FOR THE PURPOSES OF HIGHER EDUCATION CAPITAL CONSTRUCTION;

(II) TEN PERCENT OF SUCH REVENUES SHALL BE DEPOSITED IN THE CAPITAL CONSTRUCTION FUND CREATED PURSUANT TO SECTION 24-75-302, C.R.S., FOR THE PURPOSES SET FORTH THEREIN;

(III) TEN PERCENT OF SUCH REVENUES SHALL BE DEPOSITED IN THE GENERAL FUND AND DISTRIBUTED AS MAY BE DETERMINED BY THE GENERAL ASSEMBLY; AND

(IV) FORTY PERCENT OF SUCH REVENUES SHALL BE APPROPRIATED AND DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX TRUST FUND ESTABLISHED BY SECTION 39-29-110 FOR THE PURPOSES SPECIFIED IN SUBSECTION (5) THEREOF.

**SECTION 5.** 39-29-110, Colorado Revised Statutes, is amended to read:

**39-29-110. Local government severance tax fund – creation – administration – energy impact assistance advisory committee created.** (1) (c.5) EXCEPT AS SPECIFIED IN SUBSECTION (5), for any state fiscal year commencing on or after July 1, 2007, state severance tax receipts credited to the local government severance tax fund shall be distributed as follow:

(I) Seventy percent of the receipts and income shall be distributed to political subdivisions in the manner specified in paragraph (b) of this subsection (1); and

(II) Thirty percent of the receipts and income shall be distributed or loaned to counties or municipalities in the manner specified in paragraph (c) of this subsection (1).

(5) ALL REVENUES RECEIVED BY OPERATION OF 39-29-108 (2) (b) (IV) SHALL BE DISTRIBUTED TO COUNTIES AND MUNICIPALITIES SOCIALLY OR ECONOMICALLY IMPACTED BY THE DEVELOPMENT, PROCESSING, OR ENERGY CONVERSION OF THE NONRENEWABLE NATURAL RESOURCES OF OIL AND GAS IN THE MANNER SPECIFIED IN PARAGRAPH (C) OF THIS SUBSECTION (1).