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**State and Local Taxation of Natural Resources in the Federal System, by Walter Hellerstein**

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# STATE AND LOCAL TAXATION OF NATURAL RESOURCES IN THE FEDERAL SYSTEM: LEGAL, ECONOMIC, AND POLITICAL PERSPECTIVES

By Walter Hellerstein.

Washington, D.C.: A.B.A., Tax Section. 1986.

Pp. xiv + 406. \$79.00.

In a text scarcely exceeding 200 pages (inclusive of footnotes), Professor Hellerstein makes an invaluable contribution to the literature on state and local taxation of natural resources. With a prose style that makes for easy reading, the author covers a great expanse and brings together in a concise synthesis the numerous strands of his subject matter. As a result, this book will appeal to a broad audience. In colleges and universities, teachers could easily use this book as a text for courses covering state and local taxation of natural resources. Practicing lawyers will find this book to be a helpful overview of the legal issues their clients face in the area. Likewise, state and federal policy makers will find useful insights on taxation issues that will exist well into the next century. Finally, academic specialists in economics and political science will find that Professor Hellerstein has made the legal issues accessible to them.

The first chapter presents a short summary of the book and outlines the author's objectives. Broadly stated, the author intends "to examine the legal, economic, and political issues spawned by state and local taxation of natural resources." Although the author has taken on an enormous task, his effort is an unqualified success.

In the second chapter, the author provides a concise overview of historical developments in the state and local taxation of natural resources. During the first half of the 19th century, taxation of natural resources was largely undeveloped. As the author points out, Michigan enacted the first natural resource production tax in 1846 in response to substantial copper mining in the Upper Peninsula. A four percent production tax was levied on the ores produced by all mines, with a two percent rate to apply to iron ore. The measure of the tax was the value of the ore smelted in Michigan or its value upon extraction if smelted outside the state. This tax replaced all other state taxes, principally the ad valorem property tax. Michigan's experience was a preview for other states that had to make the practical decision of imposing a property tax, a production tax, or a combination of both. The interaction of these two types of taxes is still important.

Later in the same chapter, the author provides an insightful discussion of the theoretical bases for the special tax treatment of natural resources.

Because taxation of natural resources usually produces tax revenues higher than those derived from ordinary property taxes, states looked for justifications for a higher levy. Exhaustibility of natural resources is one such justification. States have reasoned that extraction of minerals represents a "one-time harvest" that deprives states of their wealth. Another justification is the natural heritage notion. Minerals are a natural heritage belonging to all citizens. This heritage justifies a higher tax rate. Finally, some states have asserted that mineral extraction increases the cost of government and requires additional revenues to cope with the boomtown syndrome.

The author's second chapter also includes overviews of the historical developments in Michigan, Montana, Texas, and West Virginia. From the discussion of developments in these four states, the reader can find patterns common to other states. This chapter concludes with a separate discussion of timber taxation. The author notes how timber, unlike oil, gas, and minerals, is a renewable resource that has engendered slightly different tax treatment.

In the third chapter, Professor Hellerstein provides a summary of existing tax law in the various states. The author divides taxes into ad valorem property taxes and production taxes. Within these two categories, the author describes how the taxes work and what issues frequently arise. From this chapter the reader receives a valuable overview. Even the more technical aspects of the chapter are clear to the general reader and of significant interest to the tax specialist.

With chapter four, the author provides an understandable analysis of the economic issues. Non-economists will especially appreciate the author's clear and intelligible explanation. For example, the author, having explained the different kinds of taxes that exist, identifies the effects each tax has on the economic decisions that companies in extractive industry must make. In addition, Professor Hellerstein looks at the economic effects of states exporting their tax burdens to consumers in other states. By the end of the discussion, the reader understands the tax exportation issue and realizes that a good bit of the literature in the area is partly political rhetoric that needs to be placed in proper perspective.

The theme of the fifth chapter turns to federal constitutional and statutory limitations on state and local taxation of natural resources. Initially, the author provides a succinct description of commerce clause jurisprudence as applied to state and local taxation. The principal emphasis is on the Supreme Court's 1981 decision in *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981). The author's thorough and objective analysis of *Commonwealth Edison* demonstrates that the courts have no easy judicial answers to the problem of energy-rich states exporting a

substantial portion of their tax burden to energy consuming states. Although a problem may exist, the Supreme Court has stated that Congress is the appropriate forum to provide a solution. The remainder of the chapter looks at miscellaneous constitutional and statutory issues, including a helpful section on state taxation of natural resources located on Indian lands.

The sixth and final chapter provided this reader with the most interesting insights. Professor Hellerstein describes the political forces at work in determining the nature and extent of state and local taxation of natural resources. The first and second sections of this chapter outline the in-state political forces that shape state and local tax systems. Case histories from various states illustrate how political consensus, especially in areas of taxation, is difficult to achieve. By analyzing various policy assumptions, the author demonstrates that state taxes imposed on natural resources frequently lack a principled justification. In addition, the author cites data showing that high state taxes on Montana coal cost electricity consumers less (as a percentage of total cost for the energy) than moderate taxes imposed on natural gas used for home heating or on oil used for oil-fired powerplants, home-heating oil, or gasoline. The final section of this chapter outlines the federal role in limiting the amount of state and local taxes on natural resources. The author looks at numerous legislative proposals and assesses the relative merits of each.

This book contains an extensive appendix that summarizes the natural resource taxes of all the states. This appendix, although lengthy by normal standards, is a valuable resource for professionals in the area who want a quick description of and initial citations to relevant state tax statutes.

Professor Hellerstein's book will be of lasting value. One hopes that the author will issue supplements periodically to keep the reader abreast of significant developments. An interesting irony is that the publisher issued this book just as world energy prices began to plummet. The reader may be inclined to pity the energy-rich states because they now find themselves in the midst of fiscal crises. Their tax base has quickly eroded. Revenues from natural resource taxes have dropped dramatically. Therefore, the concern over state exportation of taxes through taxes levied on oil, gas, and coal has abated for the present. Certainly, this concern will become crucial once again when energy prices shoot up during some certain but unknown time in the future.

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