

BY-LINED ARTICLE

Natural-Gas Tax Receipts Overly Optimistic, Industry Says

By David M. DeSalle and Lou Crocco

March 2010

Duane Morris LLP

Pennsylvania Gov. Edward Rendell's proposed natural-gas extraction tax would raise only a portion of the amount estimated by the state Office of the Budget, natural gas industry officials say.

"His numbers are off by a factor of four," an industry spokesman said. "Sure, there's a lot of activity in exploration, leasing land, but the level of production hasn't followed quite yet."

The governor's budget office anticipates that the effective 6.25-percent tax would raise \$161 million over 10 months. (Under the Rendell proposal, the tax would take effect on September 1, 2011.)

In February 2009, Governor Rendell proposed the same natural-gas extraction tax, and if it had been approved by the state general assembly, it would be in effect over the current fiscal year. Then, Pennsylvania's Oil and Gas Producers (POGAM) estimated that the effective 6.25-percent tax would raise \$26.5 million. After the proceeds from the tax were divided up, the state General Fund would have received \$15.9 million. Under Governor Rendell's plan this year, 90 percent of the tax receipts would go to a special fund to replace federal stimulus money when it has been completely spent, and 10 percent would go to local governments.

The industry has yet to determine tax-receipt estimates for next fiscal year, but an industry spokesman said the numbers would be close to the same level as estimated for this year.

"For the damage done to a growing industry, it's just not worth the money it would bring in," said Steve Rhoads, director of external affairs for East Resources, Inc.

Last year, the Pennsylvania Senate Republican Caucus helped to defeat the extraction tax. Republican leaders took a strong stand against any new "broad-based" taxes.

Immediately after the governor's budget address on February 9, 2010, the caucus released a statement, saying that senate Republicans are "holding to the same basic conservative principles they maintained during last year's deliberations."

"The budget must be balanced without a broad-based tax increase and should be delivered on time," according to the statement.

The Pennsylvania Senate's review of the budget proposal began on February 16 with three weeks of hearings conducted by the state Senate Appropriations Committee. The state's current fiscal year ends on June 30, 2010.

Last year, the budget process extended 100 days beyond the June 30 deadline, partly over the governor's insistence on a natural-gas extraction tax and an increase in the personal income tax. Senate Republicans maintained their position, and the result was a decrease in state spending for the first time ever. Next year's budget is not anticipated to be approved so late in the fiscal year. All 203 house members and 25 of the 50 senate members are up for reelection in November 2010. A few weeks beyond the June 30 fiscal-year deadline would be "survivable," some Harrisburg political observers say. Yet a budget process that reaches into August would likely create problems for incumbents.

David M. DeSalle is a partner of Duane Morris LLP, practicing in the area of energy law. Mr. DeSalle advises clients on a variety of transactional and regulatory issues and also represents clients before state and federal courts and regulatory agencies.

Lou Crocco is a managing director of Duane Morris Government Affairs LLC. He is a former legislative leadership staffer in the Pennsylvania House of Representatives. He works as a lobbyist-consultant at DMGA, representing clients both in Pennsylvania and Washington, D.C.