State taxation of energy production: regional and national issues

William A. Testa

Among the many aspects of domestic U.S. energy policies that have proved divisive, the taxation of energy production by energy-rich states incites especially sharp regional hostilities. Climbing prices of oil and natural gas, along with increasing production of Western coal, have given rise to large wealth flows via energy taxation from energy-consuming regions to energy-producing regions, aggravating existing trends in this direction. Regions that do not fare well from energy taxes harbor resentment against neighbor states, who are perceived as adding insult, if not further damage, to their injuries. Meanwhile, energy-producing states regard their tax revenue windfalls as compensation for growing public service accommodations, environmental damage, and future costs of exhausted resource development.

In addition to redistributing wealth among regions, aggressive energy taxation by energy-producing states (along with other energy-related revenues) changes the location of employment and population in favor of these states. To some degree, this migration of jobs and people furthers existing migration from older industrial areas (which tend to be energy-consuming states) toward growing areas. Energy-consuming states are particularly sensitive to energy-related fiscal moves by other states because such actions are perceived as luring employment away from their own depressed economies.

How energy tax revenues redistribute regional income

Taxes levied on an economic activity in a state can, under some conditions, burden residents of another state. The tax burden is then said to be exported out of state. In the present context, residents of energy-producing states benefit from consumption of public services that are paid for elsewhere.

When a tax is imposed on an economic activity such as energy production, the resulting revenue will ultimately be paid by producers, consumers or, more than likely, some combination of these market participants.[1] The consumer's burden of energy taxation reflects the ability of producers to raise their product price to accommodate taxation. However, this ability to pass price increases forward to consumers is limited because consumers can turn to alternative suppliers of substitute goods rather than submit to higher prices. As a result, some portion of energy tax revenue derives from lower profits of owners of mineral rights, lower rates of return to capital owners of energy-producing equipment, and lower wages of energy-industry labor.[2]

Although the actual division of this tax burden is difficult to measure, it is widely believed that severance taxes are largely extracted from economic rents on energy products, especially petroleum and natural gas, which would otherwise accrue to owners of mineral rights. The recent run-up in world energy prices has yielded large economic rents or profits to owners of mineral properties. And because energy prices for some fuels are set on world markets, they cannot be changed by a small segment of the production market. This may be less true for energy materials with special features, such as low-sulfur Western coal, because a few states dominate production while the utilities

William A. Testa is a regional economist at the Federal Reserve Bank of Chicago.

[1]Tax burden may also be borne by factors of production in economic activity such as labor and capital. This "backward shifting" of taxes is generally inferred from a general equilibrium model of market activity. For example, see Albert Church, *Taxation of Nonrenewable Resources*, Lexington, Mass., 1981.

[2]The process by which the tax burden is shifted from producers to consumers may result in a burden or economic incidence that differs from the intended or statutory incidence. See R. A. Musgrave and P. B. Musgrave, *Public Finance in Theory and Practice*, 3rd ed., New York, 1980.

that consume these products cannot easily switch fuels in response to a price increase.

Regardless of the relative weight of taxation between producing and consuming segments of the energy industry, the tax burden on energy production may be exported to consuming states. If energy production taxes are shifted forward to consumers through increases in the price of energy products, residents of consuming states suffer a loss of income. Those few states producing the bulk of domestic energy production consume only a portion of their energy-product (Table 1). More than one-half of the domestic production of each of the three major domestic energy materials—natural gas, coal, and petroleum—is produced by fewer than five states.[3] These producing states export more than they consume. Tax levies are exported along with energy products to the extent that the consumer price rises in response to taxation.

Even if energy tax burdens are borne by the producing segment of the industry, energy states can conceivably export the tax burden to consuming states. To the extent that equity values decline in response to energy taxation, the portion of equity wealth that would otherwise accrue to owners living in energy-consuming states will now be redistributed to producing-state residents in the form of greater public goods consumption, lower state taxes, or some combination of these windfalls.

