

MEMORANDUM

TO: Joint Budget Committee

FROM: Carly Jacobs and Amanda Bickel, JBC Staff

SUBJECT: Unspent/Uncommitted Severance Tax Funds

DATE: May 6, 2016

On April 25, 2016, the Colorado Supreme Court issued a decision in *BP America v. Colorado Department of Revenue*. The court held that the plain language of Colorado severance tax statute authorizes a deduction for any transportation, manufacturing, and processing costs, including the cost of capital (at issue in the case).

The Colorado Department of Revenue (DOR) has indicated the decision may have serious financial implications for the State. The specific payment due related to the BP case is less than \$2.5 million. However, based on the Court's interpretation or the language in Section 39-29-102 (3) (a), C.R.S., DOR anticipates that a large amount of deductions for oil and gas transportation, manufacturing, and processing costs that it had previously disallowed will now need to be allowed. Specifically, it anticipates:

- Significant refunds will be required that will be paid in FY 2015-16 and early FY 2016-17. These deductions will be applied to returns currently in process, and oil and gas producers will file amended tax returns as far back as allowed by the statute of limitations (3 years). These amended returns are likely to be filed quickly, most within the next 90 days.
- In the absence of a change to state law, the deductions will also be applied going forward, resulting in a significant ongoing decline in severance tax receipts.

Staff anticipates:

- The DOR will be presenting on the revised estimates of \$98.4 million in required refunds (shown in the following table), as well as ongoing implications.

Actual and Potential Refunds from BP/Amoco Case		
Tax Year	Actual Refund	Potential Refund
2003	\$1,192,626.00	
2004	\$3,764,322.00	
2005	\$6,693,104.00	\$1,508,788.39
2006	\$6,651,317.00	\$4,254,647.39
2007	\$5,405,025.00	
2008	\$758,488.00	
2009	\$490,372.00	
2010		
2011		
2012		\$13,163,047.23

Actual and Potential Refunds from BP/Amoco Case		
Tax Year	Actual Refund	Potential Refund
2013		\$22,720,394.39
2014		\$31,776,763.64
Total	\$24,955,254.00	\$73,423,641.03
Total Actual and Potential Effect		\$98,378,895.03

*Actual Refund amount based on cases in Tax Conferee section where DOR has verified the refund amount.
*Potential Refund amount based on potential claims for ROI and NERF deductions not yet verified by DOR staff.
*Dollar figures for 2003-2009 include interest. Dollar figures from 2012-2014 do not include interest.

- The Office of Legislative Legal Services will be presenting bill draft options for addressing these problems. These bill drafts reflect the following options: (1) pay refunds from the General Fund reserve; (2) use a "tiered" approach to take the funds from multiple sources, including existing severance tax reserves, uncommitted funds in the Departments of Local Affairs and Natural Resources, and the Unclaimed Property Trust Fund; and (3) pay refunds with severance tax credits.

The following information summarizes available reserves and uncommitted funds in severance tax funds administered by DOLA and DNR, as well as the Unclaimed Property Trust Fund:

DOLA	\$48.3 million (assuming no August grant cycle)
DNR	
Operational Fund	\$10.0 million
Perpetual Base Fund	\$19.1 million (after accounting for TABOR emergency reserve)
Unclaimed Property Trust Fund	\$40.0 million