METALLIC MINERALS AD VALOREM CREDIT

EVALUATION SUMMARY | JANUARY 2021 | 2021-TE2

TAX TYPE	Severance	REVENUE IMPACT (TAX YEAR 2017)	$1 million to $3.4 million
YEAR ENACTED	1977	NUMBER OF TAXPAYERS	1
REPEAL/EXPIRATION DATE	None		

KEY CONCLUSION: The credit is reducing severance taxes levied on metal mining, but, due to its structure and limited use, the credit is not effective at equalizing taxpayers' combined severance and local real property tax liabilities for mines located in different areas of the state.

WHAT DOES THIS TAX EXPENDITURE DO?

The Metallic Minerals Ad Valorem Credit allows metal mines to claim a credit against their severance tax liability equal to 100 percent of real property taxes assessed or paid to a local government on metals produced during the taxable year. The credit is capped at 50 percent of the taxpayer's severance tax liability.

WHAT IS THE PURPOSE OF THIS TAX EXPENDITURE?

Statute and the enacting legislation do not state the credit's purpose; therefore, we could not definitively determine the General Assembly's original intent. Based on our review of the credit's statutory language and feedback from metal mining industry representatives, our evaluation considered two potential purposes: (1) reducing the financial burden of severance taxes for metal mines that incur severance tax liability and also pay local real property taxes and (2) equalizing the combined severance and local real property tax rates for metal mines in different areas of the state and subject to different local real property tax rates.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly may want to consider:

- Establishing a statutory purpose and performance measures for the credit.
- Reviewing whether the credit is meeting its intent and, if necessary, revise statute in order for the credit to do so.

METALLIC MINERALS AD VALOREM CREDIT

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

Colorado imposes severance taxes on the extraction of several types of natural resources in the state, including metallic minerals, such as gold, silver, and uranium. According to statute, "metallic minerals" is defined as all minerals aside from certain exceptions listed in statute, which include coal, molybdenum (a metal, but subject to its own state severance tax), oil and gas, rock, sand, and gravel, among others.

Colorado's metallic minerals severance tax is assessed on the gross income of metal mining operations at a rate of 2.25 percent. Statute [Section 39-29-102(3)(b), C.R.S.] defines "gross income" as the value of the ore immediately after its removal from the mine. This does not include any value added by subsequent treatment processes, transportation, or marketing. Statutes [Sections 39-1-104(12)(a), 39-1-111, 39-6-101(1), 39-6-105, and 39-6-106(2), C.R.S.] also impose ad valorem (real property) taxes on metals produced at Colorado mines in a given year. These taxes are paid to local governments (e.g., counties, municipalities, and districts) at mill levy rates established by each local government.

The Metallic Minerals Ad Valorem Credit [Section 39-29-103(2), C.R.S.] allows mining operations to claim a credit against their severance tax liability equal to 100 percent of real property taxes assessed or paid to a local government on the assessed land value of the mine, which is calculated based on the value of metals produced during the taxable year. The credit is capped at 50 percent of the taxpayer's severance tax liability.

Local real property tax liability for producing mines, including metal mines, is calculated by multiplying the local mill levy rate by the assessed real property value of the mine. Assessed real property value includes two components, the land value and the value of improvements on the land, but the Metallic Minerals Ad Valorem Credit may only be claimed based on real property taxes on the assessed land value of metal mines. Article X, Section 3 of the Colorado Constitution requires that the assessed land value of producing mines be calculated as a portion of the value of materials produced annually. Additionally, statute [Section 39-6-106(2), C.R.S.] provides that the land value of a producing mine for purposes of local property tax assessment is equal to the greater of 25 percent of the mine's gross proceeds or 100 percent of its net proceeds. To calculate gross proceeds, which is defined as the value of the ore immediately after extraction, all costs of treatment, reduction, transportation, and sale are subtracted from the total selling value of the ore extracted (or of its first saleable products) during the preceding year, regardless of whether it was actually sold. To calculate net proceeds, all costs of extraction are subtracted from gross proceeds. EXHIBIT 1 demonstrates how the assessed land value of a metal mining operation is calculated.

