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Dear Requester:

You have asked this office several questions relating to the taxation of mines and mining claims in connection with the constitutional amendment proposed by Senate Joint Resolution No. 15 (S.J.R. 15), which the Legislature passed for a first time during the 2011 legislative session. 2011 Nev. Stat., file no. 44, at 3871-72. In order for S.J.R. 15 to become effective as an amendment to the Nevada Constitution, it must be passed by the Legislature a second time, and it must be approved and ratified by the voters at the next general election in 2014, unless the Legislature authorizes a special election for that purpose. Nev. Const. art. 16, § 1; NRS 218D.800 & 218D.805.

If S.J.R. 15 becomes effective, it will repeal the property tax exemption for mines and mining claims set forth in Article 10, Section 1(1) of the Nevada Constitution. 2011 Nev. Stat., file no. 44, at 3871. In addition, S.J.R. 15 will repeal the provisions governing the taxation of mines and mining claims set forth in Article 10, Section 5 of the Nevada Constitution. *Id.* at 3872. In light of these proposed constitutional revisions, you have asked the following questions:

1. If S.J.R. 15 becomes effective, will the State have the authority to collect the tax upon the net proceeds of minerals extracted at the same rates that are presently authorized by NRS Chapter 362 or will the State be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361?
2. If S.J.R. 15 becomes effective, will patented and unpatented mines and mining claims have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361?

3. Is S.J.R. 15 subject to the provisions of Article 4, Section 18 of the Nevada Constitution which provide that an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form?

The legal issue that is central to your first two questions is whether the repeal of the constitutional provisions in Article 10 governing the taxation of mines and mining claims will also repeal by implication: (1) the existing statutes governing the net proceeds tax in NRS Chapter 362; or (2) the existing statutes exempting patented and unpatented mines and mining claims from the property tax in NRS Chapter 361. After considering your questions in light of the fundamental rules of constitutional and statutory construction, we have come to the following conclusions.

Although S.J.R. 15 will repeal the existing constitutional provisions exempting mines and mining claims from the property tax, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing statutes exempting the net proceeds of minerals extracted from the property tax. Article 10, Section 1(6) authorizes the exemption of personal property from the property tax. Because the net proceeds extracted from mines and mining claims are a form of personal property, we believe that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. Additionally, because the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, there would be a reasonable basis for construing those existing statutes as a valid and enforceable tax on mineral production after the repeal of the existing constitutional provisions.

Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. As a result, it is the opinion of this office that if S.J.R. 15 becomes effective, the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

Unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Therefore, because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Furthermore, based on our examination of the Nevada Constitution, we have not found any other source of constitutional authority that would save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication, with one exception. Because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those mines and mining claims would still be exempt from the property tax under Article 10, Section 1(8), which authorizes an exemption for property used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Outside of this limited exception, it is the opinion of this office that the existing statutes exempting patented and unpatented mines and mining claims from the property tax would not be capable of being construed consistently with the remaining provisions of Article 10 after S.J.R. 15 becomes effective. Therefore, it is the opinion of this office that if S.J.R. 15 becomes effective, patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361.

Finally, under the interpretative rule favored by a majority of state courts, the Legislature would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing constitutional amendments, and it would not be required to comply with the two-thirds voting requirement in Article 4, Section 18, regardless of whether the joint resolution "creates, generates, or increases any public revenue in any form." Furthermore, even under the interpretative rule favored by a minority of state courts, we believe that the end result would be the same. Under both Article 16, Section 1, and Article 4, Section 18, the Legislature may refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. When these substantially equivalent constitutional provisions for referring measures to the voters are interpreted and harmonized together, we believe that any joint resolution proposing constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds voting requirement under Article 4, Section 18 because the proposed constitutional amendments become effective only if approved by voters. Therefore, it is the opinion of this office that the Legislature is not required to pass S.J.R. 15 by a two-thirds majority vote.

BACKGROUND

I. Overview of the existing provisions of Article 10 of the Nevada Constitution regarding the taxation of mines and mining claims.

Under the existing provisions of Article 10, Section 1(1), the Legislature may not impose a property tax on mines or mining claims except as authorized by Article 10, Section 5. Based on the existing provisions of Article 10, Section 5, the Legislature must impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds, and the Legislature may not impose any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost. In addition, the

existing provisions of Article 10, Section 5 provide for specialized tax treatment of patented mines and mining claims. To better understand these constitutional provisions governing the taxation of mines and mining claims, we believe it will be helpful to provide a brief explanation of patented and unpatented mines and mining claims.