By exporting tax burdens to other states (and, thus, importing revenues), energy producing states may also benefit from federal grants to state and local governments. Federal grants, such as revenue sharing, often distribute aid on the basis of some measurement of a state's current effort in taxing the income and property of its own residents. Insofar as the tax revenues collected from out-of-state residents are mistakenly counted as a drain on state residents in federal grant formulas, energy-producing states and their residents receive fiscal windfalls from both energy taxes and favorable grant allotments.

Table 1
Production share and net export position by major fuel in leading states, 1981

	Production share of domestic production	Production to consumption ratio
	(percent value of product)	*(physical unit base)*
Natural gas		
Louisiana	35.5	3.8
Texas	32.6	1.8
Oklahoma	9.6	3.0
New Mexico	6.1	5.8
Kansas	1.5	1.5
Total	85.3	
Crude petroleum		
Texas	33.5	1.4
Alaska	26.7	24.0
Louisiana	16.0	1.6
California	10.2	.7
Oklahoma	5.5	1.8
Total	91.9	
Coal		
Kentucky	21.5	5.5
W. Virginia	19.8	3.1
Pennsylvania	13.0	1.4
Virginia	6.6	3.9
Illinois	6.6	1.4
Total	67.5	

SOURCE: *State Energy Overview*, Energy Information Administration, U.S. Department of Energy, DOE/EIA - 0354 (82), 1983.

Producer state response

Representatives of energy-producing states readily deny that tax revenues from energy production increase the general welfare of their citizens. Their arguments suggest that energy revenues merely compensate for costs imposed on a state's government and citizens through increased state and local government costs, environmental damages, and such intangibles as the degradation of former lifestyle that may

[3]These production totals are somewhat misleading indicators of tax export ability because they include coastal production beyond state boundaries. Although this production activity is closely tied to state economies, no state revenues accrue from production.

Uranium production totals by state are not available due to corporate disclosure problems. Nuclear power consumption accounts for 3.5 percent of total domestic energy consumption and 5.2 percent of the Seventh District regional consumption.

accompany population migration from other regions.

With regard to increased government costs, producer states maintain that, although the state tax base increases with in-migration of business and population, service costs rise at an equal or greater rate for several reasons. Large front-end costs of financing new capital infrastructure such as roads, sewers, schools, and sewer systems are required. In addition, debt financing during periods of high interest rates can be especially burdensome. Finally, these states maintain that, because energy sources will soon be exhausted, the boom-towns of today will eventually leave behind large pockets of unemployed persons who consume public services in amounts greater than their tax contributions. For this reason, producer states argue that fiscal windfalls of today should be placed in state trust funds to cover these future costs. Several energy-producing states have established such trust funds.

A second set of related costs of energy production are environmental damages. For example, to the extent that state residents bear energy production costs in the form of the erosion of Louisiana's wetlands and the denuding of Wyoming's and Montana's Powder River Basin, the concept of tax exporting and regional tax incidence must be redefined to include both benefits and costs of hosting energy production activities.[4] Although environmental damages are more difficult to quantify, these costs can nonetheless be substantial.

How energy taxes change the regional location of economic activity

If energy tax burdens are, in fact, exported, or if in-state federal grant allotments are raised, real income will be transferred to producing state residents via some combination of lower individual tax burdens and greater consumption of public services. Insofar as the income transfers accrue to initial state residents and immigrants alike, population and employment can be expected to follow these fiscal advantages.

An economic incentive for population migration arises from tax exporting because immigrants are able to pay lower taxes and/or consume greater public services by migrating. Somewhat less apparently, nonenergy-producing industrial and commercial firms located in energy-producing states can also benefit from tax exporting. A declining tax share in a producing state lowers costs and increases profitability to firms in these locations. Moreover, it may be less costly to attract skilled workers to these locations from a national labor market because net-of-tax salaries are increased through lower state taxes on individual income. Finally, state fiscal windfalls can alternatively subsidize business services rather than publicly provided consumer goods. Such public inputs to private market production as dams, waterways, airports, and education encourage regional industrial and commercial development, perhaps partly at the expense of competing regions.

