

1450 FROST BANK TOWER  
100 WEST HOUSTON STREET  
SAN ANTONIO, TEXAS 78205

TELEPHONE (210) 227-8800  
TOLL FREE (800) 460-3247  
FACSIMILE (210) 212-8952

www.mcreynolds-tye.com

**Richard H. Tye**  
Board Certified  
Tax Law  
Estate Planning and Probate Law  
Texas Board of Legal Specialization

**Michael L. McReynolds**  
Board Certified  
Oil, Gas & Mineral Law  
Texas Board of Legal Specialization

**Estate Planning for Mineral and Royalty Owners  
Financial Planning Association of San Antonio & South Texas  
September 26, 2012**

1. Most Common Types of Interests
  - Subsurface mineral interest (leasing rights, bonus, delay rentals, and royalty payments)
  - Non-participating royalty interest (royalty payments only)
  
2. Lease Provisions
  - Lease bonus
  - Term of lease, including extensions
  - Royalty percentage (12.5% to 25%)
  - Post-production costs
  - Pooling, Pugh clause, and continuous development
  - Surface use
  
3. Separate Property and Community Property Issues in Texas
  - Lease bonus - same character as underlying interest (e.g., bonus from separate property is separate)
  - Delay rentals (rarely encountered) are community property
  - Royalty payments - same character as underlying interest (e.g., royalty from separate is separate)
  
4. Life Estates
  - Created by last will and testament or by intestacy - should be avoided
  
5. Income Taxation
  - Lease bonus - ordinary income, usually not subject to depletion allowance
  - Delay rentals - ordinary income, not subject to depletion
  - Royalty payments - ordinary income, subject to depletion
  - Depletion allowance - cost or percentage depletion (15%)
  - Sale of mineral or royalty interest - capital gain
  
6. Planning Goal - Facilitate Long-Term Management
  - Avoid continued fragmentation of the interest resulting from inheritance
  - Centralize control for effective management
  
7. Planning Goal - Minimize Federal Gift and Estate Tax
  - Accelerate gifts of appreciating property
  - Transfer income-generating properties to the next generation
  
8. Planning Technique - Limited Partnership
  - Centralizes control and avoids fragmentation
  - Facilitates gifting
  - Exempt from Texas franchise tax
  
9. Planning Technique - Long-Term Trust
  - Centralizes control and avoids fragmentation
  - Avoids probate proceedings (Texas and/or out-of-state)
  - Net revenues distributed to descendants and/or surviving spouses continuously without future transfers