EXHIBIT 1. HYPOTHETICAL EXAMPLE SHOWING CALCULATION OF THE ASSESSED LAND VALUE OF A METAL MINING OPERATION

STEP 1: CALCULATION OF GROSS PROCEEDS AND NET PROCEEDS	
Total selling value of metal ore or its first saleable products	$90 million
– All costs of treatment, reduction, transportation, and sale	– $40 million
= Gross proceeds	= $50 million
– All costs of extraction	– $40 million
= Net proceeds	= $10 million
STEP 2: DETERMINE ASSESSED LAND VALUE, THE GREATER OF…	
25% of gross proceeds	$12.5 million
OR	OR
100% of net proceeds	$10 million
Assessed land value = $12.5 million	

SOURCE: Office of the State Auditor analysis of Sections 39-6-106(1)(d), (e), (h), and (i) and 39-6-106(2), C.R.S.

The amount of real property taxes due on the metals produced is then determined by multiplying the assessed land value (i.e., the greater of 25 percent of gross proceeds or 100 percent of net proceeds) by the local mill levy rate. There are thousands of mill levy rates across Colorado’s counties and other taxing jurisdictions (e.g., school districts, municipalities, and special districts). The total mill levy rate applied to a given property is generally calculated as the sum of the individual mill levy rates applied in each of the taxing jurisdictions in which the property is located, although this is adjusted in proportion to the land area in each taxing jurisdiction if a metal mine crosses the border between two or more jurisdictions. A mill is equal to one-one thousandth (1/1,000) of a dollar; therefore, to calculate the tax rate, which is the mill levy expressed as a percentage, the total mills applied to a given property are divided by 1,000. For example:

85 mills = 85 ÷ 1,000 = 0.085, or 8.5 percent

EXHIBIT 2 demonstrates how real property taxes on metal mines and the Metallic Minerals Ad Valorem Credit are calculated based on an assessed land value of $12.5 million. As shown, in determining severance tax liability, the Metallic Minerals Threshold Exemption allows metal mining operations to subtract the first $19 million in gross income prior to applying the severance tax rate.

EXHIBIT 2. HYPOTHETICAL EXAMPLE SHOWING CALCULATION OF REAL PROPERTY TAXES ON METAL MINES AND THE METALLIC MINERALS AD VALOREM CREDIT	
STEP 1: CALCULATION OF STATE SEVERANCE TAXES ON METAL EXTRACTION	
Gross Income[1]	$50 million
– Metallic Minerals Threshold Exemption	– $19 million
= Taxable Gross Income	= $31 million
x Severance Tax Rate	x 2.25%
= Severance Tax Liability Before Claiming Credit	= $697,500
STEP 2: CALCULATION OF LOCAL REAL PROPERTY TAXES ON METAL MINE LAND VALUE	
Assessed Land Value	$12.5 million
x Total Local Mill Levy (Mills/1,000)	x 60 mills/1,000 (equivalent to a 6.0% tax rate)
= Real Property Taxes on Metal Mine Land Value	= $750,000
STEP 3: CALCULATION OF METALLIC MINERALS AD VALOREM CREDIT, THE LESSER OF…	
100% x Real Property Taxes on Land Value	$750,000
OR	OR
50% of Severance Tax Liability	$348,750
Metallic Minerals Ad Valorem Credit = $348,750	

SOURCE: Office of the State Auditor analysis of Sections 39-29-103(1)(b) and (2), C.R.S. and the Assessors' Reference Library, Volume 2.
[1]Assumes that the amount of gross income for severance tax purposes is equal to the amount of gross proceeds for real property tax purposes.

Additionally, the real property tax year on which the value of the Metallic Minerals Ad Valorem Credit is based depends on the taxpayer's accounting method for federal income tax purposes. For accrual basis taxpayers, the credit is claimed on real property taxes *assessed* on the mine's land value during the severance tax year. For cash basis taxpayers, the credit is claimed on real property taxes *paid* on the mine's land value during the tax year. Real property taxes are applied based on the assessed land value of a property for the current year and paid during the subsequent year. This means that the value of the credit for severance tax year 2017, for example, would be determined based on 2017 real property tax liability for accrual basis taxpayers and 2016 real property tax liability for cash basis taxpayers.