National concerns

Fiscally-induced incentives to relocate economic activity may reduce the overall productivity of the economy. The economic notion of national production efficiency suggests that in a free market the productivity of marginal units of any input to production, such as labor or capital, should be equal in all uses. In a regional context, the productivity of an additional unit of an input must be equal in every location to insure maximum production from limited resources. National markets for labor and capital produce this result by tending to equalize wage costs and interest rates across regions. However, if state governments use fiscal windfalls to subsidize migrant labor or capital, these inputs relocate in response to pure fiscal reasons rather than to the price signals of the free market. As a result, productivy of labor and capital will differ across regions. This may be less than optimal because a different spatial arrangement of available firms, capital, and labor might increase national income and production.

A second national concern over state energy revenues involves the equity of fiscal disparities. Through programs such as General Revenue

[4]This concept has been referred to as "net incidence." See R. A. Musgrave and P. B. Musgrave, *Public Finance in Theory and Practice*, 2nd ed., New York, 1976.

Sharing, Congress has attempted to mitigate fiscal disparities between regions of the country. In debates over these programs, the issue of tax exporting has arisen in response to rising energy taxes. To the extent that grant formulas that are intended to equalize fiscal disparities actually aggravate them by neglecting the effects of energy tax exporting, federal amendment of exisiting grant formulas may need to be considered. Recognition of tax exporting in grant formulas would require accurate measurement of tax exporting for all state revenue sources in addition to severance taxes, a difficult administrative and economic problem.[5]

Another national concern over energy taxation has arisen from attempts by the congressional delegations of some energy-consuming states to limit the power of energy-rich states to capitalize on their advantages. The federal government can potentially override state policies, if they are detrimental to national interests, through its constitutional powers to regulate interstate commerce. Congressional bills have already appeared that limit the power of states to tax energy materials and to establish national taxes on energy production, though none have been committed to law. Enactment of such bills might have grave consequences for the stability of our federal system. Under the Constitution, the power to tax within its own borders is reserved to the states. Curtailing the power of states to enact severance taxes could establish a dangerous precedent and alter existing federal-state relationships. Escalating retaliation among regions of the country in usurping other state tax bases through Congressional legislation could upset fiscal stability within many states in the nation.

State revenues

While regional and national attention has focused on the issues concerning fiscal disparities between have and have-not states, these disparities are not well documented. In part, this reflects the fact that state energy revenue sources assume many forms, such as severance taxes, property taxes, corporate income taxes, production privilege fees, royalties on state lands, favorable federal grant allotments, and in-lieu payments to states from federal onshore land in production. Moreover, insofar as these revenues have only recently become important, much of the public remains unaware of their magnitude—an average $220 per capita and 30 percent of state tax revenues in the major energy-producing states in 1983.

Severance taxation

The severance tax, also referred to as a production tax, production privilege tax, or a conservation tax remains the most widespread and highest-yielding energy tax. The key characteristic of this tax is that payment occurs when the product is taken from the soil or shortly thereafter. The Census Bureau defines severance taxes as:

> Taxes imposed distinctively on removal of natural products—e.g., oil, gas, other minerals, timber, fish, etc.—from land or water and measured by value or quantity of products removed or sold.[6]

Although these taxes are levied on a great variety of minerals, state revenue from taxes on petroleum and natural gas greatly exceeds that from all other sources, accounting for an estimated 84 percent of severance tax revenues in 1980.[7] Revenues from coal production amount to another 8 percent.

