



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

JONATHAN MILLER
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED] PARTNERSHIP

Contact: [REDACTED]

FINAL RULING NO 2009-22
May 5, 2009

2007 Unmined Mineral Assessment

FINAL RULING

The Department of Revenue (DOR) currently has an outstanding estimated total ad valorem tax liability totaling \$ [REDACTED] for unmined clay for 2007 based upon the values of the following parcels.

[REDACTED] County	<u>Parcel Value</u>	<u>Owner</u>	<u>Producer</u>	<u>DOR Value</u>
[REDACTED]	[REDACTED]	[REDACTED] Partnership	[REDACTED] Co.	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]

[REDACTED] County	<u>Parcel Value</u>	<u>Owner</u>	<u>Producer</u>	<u>DOR Value</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]

At issue is whether the DOR correctly assessed the fair cash value of the above parcels of unmined clay.



The taxpayer argues that clay is not a mineral under Kentucky law. They cite developments in the civil adjudication of property rights as authority for a determination that limestone and clay regardless of their value are not minerals. It is the DOR's position that this language was related to the conveyance and dispensation of property rights through the interpretation of a deed and is not the proper authority for analysis of legislative enactments relating to the taxation of unmined minerals. The policies and interests inherent in a dispute between mineral and surface estate owners are not the same as those involved in the analysis of a tax issue. The taxpayer's reliance on cases excluding clay as a mineral in the context of ownership and title is misplaced.

Unmined clay is assessed by the DOR pursuant to KRS 132.820, which states, in part:

- (1) The department shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. . . .

The DOR's position is that the unmined clay in question has been properly valued at its fair cash value as required by law (see KRS 132.820(1); Kentucky Constitution, Section 172). Numerous factors were taken into consideration relating to the parcels at issue, including, but not limited to the quality and quantity of the clay, the level of current or projected activity and the location of the tract. This valuation reflects a reasonable estimation of the fair cash value of the unmined clay.

Clay is classified as a mineral by the Kentucky Geological Survey and the United States Geological Survey. For severance tax purposes, KRS 143A020 levies a 4.5 percent tax on the gross value of all minerals severed and/or processed in Kentucky. Effective February 26, 1991, the tax rate on clay production was lowered to 12 cents per ton rather than the 4.5 percent of gross value. Unquestionably, clay is considered to be a mineral for severance tax purposes.

Based upon the foregoing, the DOR has determined that the estimated tax bill of \$██████████ is a legitimate liability of ██████████ Partnership due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of

the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40602-2120, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling within each copy of the petition of appeal.

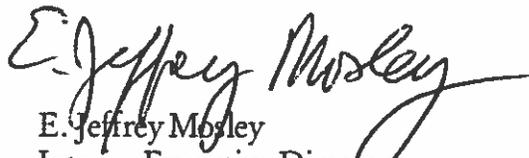
The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2(3) or 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,


E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