The Metallic Minerals Ad Valorem Credit was enacted in 1977 with the same legislation (House Bill 77-1076) that enacted the metallic minerals severance tax, and the credit has not been changed since its enactment. It is claimed on Line 7 of the Colorado Metallic Minerals Severance Tax Return (Form DR 0020A), which must be filed annually by the owner and/or operator of any mining operation liable for the severance tax.

Finally, we determined that only one taxpayer has been able to claim the credit in recent years. Therefore, we used publicly available information on this metal mine rather than Department of Revenue data to evaluate the credit's effectiveness. We have also eliminated some of the details of our calculations from this report in order to avoid disclosing potentially sensitive information.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not directly state the intended beneficiaries of the Metallic Minerals Ad Valorem Credit. Based on our review of statutory language, we inferred that the intended beneficiaries are mining operations that extract metals in Colorado and have annual gross incomes over $19 million, since mines with annual gross incomes of $19 million or less do not incur severance tax liability to which the credit could be applied due to the Metallic Minerals Threshold Exemption.

Historically, a variety of metals have been extracted in Colorado, such as gold, silver, copper, lead, uranium, vanadium, and zinc. Currently, Colorado's metal mining industry is much smaller than it was in the past, with at most four active metal mines operating as of Calendar Year 2017, compared to more than 20 in 1976. This is similar to the trend in other mining states, since the metal mining industry has experienced a significant decline in the United States in recent decades. Gold is the only metal that has been extracted in significant quantities in the Colorado during the past 20 years, with nearly all of this production occurring at one large mine.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute and the enacting legislation for the Metallic Minerals Ad Valorem Credit do not state its purpose; therefore, we could not definitively determine the General Assembly's original intent. Based on our review of statutory language and feedback from metal-mining industry representatives, we considered the following potential purposes:

1. To reduce the financial burden of severance taxes for metal mines that incur severance tax liability and also pay local property taxes. Several mining industry representatives commented that tax policy, including the Metallic Minerals Ad Valorem Credit, can be an important factor in companies' decisions to invest in mining operations and can have a significant impact on these operations, particularly when commodity prices are low.

2. To equalize the combined severance and real property tax rates for metal mines located in different parts of the state and subject to different local real property tax rates. We inferred that this may have been the purpose based on the operation of the credit.

This was also the purpose that we inferred for the Oil and Gas Severance Tax Ad Valorem Credit, which functions similarly to the Metallic Minerals Ad Valorem Credit and, thus, may serve a similar purpose.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We could not definitively determine whether the Metallic Minerals Ad Valorem Credit is meeting its purpose because no purpose is provided for it in statute or its enacting legislation. However, we found that it is likely meeting its first potential purpose that we considered in order to conduct this evaluation, which is to reduce the severance tax burden for metal mines that incur severance tax liability and also pay local real property taxes. On the other hand, the credit is not meeting its second potential purpose of equalizing the total combined severance and local property tax rates between metal mines located in different areas of the state because there has likely been only one taxpayer that has incurred severance tax liability and claimed the credit in recent years.

Statute does not provide quantifiable performance measures for this credit. Therefore, we created and applied the following performance measures to determine the extent to which the credit is meeting its potential purposes:

PERFORMANCE MEASURE #1: *To what extent does the Metallic Minerals Ad Valorem Credit reduce the severance tax liability of metal mines that pay local property taxes and incur severance tax liability?*

RESULT: We determined that the Metallic Minerals Ad Valorem Credit likely reduces the severance tax burden significantly for the one metal mine that has likely incurred both severance and local real property tax liabilities in recent years.

Department of Revenue data has not been releasable for the credit in recent years due to there being too few taxpayers claiming it to report this information without violating confidentiality requirements. As a result, we were unable to release data from the Department regarding the extent to which the credit has reduced taxpayers' severance tax liabilities. However, publicly available data found in annual reports from the Division of Property Taxation, within the Department of Local Affairs, suggests that there has only been one mining operation that has earned sufficient income in recent years to generate a severance tax liability and claim the credit. This is because the Metallic Minerals Threshold Exemption exempts the first $19 million in annual gross income that is earned at metal mines from the severance tax. Therefore, only those mines with gross incomes above this amount incur severance tax liability and are eligible to claim the Metallic Minerals Ad Valorem Credit.

