

ENERGY TAXATION

Syllabus - Fall 2022

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Casebook: Tax Law and the Environment, A Multidisciplinary and Worldwide Perspective, edited by Roberta F. Mann and Tracey M. Roberts, 2018.

Preliminary Syllabus:

1. Week 1 (August 25th): Energy Overview and Oil and Gas

- a. Casebook Reading:
 - i. Pages 1-12, 45-57
- b. Topics:
 - i. Overview of the energy segments
 - ii. Role of the tax law and environmental incentives
 - iii. Oil and Gas – history and taxation (economic interest and pool of capital)
- c. Cases and Citations:
 - i. Palmer v. Bender, 287 U.S. 551 (1933).
 - ii. GCM 22730, 1941-1 C.B. 214.

2. Week 2 (September 1): Oil and Gas

- a. Casebook Reading:
 - i. Pages 19-45
- b. Topics:
 - i. Cost recovery
 - ii. FIRPTA and other incentives
 1. FIRPTA
 2. Enhanced oil recovery
 - iii. Planning topics
 1. Production payments
 2. Carried interests / DrillCos
 3. Like kind exchanges
 4. Capital markets
- c. Cases and Citations:
 - i. Cases
 1. Helvering v. Bankline Oil Co., 303 U.S. 362 (1938).
 2. Anderson v. Helvering, 310 U.S. 404 (1940).
 3. Comm'r v. Southwest Exploration, 350 U.S. 308 (1956).
 - ii. Citations
 1. Section 263(c)
 2. Sections 611-614
 3. Section 263A
 4. Sections 1245 and 1254
 5. Section 167(h)

6. Section 168
7. Section 897
8. Section 43
9. Section 1031

3. Week 3 (September 8): Mining and Metals

- a. Casebook Reading:
 - i. Pages 59-83
- b. Topics:
 - i. Types of minerals
 - ii. Types of mining methods
 - iii. Batteries
- c. Cases and Citations:
 - i. Parsons v. Smith, 359 U.S. 215 (1959).
 - ii. Paragon Jewel Coal Co. v. Comm'r, 380 U.S. 624 (1965).
 - iii. Hogan v. Comm'r, 141 F.2d 92 (5th Cir. 1944).
 - iv. Kirby Petroleum Co. v. Comm'r, 326 U.S. 599 (1946).
 - v. Burton-Sutton Oil Co. v. Comm'r, 328 U.S. 25 (1946).

4. Week 4 (September 15): Mining and Metals

- a. Topics:
 - i. Depletion
 - ii. Lease payments unrelated to production
 - iii. Mineral properties and aggregations
 - iv. Exploration costs
 - v. Development costs
 - vi. Receding face and reclamation
- b. Cases and Citations:
 - i. Cases
 1. O'Donnell v. Helvering, 303 U.S. 370 (1938).
 2. Elbe Oil Land Dev. Co. v. Helvering, 303 U.S. 372 (1938).
 - ii. Citations
 1. Section 263A
 2. Sections 611-614
 3. Section 616
 4. Section 617
 5. Section 631
 6. Sections 1245 and 1254
 7. Section 897
 8. Section 45N

5. Week 5 (September 22): Mining and Metals Transactions

- a. Topics:
 - i. Section 1031 transactions
 - ii. Streaming arrangements
 - iii. Production payments
 - iv. Contract mining relationships

- v. Sharing and leasing arrangements
 - b. Cases and Citations:
 - i. Cases
 - 1. P.G. Lake Inc. v. Comm’r, 356 U.S. 260 (1958).
 - 2. Thomas v. Perkins, 301 U.S. 655 (1937).
 - ii. Citations
 - 1. Section 1031
 - 2. Section 636
- 6. Week 6 (September 29): Planning Concepts and Power and Utilities**
 - a. Topics:
 - i. Foreign operations of energy companies
 - ii. History of the U.S. power industry
 - 1. Generation
 - 2. Transmission
 - 3. Distribution
 - 4. How the grid works
 - b. Cases and Citations: None
- 7. Week 7 (October 6): Power and Utilities**
 - a. Topics:
 - i. Regulation and regulatory agencies
 - ii. Ratemaking and rate case process
 - iii. Interest expense
 - iv. Cost recovery
 - b. Cases and Citations:
 - i. Section 168
 - ii. Section 163(j)
 - iii. Section 168(k)
- 8. Week 8 (October 13): Wind and Solar**
 - a. Casebook Reading:
 - i. Pages 253-286
 - b. Topics:
 - i. Overview of renewable energy
 - ii. Solar energy
 - iii. The investment tax credit
 - c. Cases and Citations:
 - i. Section 48
- 9. Week 9 (October 20): Wind and Solar**
 - a. Topics:
 - i. Overview of Wind
 - ii. The production tax credit
 - b. Cases and Citations:
 - i. Section 45
- 10. Week 10 (October 27): Renewable Flip Structures**
 - a. Topics:

- i. Solar FLIP structures
 - ii. Wind FLIP structures
 - iii. Sale Leaseback transactions
- b. Cases and Citations:
 - i. Rev. Proc. 2007-65 (wind)
 - ii. Frank Lyon Co. v. United States, 435 U.S. 561 (1978).

11. Week 11 (November 3): Carbon Capture Use and Sequestration

- a. Casebook Reading:
 - i. Pages 199-218
- b. Topics:
 - i. Carbon capture use and sequestration market overview
 - ii. Qualification for Section 45Q
 - iii. Market overview and potential structures
 - iv. Investments
- c. Cases and Citations:
 - i. Section 45Q
 - ii. Rev. Proc. 2020-12
 - iii. Notice 2020-12
 - iv. Preamble to final Section 45Q Treasury Regulations

12. Week 12 (November 10): Tax Equity Financing

- a. Topics:
 - i. Role of tax equity in renewable energy transactions
 - ii. Typical opinions
 - 1. Partnership classification
 - 2. Partner treatment
 - 3. Ownership
 - 4. Placed in service
 - 5. PTC / ITC / Section 45Q qualification
 - 6. Allocations respected
 - 7. Economic substance
 - 8. Anti-avoidance
- b. Cases and Citations:
 - i. Luna v. Comm’r, 42 T.C. 1067 (1964).
 - ii. Comm’r v. Culbertson, 337 U.S. 733 (1949).

13. Week 13 (November 17): Biofuels, Biomass, Timber and Conservation Easement

- a. Casebook Reading:
 - i. Pages 219-252
- b. Topics:
 - i. Biofuels
 - ii. Biomass
 - iii. Timber
 - iv. Conservation easements
- c. Cases and Citations:
 - i. Section 631

- ii. Section 40A
- iii. Section 45H
- iv. Section 45K

14. Week 14 (December 1): Hydrogen, Geothermal, and Carbon Markets

- a. Casebook Reading:
 - i. Pages 151-174
- b. Topics:
 - i. Hydrogen - incentives
 - ii. Geothermal and cost recovery
 - iii. Renewable natural gas
 - iv. Responsibly sourced gas
 - v. Nuclear
- c. Cases and Citations:
 - i. Section 45J
 - ii. Section 48