Under American mining law, a person may enter certain public lands to search for, discover and locate valuable mineral deposits for the purpose of establishing ownership interests in any such deposits that are found. 1 American Law of Mining § 30.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984). If the person discovers a valuable mineral deposit and completes the required acts of location in accordance with law, the person acquires rights to an unpatented mining claim, which is a possessory interest in a particular area of public land solely for the purpose of mining. Id. at § 30.05[6]; 30 U.S.C. § 612(a); N. Alaska Env'tl. Ctr. v. Lujan, 872 F.2d 901, 904 n.2 (9th Cir. 1989); Hydro Res. Corp. v. Gray, 143 N.M. 142, 145 n.1 (N.M. 2007). A person who acquires rights to an unpatented mining claim has only a possessory interest in the minerals underlying the public land and, in most cases, does not have any interest in the land's surface because the government retains fee title to the land. Ford v. United States, 101 Fed. Cl. 234, 238 n.6 (Fed. Cl. 2011) (citing 30 U.S.C. § 612(b)).

A person who holds a valid unpatented mining claim may, but is not required to, apply for a mineral patent to obtain fee title to the land from the government. 1 American Law of Mining § 30.06[2] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984). If the person's mining claim is patented in accordance with law, the person gets full ownership of the land pursuant to a grant of fee title from the government, and the patent merges the person's possessory interest in the underlying minerals with full legal title to the land. Id. at § 30.06[5]; Clouser v. Espy, 42 F.3d 1522, 1525 n.2 (9th Cir. 1994); Hoefler v. Babbitt, 952 F. Supp. 1448, 1452 n.1 (D. Or. 1996).

Under the existing provisions of Article 10, Sections 1(1) and 5, unpatented mines or mining claims are exempt from the real property tax and are subject only to the net proceeds tax if they are productive. By contrast, patented mines or mining claims must be assessed and taxed as other real property is assessed and taxed, subject to two exceptions. First, no value may be attributed to any mineral known or believed to underlie the patented mine or mining claim. Second, no value may be attributed to the surface of the patented mine or mining claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment. Based on these two exceptions, if the labor requirement is satisfied, patented mines or mining claims are exempt from the real property tax and are subject only to the net proceeds tax if they are productive.

II. Historical overview of the taxation of mines and mining claims in Nevada.

Throughout Nevada's history, there has been considerable debate concerning the proper approach to tax mines and mining claims. See Political History of Nevada, 103, 106-07 (11th ed. 2006). This difference in opinion has resulted in the passage of various constitutional and

statutory provisions regarding the taxation of mines and mining claims. Because these prior constitutional and statutory provisions offer important historical insight into the constitutional revisions proposed by S.J.R. 15, we believe it will be helpful to provide a brief historical overview of the taxation of mines and mining claims in Nevada.

A. The taxation of mines and mining claims by Nevada's Territorial Legislative Assembly.

During the years preceding adoption of the Nevada Constitution in 1864, there was a sharp divide in the Territory of Nevada between mining interests and agricultural interests over the proper approach to tax mines and mining claims. See State v. Eastabrook, 3 Nev. 173, 178 (1867). The mining interests believed that mines and mining claims should be exempt from taxation and that, if any taxation was to be imposed on mining operations, only the proceeds from productive mines and mining claims should be assessed and taxed. Id. The agricultural interests believed that mines and mining claims should be assessed and taxed in the same manner as other property, whether or not the mines or mining claims were productive. Id.

During the first session of Nevada's Territorial Legislative Assembly in 1861, the Legislative Assembly exempted "[m]ining claims" from property taxation. 1861 Nev. Laws, ch. 50, § 4, at 146. During its second session in 1862, the Legislative Assembly narrowed the exception so that it applied only to "[u]nproductive mining claims." 1862 Nev. Laws, ch. 124, § 4, at 132. However, during its third and final session in 1864, the Legislative Assembly removed the exemption for mining claims and provided that "mining claims and possessory rights thereto" were subject to property taxation. 1864 Nev. Laws, ch. 35, § 2, at 38.