Division of Property Taxation annual reports do not include the gross incomes of metal mining properties, but they do report the combined assessed land values of these properties on a countywide basis. Gross income is defined in statute very similarly to gross proceeds, which is used in calculating assessed value, with both terms effectively referring to the value of the metal at the point of extraction from the earth. Therefore, we were able to use the assessed land values to estimate the gross incomes of Colorado's metal mines. Based on annual reports from 1998 to 2019, we determined that one Teller County mine is likely the only metal mine to have exceeded $19 million in gross income, and, therefore, been liable for the metallic minerals severance tax and eligible for the Metallic Minerals Ad Valorem Credit since at least 1997.

Additionally, the credit is likely conferring the maximum benefit in reduced severance tax liability to the one eligible taxpayer. Specifically, we used Division of Property Taxation reports to estimate that this taxpayer likely received a credit amount equal to the credit's cap (50 percent of severance tax liability) in 2017. Without the credit, but still accounting for the Metallic Minerals Threshold Exemption, we estimated that this taxpayer's effective severance tax rate as a percentage of estimated gross income would have been about 2 percent, and since the credit likely reduced the taxpayer's severance tax liability by 50 percent, its effective severance tax rate after the credit had been applied would have been about 1 percent.

Finally, we did not identify any administrative barriers to claiming the credit. Stakeholders reported that mining operations are generally aware of the credit and claim it when they incur severance tax liability.

PERFORMANCE MEASURE #2: *To what extent does the Metallic Minerals Ad Valorem Credit equalize the combined real property and severance tax rates of metal mines across the state?*

RESULT: As discussed in Performance Measure #1, since at least 1997, there has likely been only one metal mine that has generated enough gross income to incur severance tax liability and, thus, be eligible for the Metallic Minerals Ad Valorem Credit. As a result, the credit has not likely provided any equalization between multiple taxpayers in recent years.

In addition to not meeting this purpose currently, the Metallic Minerals Ad Valorem Credit is unlikely to be effective at equalizing taxpayers' combined tax rates even if more metal mines become eligible for the credit in the future. Consistent equalization between taxpayers would occur only if the amount of the credit were more proportional to the taxpayer's local real property tax liability for every taxpayer eligible for the credit, which would generally require that taxpayers' credit amounts be less than the credit's cap (50 percent of the taxpayer's severance tax liability). However, based on local mill levy rates, we found that under most circumstances, local real property taxes would be more than 50 percent of taxpayers' severance tax liabilities, and, therefore, the amount of the credit is likely to be equal to the credit's cap for any given taxpayer. Specifically, taxpayers' credit amounts are only likely to be less than the cap (and therefore proportional to their real property tax liabilities) if:

1. The local mill levies applied to mining properties are substantially less than Colorado's average mill levy (for example, a mill levy less than 45 compared with the 2018 statewide average mill levy of 70), and/or

2. The mines have experienced substantial increases in gross income (for example, an annual increase of 25 to 50 percent).

Additionally, these conditions would need to apply to most or all of the metal mines in the state in order for the credit to equalize the combined tax rates among all of these taxpayers, making it unlikely for the Metallic Minerals Ad Valorem Credit to accomplish its purpose of equalization, even if more mines began operating in Colorado.

EXHIBIT 3 demonstrates how the credit is generally not effective at equalizing the combined severance and local real property tax liabilities of taxpayers in jurisdictions with different local mill levies. The calculation shows the effective combined tax rate for two different hypothetical taxpayers before and after the credit is applied. Both taxpayers have a gross income of $50 million and have the same severance tax liability and assessed land value, but each of their properties is subject to a different local mill levy, resulting in different real property tax liabilities. The taxpayers' Metallic Minerals Ad Valorem Credits are both the same amount because each of their real property tax liabilities is greater than 50 percent of the severance tax liability ($348,750), so that the credit amount for each is equal to the credit's cap. As shown, both taxpayers experience a decrease in their combined tax rates. However, the difference between the two taxpayers' combined tax rates is the same both before and after the credit is applied (1.0 percent), indicating that the credit has not equalized the combined tax rates between taxpayers despite the decrease in each individual rate.