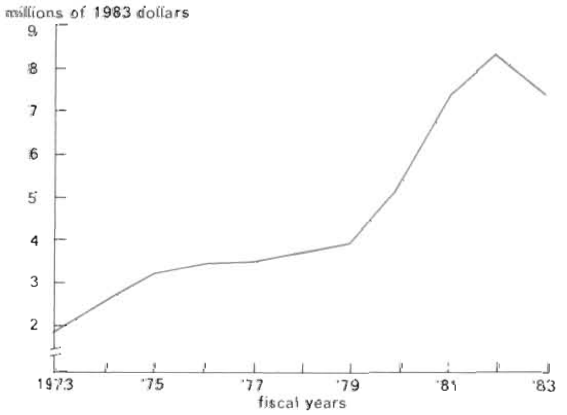
Over the last decade, state severance tax revenue grew rapidly in constant dollar terms (Figure 1). Severance tax revenue increased by approximately 291 percent from fiscal year 1973 (the year before the OPEC embargo) through fiscal year 1983, an average annual growth rate of 13.6 percent. In fiscal 1983, states raised over $7

[5] For a discussion of the problems inherent in measuring tax exporting, see Charles E. McClure, "Tax Exporting and the Commerce Clause," *Fiscal Federalism and the Taxation of Economic Resource*, Charles E. McClure and Peter Mieszkowski, eds., Lexington, Mass. 1983.

[6] *State Government Tax Collections In 1982*, Bureau of the Census, U.S. Department of Commerce, Series GF82 No. 1, p. 38., U.S.G.P.O., 1982.

[7] See Peggy Cuciti, Harvey Galper, and Robert Lucke, "State Energy Revenues," *Fiscal Federalism and the Taxation of Natural Resources*, Charles E. McClure and Peter Mieszkowski, eds., Lexington, Mass., 1983, p. 18.

Figure 1
Severance tax revenue in the U.S.



billion in revenues from the severance tax alone (Table 2).

In large part, price hikes for petroleum and natural gas explain rising tax revenue in the United States, beginning with the first OPEC-related price increases in 1973-74. Rising production of coal in Western states, accompanied by aggressive tax policies, also contributed to rising revenues. Most recently, the OPEC price increase following the Iranian revolution, coupled with price decontrol of domestic petroleum production and partial decontrol of natural gas, significantly boosted these tax revenues. From 1977 to 1983, total severance tax revenues more than doubled in real terms.

Severance tax revenues have become a much more important revenue source to state governments, climbing from 1.3 percent of overall state tax revenue in 1973 to 4.3 percent in fiscal 1983. Although this is not a large fraction of overall state tax revenue, severance tax revenue became a mainstay of the fiscal system for many individual states over this period (Table 3). In 1970, only one state (Louisiana) relied on the severance tax to provide more than one-fifth of tax revenue. By 1983, eight states—Texas, Louisiana, Alaska, Oklahoma, New Mexico, Montana, Wyoming, and North Dakota—relied on severance revenues for tax shares of this size.

Texas raised over $2.2 billion in severance tax revenue in 1983, almost one-third of all domestic severance tax revenue. Alaska and Louisiana together accounted for another one-third of total severance tax revenue. On a per capita basis, the nine leading severance tax states collected around $220 per capita in fiscal year 1983, with a wide dispersion around this average (Figure 2). The State of Alaska, with its huge petroleum resources and sparse population, collected approximately $3,365 per capita from severance taxes alone in 1983.

Severance tax revenues were affected by the 1982 recession. Across the United States, they fell by more than 5 percent from fiscal 1982 to 1983. Each of the top severance tax states also suffered declining real revenues over this period, suggesting that such revenues are a highly volatile source of revenue.

Table 2
Severance tax revenues in the U.S., fiscal years 1973 to 1983

Fiscal year	Revenue (current $ millions)	Revenue* (constant $ millions)	Percent of state tax revenue
1973	850.4	1,893.1	1.3
1974	1,254.2	2,580.2	1.7
1975	1,741.2	3,225.5	2.2
1976	2,028.7	3,451.0	2.3
1977	2,168.1	3,485.6	2.1
1978	2,492.1	3,731.2	2.2
1979	2,850.5	3,939.0	2.3
1980	4,167.4	5,249.1	3.0
1981	6,379.2	7,334.7	4.3
1982	7,830.0	8,351.3	4.8
1983	7,396.7	7,396.7	4.3

*Revenues are inflated by the implicit price deflator for state and local purchases of goods and services (1983 = 100).

