

SALES AND USE TAX BULLETIN 2012-01

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Sales/Use Tax Issues for Mining Site Preparation

The Department of Revenue offers this sales and use tax guidance to taxpayers who clear land and prepare a site in anticipation of mining operations to be conducted at that site. This guidance is necessary because the Department's mining regulation, 61 Pa. Code § 32.35, details the application of the sales and use tax law as applied to traditional and strip mining, but is not as specific concerning modified or enhanced mining processes, such as hydraulic fracturing used in unconventional oil and gas well development. Although much of the work done for mining site preparation does not qualify for the mining exclusion, the exclusion is available for certain site work.

Pennsylvania law excludes from sales and use tax machinery, equipment, parts and foundations therefor, and supplies that are predominantly used directly in mining operations. 72 P.S. § 7201(k)(8); 61 Pa. Code § 32.35(a). Even if property may be considered essential to the conduct of the business of mining because its use is required either by law or practical necessity, that does not necessarily mean that the property qualifies for the tax exclusion. 61 Pa. Code § 32.35(a)(1)(iii). For example, property used prior to the actual mining operation, such as property used to store raw materials prior to their use in the mining operation, is not considered to be directly used in mining and is subject to tax. 61 Pa. Code § 32.35(a)(3)(iii)(G). Also, "property used for waste handling and disposal of pollutants other than in the course of production operations" is taxable unless the equipment, machinery and supplies are designed and used to control, abate or prevent air, water or noise pollution generated in the mining operation. 61 Pa. Code §§ 32.35(a)(2)(ii) and (a)(3)(iii)(J).

The regulation specifically states that the mining exclusion does not apply to property or services used in the "construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate." 61 Pa. Code § 32.35(a)(3)(i). That clause further states that "property used to remove trees and clear ground preparatory to extraction activities is not deemed to be directly used" and therefore not covered by the mining exemption. *Id.*

Beginning April 16, 2012, if the rigging pad is constructed in accordance with 58 P.S. §3218.2 (Containment for Unconventional Wells, effective April 16, 2012) to control or abate pollutants generated in the mining operation, the materials used in the construction of the rigging pad, such as liners, sand and gravel, would be excluded from tax as a pollution control device.

Generally, equipment and parts used in site preparation – including, but not limited to, removal of timber, building of access roads and removal of dirt and rocks from the land – are taxable as pre-mining activities. However, the foundation directly underneath the drilling rig is excluded from tax. Therefore, although equipment used to build rigging pads is taxable, any foundation material supporting the drilling rig, such as sand, stone or other similar material, would be excluded from tax as foundation material for exempt mining equipment.

The construction of ponds or any other vessels for storage of fresh water or raw materials prior to their use in drilling or hydraulic fracturing is not a mining activity. Therefore, equipment used to construct these ponds and the actual materials used in the ponds, such as liners, are taxable pre-mining property. Ponds to be used to control or abate pollution generated in the mining operation, however, are excluded from tax. Therefore, although equipment used to build such ponds is taxable, any materials used in that construction, such as liners, sand and gravel, would be excluded from tax.