Hardrock Mining Royalty – Fair to Taxpayers, Fair to Industry

8% Gross Income Royalty is Small Burden after Tax Breaks

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Fair Compensation for Taxpayers

For more than 8 decades the coal, oil, and natural gas industries have all paid royalties for the right to make a profit from public lands by extracting valuable resources. But hard rock mineral mining companies, which extract some of the world's most valuable resources, pay no royalties to the federal government for the right to profit from precious metals such as copper, gold, and silver. With the layers of tax breaks they receive, and their record profits, an 8 percent gross income royalty is fair to the taxpayers and fair to the industry.

Gross Income Royalty, a Small Burden

An 8 percent gross income royalty accomplishes two things – it brings the taxpayer a reasonable return for the loss of valuable minerals to private interests, and it does so in a fair and simple manner that is of minimal burden to the industry.

- The 8 percent royalty would be applied to the existing Internal Revenue Code (IRC) [1] definition of gross income from mining. Thus the industry would not be burdened with additional bookkeeping costs, for they already track their gross income for other reasons.
- And, under the IRC definition of gross income from mining, at the very early stages of processing, certain limited costs may be subtracted from the value of the mineral before applying the royalty. For example, the allowed processes include, "in the case of lead, zinc, copper, gold, silver, and uranium, crushing, grinding, grinding, and benefication by concentration."[2]

The gross income royalty is fair to taxpayers; it compensates taxpayers and allows limited industry deductions at a point in the extraction process where the value of the mineral is relatively low. And it is fair to the industry by using existing tax law to apply the royalty at a relatively early stage in the process – allowing some deductions, and applying the royalty at a low value stage in the production process.

Special Tax Breaks for the U.S. Mining Industry

Mining companies receive a special tax break, a percentage depletion allowance, under the IRC, effectively lowering their ultimate tax rate.[3] The depletion allowance is similar to the depreciation deduction. It allows mining companies to essentially write-off an arbitrary percentage of the value of the extracted mineral as a deduction against income.[4] The justification is that minerals are a finite resource, and a mine's value declines as minerals are extracted.

Under the percentage depletion allowance, "total deductions typically exceed the capital invested."[5] This has the effect of reducing the impact of a royalty. In some cases this can contribute to a company having a negative effective tax rate, meaning the federal Treasury owes them money. For fiscal years 2007 through 2013 this subsidy is estimated to cost an average of more than $431 million/yr., with a total estimated loss to taxpayers of $3.02 billion Most other countries have rejected the depletion allowance subsidy,[6] perhaps recognizing it as an industry giveaway at taxpayer expense.[7]

The mining industry receives other special tax breaks, including the accelerated expensing of exploration and development (E&D) costs, and deduction of costs for mine closure and reclamation. The E&D deduction is estimated to cost taxpayers $10 million a year.[8] Furthermore, the cost of royalties themselves is deductible, further negating the impact of a royalty.[9]

Other extractive industries pay an eight percent or higher royalty in the U.S. The oil, gas and coal industry all pay at least an 8% royalty to extract natural resources from federal lands and waters. *Examples of extractive industry royalty rates*:

- Underground coal – 8%
- Surface coal – 12.5%
- Onshore oil and gas – 12.5%
- Deep water Offshore oil – 16.7%

Royalties compensate taxpayers for the use of public lands.

- From 1980 to 2000, royalties collected from coal mined on federal lands totaled more than $5.9 billion.[10]
- In Fiscal Year 2007 the federal government collected $11.4 billion in oil and gas royalties.[11]

The Congressional Budget Office estimates that the 8% hard rock mineral royalty would generate $40 million/yr. for US taxpayers. For more than a century this industry has paid nothing for the privilege to mine taxpayer-owned resources, and has additionally enjoyed unique tax treatment unavailable to other industries. The time to enact a fair royalty, from an industry that becomes increasingly profitable each year, is long overdue.

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[1] Specifically, Internal Revenue Code §613(c).

[2] Ibid, §613(c)(4)(D)

[3] The oil and gas industries are also allowed to take a percentage depletion allowance.

[4] See paragraphs 6 and 7 for the Environmental Protection Agency's description of percentage depletion at this site: http://yosemite.epa.gov/ee/epalib/incent2.nsf/821321c2b2c0d5bd8525677500697227/950fc1c1421943df85256ab200704237!OpenDocument. Last accessed 3/11/08.

[5] Congressional Research Service, Salvatore Lazzari, Specialist in Natural Resource Economics and Policy, testimony before the Subcommittee on Energy and Mineral Resources, House Committee on Natural Resources, October 2, 2007.

[6] James M. Otto, Independent Consultant on Mining Law, Policy and Economics, answers to questions from the Subcommittee on Energy and Mineral Resources, House Committee on Natural Resources, October 2007. (See p. 5 of Committee Report.)

[7] For nonfuel minerals. Executive Office of the President, "Analytical Perspectives: Budget of the United States Government, Fiscal Year 2009," Table 19-2, Estimates of Total Income Tax Expenditures, p 293, line 34 at http://www.whitehouse.gov/omb/budget/fy2009/apers.html

[8] For nonfuel minerals. Executive Office of the President, Op. Cit., line 33.

[9] Congressional Research Service, Lazzari, Op. Cit.

[10] U.S. Department of Interior, Minerals Management Service, Minerals Revenue Management, Commodities Statistics for onshore coal at http://www.mrm.mms.gov/Stats/comm.htm.

[11] http://www.mrm.mms.gov/Intro/PDFDocs/20071203.pdf