SOURCE: *State Tax Collections*, Governments Division, Bureau of the Census, U.S. Department of Commerce.

Royalties, rentals, and bonus payments

State governments collect rentals and front-end bonus payments from mineral production on state-owned land in much the same manner as private land rental rights are determined, by two-party negotiation. Royalty or rental rates vary by the value of extracted material and cost of extraction. Although aggregate estimates of these revenues are not available, the U.S. Advisory Commission on Intergovernmental Rela-

Table 3
Severance tax revenue by state, fiscal years 1973 and 1983

State	Share of state tax revenue		Real revenue		Real revenue per capita	
	1973	1983	1973	1983	1973	1983
	(percent)		($ millions)		($)	
Alaska	12.9	73.0	31.4	1,494.0	96	3,365
Kentucky	3.7	8.5	83.2	221.4	25	60
Louisiana	23.0	28.9	595.8	869.5	158	198
Montana	2.8	26.8	11.6	137.6	16	171
New Mexico	9.6	30.2	82.2	351.3	76	257
North Dakota	1.7	35.1	7.0	184.5	11	275
Oklahoma	10.3	29.6	159.1	777.7	60	241
Texas	12.1	25.0	756.3	2,254.7	64	147
Wyoming	5.0	52.8	11.8	388.9	34	764
Nine State Total	11.7	30.0	1,738.5	6,679.7	71	220
United States	1.3	4.3	1,893.0	7,396.7	9	32

NOTE: Revenues are inflated by the implicit price deflator for state and local purchases of goods and services, 1983 = 100. Per capita revenues are derived from July 1 population estimates of the Bureau of the Census, Series P-25.

SOURCE: *State Government Finances*, Governments Division, Bureau of the Census, U.S. Department of Commerce, and *Current Population Reports*, Series P-25, Population Division, Bureau of the Census.

tions estimates that revenue from mineral leases grew from $500 million in 1972 to $3.3 billion in fiscal 1980.[8] From year to year, these payments average three-fourths as much as state severance tax revenues.

Royalties paid to the federal government for production on onshore federal lands are widely shared with states. About 20 percent of the national total of state royalty revenue is comprised of federal revenue. New Mexico and Wyoming are reported to receive two-thirds of this federal-source income.[9] Coal development of the Powder River Basin in Wyoming and Montana is expected greatly to increase these federal-source monies in the coming decades.

Although royalty revenue data are not widely reported on a national basis, certain states are known to collect substantial revenues. Once again, Alaska stands out as a primary collector of revenues. All petroleum production in Alaska occurs on state lands and is subject to a royalty rate of one-eighth of value. For fiscal year 1982, Alaska collected nearly $1,557 million in natural resource royalties, a figure that exceeded its severance tax revenue (Table 4). Royalties in combination with severance tax revenues accounted for over 50 percent of Alaska's revenue from all sources in 1983, more than $6,000 per capita.

