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Gas Leasing & Development

update



PENNSYLVANIA CHAPTER OF NARO INVITES YOU TO
JOIN US FOR AN EXCLUSIVE EVENT ON MARCELLUS
SHALES!!!

Town Hall Meeting

Discussing Landowner and Gas Royalty Owner Issues

Thursday, November 10, 2011

at

The Greater Philadelphia Expo Center at Oaks
100 Station Avenue; Oaks, PA 19456
phillyexpocenter.com

Beginning at 4:30 pm: Visit with Vendor Sponsors and Business Partners
6:00 pm: Educational Seminars
Refreshments

For further information and registration form:
<http://www.hrmm.com/news.php?action=view&id=75>

The impact fee Corbett has proposed would be imposed by individual counties on a per well basis with amounts ranging from \$40,000.00 in the first year of a well's life to \$10,000.00 in the fourth through tenth years. Counties and municipalities would retain 75% of the revenue generated by the fee. Counties could use the revenue generated to finance expenses they currently incur without a source of funding as a result of gas development activity. Since it would be up to counties to adopt the fee, the possibility of inconsistent application by and competition between counties would exist. In addition, counties with few or no wells, but suffering impacts such as increased traffic and pipelines, would receive no funding.

The remaining 25% of the revenue generated would be shared by certain state agencies as follows:

- 70% to PennDOT for road maintenance and repair;
- 4.5% for PEMA for emergency response planning and training;
- 3.75% for the office of State Fire Commissioners for training for First Responders;
- 3.75% to the Department of Health to collect and disseminate information regarding the investigation of health effects of gas development;
- 7.5% to the PUC to enhance pipeline safety;
- 10.5% to DEP for plugging abandoned wells and natural gas enforcement.

No additional funding would be provided to other DEP programs, an aspect of the plan, together with the amount of the revenue generated by the fee, that has been criticized by environmental groups.

Corbett's plan will now be considered by the state

legislature, where competing bills for differently structured impact fees and severance tax programs have already been introduced.

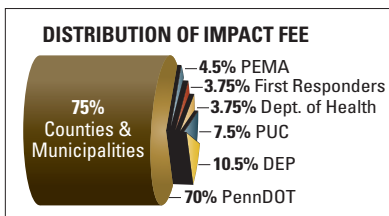
Corbett Announces Plan to Implement Many Recommendations of the Marcellus Shale Commission

By Kermit L. Rader, Esquire

On October 4, 2011, Governor Corbett responded to the July 22, 2011 report of the Marcellus Shale Commission he appointed by adopting many of its recommendations and providing more detail regarding his impact fee proposal. The two (2) most controversial recommendations in the Commission's Report related to impact fees and forced pooling. Corbett's plan does not include forced pooling. The Governor has stated that he is opposed to it. While the Commission Report recommended an impact fee, it provided no detail as to an amount or implementation; Corbett's plan provides that detail, as described below. The Commission Report also recommended a series of updates and improvements to the State's Oil and Gas Statutes which the Corbett plan also includes.

Among these are:

- Greater minimum setback distance requirements between gas wells, water wells and bodies of water;
- A five-fold increase in bond amount requirements per well and a ten-fold increase in aggregate bond requirements;
- An increase in the distance between gas and water wells that a gas operator will be presumed to be responsible for water contamination;
- A doubling of DEP's Penalty Authority; and
- Enhance the authority for DEP to suspend and withhold permits.



INTRA-FAMILY LOANS:

An Important Wealth Preservation Planning Technique

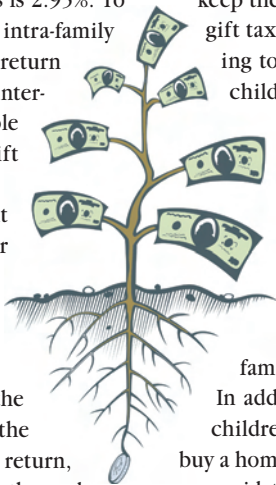
By Jonathan Samel, Esquire

You can make a loan to a family member at a lower interest rate than that charged by commercial lenders without the loan being treated as a gift. In addition, such a loan can be structured with a balloon note which allows the borrower to pay interest only during the term and does not require repayment of any principal until the end of the term. You can in this manner shift wealth to another family member in a very tax efficient manner.

In order to prevent the IRS from treating part of an intra-family loan as a gift, you must charge a certain minimum interest rate, which is known as the applicable federal rate ("AFR"), and which the United States Treasury determines every month. To the extent that the interest charged on the loan is lower than the AFR, that amount will be imputed as income to you, even though you do not actually collect it. In addition, the IRS will treat that amount as a gift to the borrower, which may require the filing of a gift tax return, or event the payment of gift tax. However, if you make the loan using an interest rate equal to the AFR, no gift will be deemed to have occurred.