EXHIBIT 3. EFFECTIVE COMBINED TAX RATES OF METAL MINES[1] SUBJECT TO DIFFERENT MILL LEVIES, WITH AND WITHOUT THE METALLIC MINERALS AD VALOREM CREDIT

	TAXPAYER A: 80 MILLS	TAXPAYER B: 40 MILLS
Severance tax liability (before applying Credit)[2]	$697,500	
Real property tax liability[3]	$1,000,000	$500,000
Combined severance and real property tax liability (without Credit)	$1,697,500	$1,197,500
Metallic Minerals Ad Valorem Credit[4]	$348,750	$348,750
Combined severance and real property tax liability (with Credit)	$1,348,750	$848,750
Combined tax rate (without Credit)[5]	3.4%	2.4%
Combined tax rate (with Credit)[5]	2.7%	1.7%

SOURCE: Office of the State Auditor analysis of Sections 39-29-103(1)(b) and (2), C.R.S., and the Assessors' Reference Library, Volume 2.

[1]The calculations for both taxpayers are based on a gross income of $50 million and an assessed land value of $12.5 million.

[2]Accounts for the Metallic Minerals Threshold Exemption, which allows metal mining operations to exempt $19 million from gross income before applying the severance tax rate of 2.25 percent.

[3]Equal to the property's assessed land value multiplied by the local real property tax rate, which is calculated as the mills divided by 1,000.

[4]The lesser of the taxpayer's real property tax liability and the Credit's cap, which is 50 percent of the taxpayer's severance tax liability.

[5]Calculated as a percentage of the taxpayer's gross income.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

We found that the Ad Valorem Credit had an estimated revenue impact between $1.0 million and $3.4 million in Tax Year 2017. The credit is itemized on Form DR 0020A, and the Department is able to collect this data. However, data on this credit has not been releasable during recent years due to taxpayer confidentiality requirements. Therefore, we used publicly available annual reports on Colorado property values in order to estimate the credit's impact to state revenue.

As discussed in Performance Measure #1, the Metallic Minerals Ad Valorem Credit has likely been applicable to just one taxpayer located in Teller County. Therefore, we determined the minimum and maximum estimated amount allowable under the credit for this taxpayer in 2017 in order to estimate the amount of revenue forgone as a result of the credit. Exhibit 4 demonstrates how we arrived at this estimate, assuming that the taxpayer files income taxes on an accrual basis.

EXHIBIT 4. ESTIMATED REVENUE IMPACT OF THE METALLIC MINERALS AD VALOREM CREDIT, 2017

STEP 1: ESTIMATE REAL PROPERTY TAX LIABILITY

Assessed land value, 2017	$65 million	These calculations assume that the taxpayer is an accrual basis taxpayer, such that the Metallic Minerals Ad Valorem Credit is taken for real property taxes assessed during the severance tax year. Therefore, we used 2017 assessed land value to calculate real property tax liability for purposes of estimating the 2017 credit amount, since 2017 real property taxes assessed are based on the assessed land value from the same year.
x Average total mill levy in Teller County, 2017	53 (tax rate of 5.3%)	
= Estimated local real property tax liability, 2017	$3.4 million	