Other methods of taxation

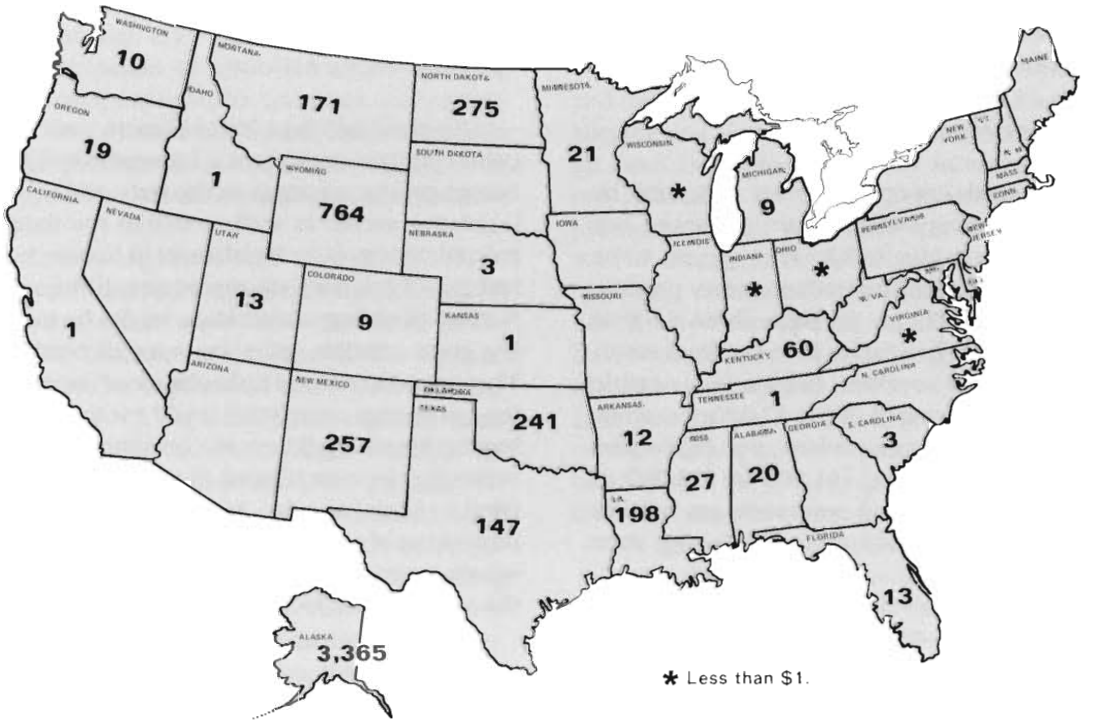
Aside from royalty fees and severance taxes, producing states maintain other taxes to collect revenues from energy production. These revenue sources are often less visible and include statewide property taxation, local property taxation, corporate income taxation, and gross receipts taxation.

For some taxes, especially the state corporate income tax, it is often difficult to identify those revenues that are related to energy production. Corporation tax revenues by industry are not generally reported by state governments. Alaska's use of separate accounting of petroleum industry profits, effectively repealed on January 1, 1982, was an exception. Most states apportion the taxable income of corporations among states using a three-factor formula that includes the

[8]Ibid., p. 23.

[9]See Peter Mieszkowski and Eric Toder, "Taxation of Energy Resources," *Fiscal Federalism and the Taxation of Natural Resources*, p. 76.

Figure 2
Per capita severance tax revenues from all sources
(in dollars—fiscal year 1983)



state's share of corporate payroll, property, and sales. In an apparent attempt to increase its revenues from energy corporations, Alaska treated corporate energy production activities as separate entities in determining income earned in Alaska, imposing a special 9.4 percent tax rate. Prior to its effective repeal in 1982, Alaska collected $669 million in fiscal 1982 from energy corporations under this system.

Table 4
Natural resource rent and royalty revenue, selected states, fiscal year 1982

	Rents and royalties	Per capita rents and royalties*
	($ thousands)	*($)*
Alaska	1,557,073	3,743
Louisiana	654,661	152
Montana	59,468	76
New Mexico	216,038	162
Texas	595,784	40

*Per capita figures use resident population estimates for July 1, 1981. Montana's revenue figures are for fiscal year 1981, population for April 1, 1980.

SOURCE: *State Government Finances in 1982*, Bureau of the Census, Governments Division, and *Current Population Reports*, Series P-25, #944, Bureau of the Census.