The validity of the 1864 territorial law that taxed possessory rights in mining claims was challenged in an action heard by the Nevada Supreme Court after Nevada became a state. Hale & Norcross Gold & Silver Mining Co. v. Storey County, 1 Nev. 104 (1865). The mining company claimed that taxation of its possessory rights in mining claims located on property owned by the Federal Government violated the Act of Congress organizing the Territory of Nevada which provided that "no tax shall be imposed upon the property of the United States." 12 Stat. 209, 211, § 6 (1861). The court determined that "a Territorial Legislature may tax any species of property, whether real, personal, or mixed, corporeal or incorporeal, so far as they are not restrained by the Organic Act." 1 Nev. at 107. Because case law had "universally treated the possessory rights of the miner as an estate in fee," the court concluded that such possessory rights were a taxable species of real property in Nevada because the miner's possessory rights in the underlying minerals were separate from the Federal Government's ownership of the land. Id. at 106-07.

Even though the Hale & Norcross case involved the interpretation of the Act of Congress organizing the Territory of Nevada, we believe that case is equally applicable to the

interpretation of the Nevada Constitution because Nevada's organizing act operated as the constitution for the Territory of Nevada before its statehood.¹ Therefore, we believe the Hale & Norcross case stands for the proposition that a person's possessory rights in mining claims must be taxed as real property in Nevada unless there is an exemption from such taxation authorized by the Nevada Constitution.

B. The taxation of mines and mining claims under the constitution proposed by Nevada's first constitutional convention in 1863.

The Territory of Nevada held its first state constitutional convention in 1863, where the debate over the proper approach to tax mines and mining claims commanded much of the delegates' attention. See Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional Convention of the Territory of Nevada, 225-29, 239-52, 264-81 (1972). The constitutional convention ultimately approved the following provision:

The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, *including mines and mining property*[.]

Id. at 429 (emphasis added).

Based on its proposed constitutional language, Nevada's first constitutional convention adopted the approach that mines and mining claims should be assessed and taxed in the same manner as other property, whether or not the mines or mining claims were productive. However, the first constitutional convention's approach to the taxation of mines and mining claims was met with great public opposition, and the voters of the Territory of Nevada rejected the proposed constitution. See Goldfield Consol. Mines Co. v. State, 35 Nev. 178, 185 (1912).

C. The taxation of mines and mining claims under Article 10 of the Nevada Constitution.

The Territory of Nevada held its second state constitutional convention in 1864, where the debate over the proper approach to tax mines and mining claims continued with vigor. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State

¹ See Nat'l Bank v. County of Yankton, 101 U.S. 129, 133 (1880) ("The organic law of a Territory takes the place of a constitution as the fundamental law of the local government."); Carter v. Gear, 197 U.S. 348, 353 (1905) ("the Organic Act stands in the place of a constitution for the Territory of Hawaii, to which its laws must conform."); Trustees of Sch. Dist. No. 1 v. County Comm'rs, 1 Nev. 334, 340-41 (1865) (striking down certain territorial laws enacted in violation of Nevada's organic act).

Constitutional Convention of 1864, 222-30, 318-87, 405-33, 436-47, 499, 500, 513-21 (1866). The second constitutional convention ultimately approved the following provision, which was ratified by the voters as Article 10, Section 1 of the Nevada Constitution:

The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, the proceeds of which alone shall be taxed*[.]

Nev. Const. art. 10, § 1 (1864) (emphasis added).

In one of its earliest cases interpreting Article 10, Section 1, the Nevada Supreme Court stated that the provision, as ratified in 1864, embraced two main propositions:

First, that all property assessed for an ad valorem tax should be liable to pay the same percentage; second, that unproductive mines should be entirely free from taxation, whilst those which were productive should pay the regular ad valorem tax on the products, instead of the same tax on the body of the mine itself. There can be no doubt but it was the intention that the entire product should be taxed, in lieu of the body of the mine. This property is different from all other property in the State.

State v. Eastabrook, 3 Nev. 173, 178 (1867).

The provisions of Article 10, Section 1 governing the taxation of mines and mining claims were amended in 1902, 1906 and 1989. In 1902, the voters ratified an amendment that required patented mining claims to be assessed and taxed at a valuation of \$10 per acre. This real property tax on patented mining claims was imposed in addition to the taxes collected on the proceeds of the patented mining claims. Specifically, the 1902 amendment provided:

The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, the proceeds of which alone shall be taxed, but the acreage of patented mining claims shall also be assessed at a valuation of ten dollars per acre*[.]

Nev. Const. art. 10, § 1 (1902) (emphasis added).

