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Property tax credit wipes out much of state's take from oil and gas industry

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By Burt Hubbard

Energy companies enjoy a substantial property tax exemption in Colorado. In New Mexico and Wyoming, they don't.

So when the three energy rich states are compared and Colorado comes up the much poorer neighbor — at least in the amount of severance tax it collects — that's one major reason.

The property tax credit has cost Colorado hundreds of millions of dollars in revenue from oil and gas exploration.

While critics of the credit say it gives oil and gas companies an unfair tax break, industry officials respond that it is a just way to even out the tax burden.

Colorado is the only state that offers such a huge break.

Here's how it works. An energy company owes the state $100 in severance tax. But it owes, say, Weld County $100 in property tax. It gets to deduct 87.5 percent — or in this hypothetical, $87.50 — of its property tax bill from its severance tax.

Leaving the state with $12.50.

But most energy companies don't even have to pay that, since they pay more in property taxes than in severance taxes because of the way the two are calculated.

"Now, for practical purposes, it wipes out the severance tax for all but a handful of companies," said Jim Evans, former executive director of the Associated Governments of Northwest Colorado.

As a result, in most years, the state gets severance tax income from only five of its 30 oil- and gas- producing counties.

The property tax credit in the other 25 counties is high enough to cancel out the state tax owed by the companies, according to an analysis by the Colorado Legislative Council.

The property tax credit has been in place since 1977 and traces its roots to a 1953 state law.

It also means the overall tax burden for oil and gas companies in Colorado is 5.7 percent of production compared with 11.2 percent in Wyoming and 9.4 percent in New Mexico. Only Utah at 4.5 percent has a lower tax burden for drilling than Colorado.

A recent report by environmental groups estimated the property tax credit cost the state about $200 million last year.

Industry officials, however, say the tax credit levels the playing field for energy producers and puts more of the money into the hands of local governments to deal with the impacts from drilling operations.

"It equalizes the tax burden operators are paying," said Jep Seman, local counsel for the Colorado Petroleum Association. "We think it's a pretty important part of the severance tax."

For example, Seman said, producers in Weld County pay more in property taxes than producers on the Western Slope because the mill levy in Weld is higher. Without the tax credit, their total tax burden from property and severance taxes combined would be much higher than their counterparts in Garfield and Rio Blanco counties.

Last year, county property taxes from oil and gas production totaled $253 million statewide, as compared to the $202 million the state collected in oil and gas severance taxes, according to state agencies.

"In a county with a high tax rate, they wanted a break because the severance tax would double their combined tax load," Evans said.

No other state, however, has a similar credit, said Matt Samelson, special projects director for the Donnell-Kay Foundation, a nonprofit that works to improve education in Colorado.

Kansas is the only other state with a tax credit at all and it is less than 4 percent of the property taxes paid by oil and gas producers, Samelson said.

The credit for property taxes goes back to a 1953 state law that imposed the first version of severance taxes as part of a company's state income tax return. At the time, energy companies could deduct 100 percent of their property taxes against the severance tax.

In 1977, when it became part of a new severance tax law, the credit was reduced to 87.5 percent.

There have been few attempts to eliminate or reduce the credit over the years. Former Gov. Dick Lamm tried twice in the mid-1970s to cut the credit by half, first through legislation, and then through a ballot measure. Both failed.

"There was no thought of raising the tax as long as I was in the legislature," said Dave Owen, a Republican who served in the General Assembly for 20 years until last year and chaired the powerful Joint Budget Committee.

This year, the Donnell-Kay Foundation and Colorado Children's Campaign drafted a ballot measure to eliminate the tax credit and use the additional revenue for school facilities. But they never got to the point of collecting the signatures necessary to put it on the ballot.

Samelson said the two groups have not decided whether to try for the 2008 ballot.

Lawmakers have been advised that reducing or eliminating the credit would have to go to a statewide vote because it would be considered a tax increase under the tax and spending limits of the Taxpayer's Bill of Rights.

The last serious attempt to cut the credit came 30 years ago during a 1977 hearing before the Senate Finance Committee on severance taxes. A young state senator from Denver, Barbara Holme, made a motion to cut the credit to 50 percent of property taxes paid.

It lost by three votes.

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