Taxation of property value at the state or local government level can also substitute for, or augment, other energy revenues. Alaska levied the only statewide property tax on oil and gas property in fiscal 1983, collecting over $152 million. At the local level, some states, such as Louisiana, Oklahoma, and Alaska, exempt land under production from the local property tax while other states, such as Texas and California, reportedly attempt to tax the true market value of energy reserves underground. Some energy-producing states that do not raise substantial energy revenues from severance taxes may do so through some form of property taxation. West Virginia, Virginia, and Pennsylvania rank very low in severance tax revenues, yet coal property within these states is subject to some form of

local property tax. Here again, revenues by industry are not available. Mieszkowski and Toder (1982) estimate that Texas property tax revenues from oil and gas properties may have amounted to as much as $775 million in fiscal year 1981.[10]

Total energy revenues

The total energy revenues collected by energy-producing states remain unknown, but severance taxes plus royalty fees suggest some approximate levels. The leading energy-producing states collect, on average, three to four hundred dollars per capita per year from severance taxes and royalties. Alaska is a notable exception, capturing $6,000 to $7,000 per capita.

As a point of comparison, per capita personal income averaged $11,000 to $12,000 in 1982-83. If royalty and severance tax monies comprised a pure subsidy to producing state residents, it would amount to approximately 3 percent of personal income in most energy states, but over one-third of personal income to residents of Alaska.

Consumer state actions

Consuming states have acted on their concerns over real or perceived income transfers to energy-producing states in the state and federal legislative arenas as well as within the federal judicial system. State legislatures in Connecticut and New York have attempted to capture some portion of energy corporation profits by imposing gross receipts taxes on sales of products. These practices stood little chance of success so long as energy companies could escape the tax burden by raising prices to consumers in those states. In response, Connecticut and New York tried to prohibit price increases following the imposition of taxation. Federal courts, however, struck down such measures as interfering with the sovereign federal power to regulate inter-

[10]Ibid., p. 74.

Severance taxation in Seventh District states

Although a relatively few states collect the bulk of severance taxes, 32 states employ severance taxes in one form or another. Michigan imposed the first severance tax, on iron ore, in 1846. Today, Michigan raises the only significant severance tax revenue within the Seventh District, $81 million or 1.2 percent of the state's tax revenue in 1983. Indiana levies a small percentage tax on petroleum and Wisconsin collects modest revenues from timber production. Illinois, the region's largest energy producer, has no severance tax on its coal production.

Severance tax rates and revenue within Seventh District states, 1983

State	Tax rates (percent) Petroleum	Natural gas	Coal	Revenue from all severance taxes (thousands of dollars)	Share of state taxes (percent)
Illinois	X	X	X	0	0.0
Indiana		1.0	X	1,616	0.1
Iowa	X	X	X	0	0.0
Michigan	4.0-6.6	5.0	X	81,371	1.2
Wisconsin	X	X	X	952	<0.1
Region	X	X	X	83,939	0.4

SOURCE: *State Tax Guide*, Commerce Clearinghouse Corp., and *State Government Tax Collection in 1982*, U.S. Bureau of the Census.

state commerce.[11]

State revisions of their own corporate income taxes have increased consuming-state revenues from multi-state and multi-national energy firms. Through the "unitary business method," the combination of interstate and worldwide energy company subsidiaries, states such as California and Florida have pulled the profitable energy production and transport linkages of energy industries into the state corporate income tax base.

Consuming states have experienced favorable judicial rulings for these practices. In *Exxon* v. *Wisconsin*, the corporation maintained that its domestic distribution subsidiary was a separate entity from its exploration and recovery operations.[12] The U.S. Supreme Court rejected these arguments in favor of the unitary business approach to business taxation. More recently, the Supreme Court removed any doubt that it might decide that worldwide combination of corporate subsidiaries is unconstitutional.[13] Following this ruling, Florida adopted worldwide combination and apportionment of income. However, states are now proceeding cautiously in adopting worldwide unitary methods because this practice has been vigorously protested by many firms as detrimental to a state's "business climate."

Consuming states have attempted to thwart producing state use of severance taxation by appealing to the commerce clause of the U.S. Constitution which grants to Congress "power to regulate commerce with foreign countries, and among several states, and with the Indian Tribes."[14] Although the method and circumstance of such regulations are not contained in the Constitution, federal courts have continually disallowed taxes that discriminate against goods on the basis of their movement across state borders. States do not have the power to discriminately tax exports or imports of another state or foreign nation. If Illinois, for example, levied a state sales tax solely on foreign autos or on California wine, it would most likely be found in violation of the commerce clause.