In 1906, the voters ratified an amendment which repealed the prior 1902 amendment and which required patented mines to be assessed and taxed at not less than \$500, except that no such tax would be collected when \$100 in labor was actually performed on the patented mine during the year. When collected, this real property tax on patented mines was imposed

in addition to the taxes collected on the proceeds of the patented mines. See Goldfield Consol. Mines Co. v. State, 35 Nev. 178 (1912) (interpreting the 1906 amendment). Specifically, the 1906 amendment provided:

The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars (\$500) except when one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds[.]*

Nev. Const. art. 10, § 1 (1906) (emphasis added).

In 1989, the voters ratified an amendment which repealed the prior 1902 and 1906 amendments and which amended Article 10, Section 1(1) into its current form. The 1989 amendment provided:

The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, *except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.*

Nev. Const. art. 10, § 1(1) (emphasis added).

In addition to revising Article 10, Section 1(1), the 1989 amendment added a new Section 5 to Article 10 to govern the taxation of mines and mining claims, as follows:

1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any

mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment.

Nev. Const. art. 10, § 5. With this background in mind, we turn now to answering your specific questions.

DISCUSSION

I. If S.J.R. 15 becomes effective, will the State have the authority to collect the tax upon the net proceeds of minerals extracted at the same rates that are presently authorized by NRS Chapter 362 or will the State be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361?

Under Article 10, Section 1(1), the Legislature “shall provide by law for *a uniform and equal rate of assessment and taxation*, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory,” except for property that is exempted from the property tax under the authority of the Nevada Constitution. Nev. Const. art. 10, § 1(1) (emphasis added). The Nevada Supreme Court has described the purpose of the Uniform and Equal Clause in Article 10, Section 1(1) as follows:

[T]he constitutional convention, in using the language last quoted, meant to provide for at least one thing in regard to taxation: that is, that all *ad valorem* taxes should be of a uniform rate or percentage. That one species of taxable property should not pay a higher rate of taxes than other kinds of property. If the language we have quoted did not express this idea, then it was perfectly meaningless.

State v. Eastabrook, 3 Nev. 173, 177 (1867); United States v. State ex rel. Beko, 88 Nev. 76, 86-87 (1972); List v. Whisler, 99 Nev. 133, 138 (1983).

Because the Uniform and Equal Clause in Article 10, Section 1(1) was used by the framers in connection with the taxation of “property,” the Nevada Supreme Court has interpreted the Uniform and Equal Clause as a limitation only on the *ad valorem* property tax, and the court has consistently held that the provision does not limit the Legislature’s power to impose other types of taxes on businesses, trades or professions. Ex parte Robinson, 12 Nev. 263, 267-70 (1877); Ex parte Cohn, 13 Nev. 424, 426-27 (1878); In re Dixon, 43 Nev. 196, 204-05 (1919); see also Harris v. City of Reno, 81 Nev. 256, 260 (1965). Thus, to the extent that Article 10, Section 1(1) requires “a uniform and equal rate of assessment and taxation,” that provision applies only to Nevada’s property tax. It does not apply to other types of taxes, such as excise taxes, privilege taxes or taxes on mineral production. See 5 American Law of Mining §§ 191.03[1][a] & 192.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2005 &

2010) (explaining the differences between property taxes and taxes on mineral production, which are often called production taxes, severance taxes or extraction taxes).

Because Article 10, Section 1(1) requires the property tax to be imposed on “all property, real, personal and possessory,” the Legislature cannot exempt any property from the property tax unless the exemption is authorized by the Nevada Constitution. State v. Carson City Sav. Bank, 17 Nev. 146, 151 (1882); State ex rel. U.S. Lines Co. v. Dist. Ct., 56 Nev. 38, 52-53 (1935); Gen. Elec. Credit Corp. v. Andreen, 74 Nev. 199, 202 (1958); Hendel v. Weaver, 77 Nev. 16, 18-19 (1961). Thus, in the absence of an exemption from the property tax authorized by the Nevada Constitution, all real, personal and possessory property must be assessed and taxed at a uniform rate.² Eastabrook, 3 Nev. at 177-78; Beko, 88 Nev. at 86-87; Whisler, 99 Nev. at 138.