STEP 2: ESTIMATE SEVERANCE TAX LIABILITY AND METALLIC MINERALS AD VALOREM CREDIT

	MINIMUM	MAXIMUM	
Assessed land value, 2018	$106 million		We used 2018 assessed land value to estimate gross income for severance tax purposes because 2017 severance tax liability is based on 2017 production value, which in turn is used to determine 2018 assessed land value. Based on an analysis of statute, we determined that a producing mine's gross income can be no less than the assessed land value and no greater than 4 times the assessed land value, provided that gross income is equal to gross proceeds. Therefore, we estimated the taxpayer's minimum gross income to be the assessed land value in 2018 and the maximum gross income as 4 times this assessed land value.
Estimated gross income based on assessed land value, 2017	$106 million	$424 million	
– Metallic Minerals Threshold Exemption	$19 million	$19 million	The Metallic Minerals Threshold Exemption exempts the first $19 million in annual gross income that is earned at a metal mine from the metallic minerals severance tax. Therefore, taxable gross income is calculated by subtracting $19 million from the mine's total estimated gross income.
= Estimated taxable gross income	$87 million	$405 million	
x Severance tax rate = Estimated severance tax on gross income before credit	$2.0 million	$9.1 million	Severance tax liability is calculated by multiplying taxable gross income by the metallic minerals severance tax rate of 2.25 percent.
x 50 percent of severance tax before credit	$1.0 million	$4.60 million	The credit is equal to the lesser of the taxpayer's local real property tax liability or 50 percent of the taxpayer's severance tax liability. For the minimum estimated gross income, the lesser of these two amounts is equal to 50 percent of the taxpayer's severance tax liability, or $1.0 million. For the maximum estimated gross income, the lesser of these two amounts is the taxpayer's local real property tax liability, or $3.4 million.
Estimated Metallic Minerals Ad Valorem Credit and 2017 revenue impact (lesser of 50% of severance tax and local real property tax liability from Step 1 above)	$1.0 million	$3.4 million	

SOURCE: Office of the State Auditor analysis of data from the Department of Local Affairs' Division of Property Taxation, Sections 39-29-103(1)(b) and (2); 39-6-106(1)(d), (e), (h), and (i); and 39-6-106(2), C.R.S., and the Assessors' Reference Library, Volume 2.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

Eliminating the Metallic Minerals Ad Valorem Credit would increase the severance tax liability and effective severance tax rate of the one mine in Colorado that has likely generated sufficient income to claim the credit in recent years. Future operations with annual gross incomes over $19 million would also be subject to this increase.

Since the credit may provide some financial support to the mine that is currently eligible to claim it or to mines that become eligible in the future, eliminating the credit would remove this support and may result in mines reducing operations or not expanding operations in the state. One industry representative reported that the loss of this financial support would be particularly challenging for mines when commodity prices are lower. Some also stated that the competition for limited capital between different operations can be intense, especially when prices are low, and an increase in costs for a given operation can affect the operation's investment opportunities.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

Since gold is likely the only metal that has been produced in large quantities in Colorado (which, in 2017, produced 6 percent of the gold mined in the United States) over the past 20 years, we examined the severance tax treatment of metals in the four other leading states for gold mining: Nevada (73 percent of U.S. gold mined), Alaska (11 percent), California (3 percent), and Utah (2 percent). With the exception of California, all of these states assess a severance tax or similar tax on gold extracted and levy ad valorem taxes at state and/or local levels. We did not identify any provisions similar to Colorado's Metallic Minerals Ad Valorem Credit in these states; although in Nevada, the minerals (severance) tax is imposed on producing mines in lieu of ad valorem taxes.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

The Oil and Gas Severance Tax Ad Valorem Credit [Section 39-29-105(2)(b), C.R.S.] allows taxpayers to claim a credit of 87.5 percent of the real property taxes assessed or paid to local governments on oil and gas produced to offset their state oil and gas severance tax liability. However, taxpayers cannot claim the Oil and Gas Ad Valorem Credit for property taxes paid on oil or gas from wells that produce lower amounts of oil or gas (known as "stripper wells"), since they are exempt from the severance tax. Additionally, there is no cap on the Oil and Gas Ad Valorem Credit, so taxpayers' severance tax liabilities may be completely eliminated as a result of this credit.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

The Metallic Minerals Ad Valorem Credit is itemized on the Colorado Metallic Minerals Severance Tax Return (Form DR 0020A), and the Department of Revenue reported that this data is extractable from GenTax, the Department's tax processing system. However, data for the credit has not been releasable in recent years due to taxpayer confidentiality requirements. Statutes [Section 39-21-113(4)(a), 113(5), and 305(2)(b) C.R.S.] prohibit the Department from publishing any information that would allow the identification of any particular tax return and require our office to follow the same requirement for our tax expenditure evaluations. As a result of this data constraint, we were unable to use Department data to determine the revenue impact of the credit.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