In this regard, a number of coal companies and their out-of-state utility customers filed suit alleging that Montana's 30 percent severance tax on coal discriminated against interstate commerce because the tax was not fairly related to the services and protection provided by the state.[15] Among the complex legal arguments, the claimants contended that the tax unconstitutionally represented a tax on exports from that state because revenues exceeded perceived costs of extraction imposed on the residents of Montana. The U.S. Supreme Court ruled that this tax was not discriminatory in that it taxed severance of coal from the soil irrespective of its destination. The majority opinion stated:

> . . . there is no real discrimination in this case: the tax burden is borne according to the amount of coal consumed and not according to any distinction between in-state and out-of-state consumers.[16]

Some legal scholars maintain that Congress may regulate state tax behavior through its authority to regulate interstate commerce in the national interest. In response to tax rate hikes on coal by the states of Montana and Wyoming from 1975 to 1977, the House Interstate and Foreign Commerce Committee reported out a bill, though it was not voted on by the full House, that would limit state severance taxes on coal to 12.5 percent of value.[17]

Although this type of legislative action would ultimately be challenged under the U.S. Constitution, it presents a method for consuming states to limit the perceived fiscal windfalls accruing to energy state governments. Even if such a law withstood judicial challenge, however, energy-

---

[11]See *Mobil Oil Corp.* v. *Tully*, 499F. Supp. 888,892 (N.D.N.Y.1980) and *Mobil Oil Corp.* v. *Dubno*, 492F Supp. 1004,1006 (D. Conn. 1980).

[12]*Exxon Corp.* v. *Wisconsin Dept. of Revenue*, 44F U.S. 207 (1980).

[13]*Container Corp. of America* v. *California State Franchise Bd.*, 77 L. Ed. 2d 545 (1983).

[14]Article I, Section 8., U.S. Constitution.

[15]*Commonwealth Edison Co. et al.* v. *State of Montana*, 615 p. 2d 847, 855 (1980). The Montana tax was also challenged under the supremacy clause of the Constitution, Article VI Section 2.

[16]*Commonwealth Edison Co. et al.* v. *State of Montana*, (pp. 2954-2955).

[17]H. R. 6625, 96th Congress. This bill would have only affected Montana and Wyoming.

producing states could conceivably replace foregone severance tax revenues by such methods as restructuring or instituting corporate income and statewide taxes on energy production.[18]

Conclusions

Rising world energy prices in recent years have sharply increased state tax revenues from energy production in several western and south central states. These revenues have caused concern among energy-consuming states that view these revenues as significant regional income transfers at their expense. Producing-states spokesmen have responded that taxes levied on energy production compensate their residents for the increased public service costs of hosting energy industries, for environmental damage to undeveloped plains and coastlines, and for the loss of treasured lifestyle that accompanies energy-related in-migration of population.

While the actual extent of regional income transfer will continue to be scrutinized, some consuming states have acted on the basis of real or perceived income losses by revising their own state tax structures to capture energy company profits. Methods include challenging the legality of state severance taxes and supporting Congressional initiatives to limit state severance taxation. Although none of these measures can claim great success to date, the possibilities for Congressional limitation on energy state severance taxation have not yet been exhausted. However, even in the event that a bill to limit severance taxation was committed into law, its success in restraining inter-regional income transfers would be questionable. Energy-producing states possess alternative tax vehicles, such as corporate income taxes, gross receipt taxes, as well as state and local property taxes, that can be imposed with much the same effect on tax reporting as severance taxation. Moreover, a national concern arises over this potential seizure of state government tax domain. Regional retaliation through further Congressional action might destabilize state fiscal systems.

[18]For example, Texas and Wyoming currently impose no state corporate income tax.