The minimum interest rate required to be used depends on the term of the loan. The current AFRs are very low. In October 2011, if interest is paid annually on a loan, the AFR for short-term loans (loans for up to three years) is 0.16%. The AFR for mid-term loans (loans from three to nine years) is 1.19%, and the long-term AFR rate for loans over nine years is 2.95%. To the extent that a recipient of an intra-family is able to earn a higher rate of return on the borrowed funds than the interest rate being paid, he or she is able to keep the excess without any gift tax consequences.

For example, if a parent makes a nine-year loan in October 2011 to a child of \$1 million, the loan will result in a transfer of wealth to the next generation if the child can earn over 1.19% with the money borrowed. If the child invests the \$1 million for the nine years at a 5% annual rate of return, the child will have \$1,551,328 at the end of the term, and will only have to repay his or her parents \$1,107,100 throughout the term



A Mineral By Any Other Name Is Not Natural Gas

By Mark F. Himsworth, Esquire

A recent case, now on appeal to the Pennsylvania Supreme Court, has caused some agita to landowners and oil and natural gas companies alike.

In a case of first impression, the Pennsylvania Superior Court held that expert scientific testimony is needed to determine:

Whether marcellus shale constitutes a mineral;

Whether marcellus shale gas constitutes a type of conventional natural gas
Contemplated in previous supreme court decisions.

Whether marcellus shale is similar to coal to the extent that whoever owns the shale, owns the shale gas.

In *Butler v. Charles Powers Estate*, 2011 Pa.Super 198 (2011), the dispute was between heirs to the estate of Charles Powers and the current owners of 244 acres in Apolacon Township, Susquehanna County. The deed at issue reserved to Charles Powers and his heirs and assigns, "one half the minerals and Petroleum Oils." The heirs asserted that the Marcellus shale is a mineral consistent with the reservation of rights in the deed. The trial court disagreed and dismissed the heirs' request for declaratory judgment that shale gas is included in the reservation of the Powers deed.

Prior Pennsylvania Supreme Court decisions, *Dunham v. Kirkpatrick*, 101 Pa. 36 (1882) and *Highland v. Commonwealth*, 400 Pa. 261, 161 A.2d 390 (1960), cert. denied, 364 U.S. 901, 81 S.Ct.234, 5 L.Ed.2d 194 (1960) determined that "a reservation or exception in a deed reserving 'minerals' without any specific mention of natural gas or oil, creates a rebuttable presumption that the grantor did not intend for 'minerals' to include natural gas or oil." The Powers heirs argued that *Dunham* was decided after the deed at issue was created and that the cases deal with conventional gas whereas Marcellus shale is an unconventional gas. The heirs also rely on the proposition that "whoever owns the shale, owns the gas" likening Marcellus shale to coal. See *U.S. Steel Corp. v. Hoge*, 503 Pa. 140, 248 A.3d 1380 (1983).

The Butler Court reviewed Pennsylvania cases construing the term "mineral" and determined that the *Dunham and Highland* cases do not end the analysis in the present case as there needs to be a more sufficient understanding of whether Marcellus shale constitutes a type of mineral such that the gas in it falls within the Powers' deed reservation.

The resulting war of the experts and likely final appellant determination of this issue will be significant for those heirs and assigns who have a deed with similar reservations and exceptions as in the Powers deed and the present owners of those properties as well as the title companies who have insured the properties.

of the loan. Therefore, the child is entitled to keep the difference of \$444,228 without any gift tax consequences. If the parent was going to make the same investment that the child made anyway, the risk to the family as a whole has not changed and the loan was a successful way to transfer wealth to the next generation.

Intra-family loans also may be more beneficial than third-party loans because they allow the total interest expense paid over the term of the loan to stay within the family rather than being paid to a bank.

In addition, an intra-family loan can allow children who have poor credit history to buy a home or to start a new business. Families can avoid the normal expenses incurred with commercial loans, such as administrative costs, closing costs and appraisal fees. If a child wants

to pay off the loan early, the terms of the loan can be structured so that there are no prepayment penalties.

In summary, intra-family loans can be a simple but efficient estate planning tool. Please contact our office if you have any questions or want to learn more about intra-family loan or other wealth preservation planning techniques.

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HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN, PC
ATTORNEYS AT LAW

Lansdale • Perkasie • Limerick
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It's About the Result