To implement Nevada’s property tax in accordance with Article 10, Section 1(1), the Legislature enacted NRS Chapter 361, which provides that all property of every kind and nature is subject to the property tax unless the property is exempted by law. NRS 361.045; State v. Wells, Fargo & Co., 38 Nev. 505, 529 (1915) (“the constitution authorizes and the statute directs that all property of every kind, character, and nature not specifically exempted, is subject to taxation.”). The provisions of NRS Chapter 361 are carried out by various state and local tax officials who determine the value of the property being taxed and collect the property taxes imposed for state and local purposes.

To determine the value of the property being taxed, the tax officials first ascertain the taxable value of the property, which must not exceed its full cash value. NRS 361.227. The tax officials then assess the property at 35 percent of its taxable value to arrive at its assessed value. NRS 361.225. To calculate the total amount of property tax that is due, the tax officials apply the state and local property tax rates to the assessed value of the property. NRS 361.445 to 361.470, inclusive.

Under both the Nevada Constitution and NRS Chapter 361, there are limitations on the total property tax levy that may be made for all public purposes. The Nevada Constitution provides that the total property tax levy that may be made for all public purposes must not exceed \$5.00 on each \$100 of assessed valuation. Nev. Const. art. 10, § 2. The Legislature has enacted a more stringent limitation in NRS Chapter 361, which provides that the total property tax levy that may be made for all public purposes must not exceed \$3.64 on each \$100 of assessed valuation. NRS 361.453. However, the Legislature has provided for certain

² Even though Article 10, Section 1(1) requires that all property must be taxed at a uniform rate, it does not prohibit the Legislature from delegating to each local taxing district the power to fix the rate of taxation for local purposes. State ex rel. Williams v. Fogus, 19 Nev. 247, 249-50 (1885). Therefore, although all property must be taxed at a uniform rate within each local taxing district, “the rate is fixed in each [local taxing district] without reference to the rate established in others.” Id. at 250.

exceptions from the statutory limitation in special or emergency circumstances. See, e.g., NRS 354.705, 354.723 & 450.760; 2001 Nev. Stat., 17th Spec. Sess., ch. 6, § 6, at 109.

Early in this State's history, the Nevada Supreme Court held that the net proceeds of extracted minerals are a type of personal property that must be assessed and taxed at the same rate or percentage as other taxable property. City of Virginia v. Chollar-Potosi Gold & Silver Mining Co., 2 Nev. 86, 91-92 (1866); Eastabrook, 3 Nev. at 177-81. Therefore, without the exemption authorized by the Nevada Constitution, the net proceeds of extracted minerals would be assessed and taxed as personal property at the same rate or percentage as other taxable property under NRS Chapter 361.

As discussed previously, the existing provisions of Article 10, Section 1(1) exempt mines and mining claims from the property tax and further provide that mines and mining claims must be assessed and taxed only as provided in Article 10, Section 5. Under Article 10, Section 5, the Legislature must impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds, and the Legislature may not impose any other tax upon a mineral or its proceeds until the identity of the proceeds as such is lost.

In accordance with Article 10, Section 5, the Legislature enacted the current provisions of NRS Chapter 362, which impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds. NRS 362.140. Generally speaking, NRS Chapter 362 establishes a graduated tax rate, with a minimum rate of 2 percent and a maximum rate of 5 percent, where "the rate of tax upon the net proceeds of each geographically separate extractive operation depends upon the ratio of the net proceeds to the gross proceeds of that operation as a whole." NRS 362.140.

If S.J.R. 15 becomes effective, it will repeal the property tax exemption for mines and mining claims set forth in Article 10, Section 1(1), and it will repeal the provisions governing the tax upon the net proceeds of minerals extracted set forth in Article 10, Section 5. Given that S.J.R. 15 will repeal these constitutional provisions, the legal issue that arises is whether the repeal of these constitutional provisions will also repeal by implication the existing statutory provisions governing the tax upon net proceeds.

In addressing this legal issue, we are guided by several "well-established precepts of statutory and constitutional construction." We the People Nev. v. Miller, 124 Nev. 874, 880-81 (2008). As a general rule, when the authority for an existing statute comes from a specific constitutional provision and that provision is repealed by a later constitutional amendment, courts usually hold that the existing statute is repealed by implication. Wren v. Dixon, 40 Nev. 170, 184-193 (1916); United States v. Chambers, 291 U.S. 217, 222-23 (1934). However, courts will not hold that the existing statute is repealed by implication when the statute can be construed consistently with the state constitution even after the constitutional amendment. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009).