THE GENERAL ASSEMBLY MAY WANT TO CONSIDER AMENDING STATUTE TO ESTABLISH A STATUTORY PURPOSE AND PERFORMANCE MEASURES FOR THE AD VALOREM CREDIT. As discussed, statute and the enacting legislation for the credit do not state the credit's purpose or provide performance measures for evaluating its effectiveness. Therefore, for the purposes of our evaluation, we considered two potential purposes for the credit: (1) reducing the financial burden of severance taxes for metal mines that incur severance tax liability and also pay local real property taxes and (2) equalizing the combined severance and local real property tax rates for metal mines in different areas of the state, since local property tax rates can vary substantially. We identified these purposes based on our review of the following sources:

- STATUTORY LANGUAGE. The Metallic Minerals Ad Valorem Credit's function allows for a substantial reduction in metal mines' severance tax liabilities, which suggests the first of the two potential purposes. Additionally, the structure of the credit, which appears intended to provide larger credits to taxpayers that pay more in local real property taxes (up to the credit's cap), suggests the second of the two potential purposes, which is similar to the purpose we inferred for the Oil and Gas Severance Tax Ad Valorem Credit.

- FEEDBACK FROM METAL MINING INDUSTRY REPRESENTATIVES. Several mining industry representatives commented that tax policy, including the Metallic Minerals Ad Valorem Credit, can be an important factor in companies' decisions to invest in mining operations and can have a significant impact on these operations, particularly when commodity prices are low, which suggests the first of the two potential purposes.

We also developed two performance measures to assess the extent to which the credit is meeting each of these potential purposes. However, the General Assembly may want to clarify its intent for the credit by providing a purpose statement and corresponding performance measure(s) in statute. This would eliminate potential uncertainty regarding the credit's purpose and allow our office to more definitively assess the extent to which the credit is accomplishing its intended goal(s).

IF THE GENERAL ASSEMBLY DETERMINES THAT THE PURPOSE OF THE METALLIC MINERALS AD VALOREM CREDIT IS TO EQUALIZE THE COMBINED SEVERANCE AND LOCAL REAL PROPERTY TAX RATES FOR METAL MINES IN DIFFERENT AREAS OF THE STATE, IT MAY WANT TO REVIEW WHETHER THE CREDIT IS MEETING ITS INTENT. As discussed, we found that the credit is likely meeting its first potential purpose because it likely substantially reduces the severance tax liability of the one mine that has been eligible to claim it. We estimated that this taxpayer's credit was likely equivalent to about 1 percent of their total gross income and would have reduced their effective severance tax rate by 50 percent in 2017.

However, since only one metal mine has likely been eligible to claim the credit in the past 20 years, the credit is not meeting its second potential purpose of equalizing the combined severance and local real property tax rates among multiple metal mines located in different areas of the state and subject to different local property tax rates. Furthermore, based on its structure and the typical local mill levy rates in Colorado, the credit is unlikely to meet this purpose even if more metal mines become eligible for the credit in the future. Specifically, in order for the credit to be effective at equalizing combined tax rates among taxpayers, the credit amount would need to be more proportional to each taxpayer's local real property tax liability for every taxpayer eligible for the credit. Under the credit's current design, this would consistently occur only if taxpayers' local real property taxes, and therefore credit amounts, were less than the credit's cap, which is 50 percent of the taxpayer's severance tax liability. Based on local mill levy rates, under most circumstances, we found that metal mines' local real property tax liabilities would generally be greater than 50 percent of their severance tax liabilities. Therefore, the amount of the credit is likely to be equal to the credit's cap for any given taxpayer, which substantially limits the credit's ability to equalize combined severance and local real property taxes.

Since we identified two potential purposes for the Metallic Minerals Ad Valorem Credit, and it is only meeting one of those purposes, the General Assembly may want to assess whether the credit is meeting its intent and review the credit for potential revision.