STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1247 By: Rice

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 1001, as amended by Section 1, Chapter 30, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1001), which relates to gross production taxes; authorizing exemption from gross production taxes for certain oil wells; providing definitions; providing for partial exemption from gross production taxes for certain wells and providing procedure for determining partial exemption; providing requirements to qualify for exemption; providing for disbursement of exemptions; providing for apportionment of nonexempt funds; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1001, as amended by Section 1, Chapter 30, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1001), is amended to read as follows:

Section 1001. (a) There is hereby levied upon the production of asphalt, ores bearing lead, zinc, jack, gold, silver and copper a tax equal to three-fourths of one percent (3/4 of 1%) on the gross value thereof.

(b) Except as otherwise exempted pursuant to subsections (d) ~~and~~, (e) and (f) of this section, there is hereby levied upon the production of oil a tax equal to seven percent (7%) of the gross value of the production of oil based on a per barrel measurement of forty-two (42) U.S. gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit and a tax equal to seven percent (7%) of the gross value of the production of gas.

(c) The tax hereby levied shall also attach to, and is levied on, what is known as the royalty interest; and the amount of such tax shall be a lien on such interest.

(d) (1) Any incremental production which results from an enhanced recovery project shall be exempt from the gross production tax levied pursuant to this section from the project beginning date until project payback is achieved for new enhanced recovery projects or until project payback is achieved but not to exceed a period of thirty-six (36) months for tertiary enhanced recovery projects existing on the effective date of this act. This exemption shall take effect July 1, 1988. Project payback shall be determined by appropriate payback indicators, as established by the Oklahoma Corporation Commission and approved by the Oklahoma Tax Commission.

(2) The provisions of this subsection shall also not apply to any enhanced recovery project using fresh water as the primary injectant, except when using steam.

(3) For purposes of this subsection:

(i) Incremental production means the amount of crude oil or other liquid hydrocarbons which is produced during an enhanced recovery project and which is in excess of the base production amount of crude oil or other liquid hydrocarbons. The base production amount shall be the average monthly amount of production for the twelve-month period immediately prior to the project beginning date minus the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the project beginning date. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the project beginning date as determined by the Corporation Commission based on the production history of the field, its current status, and sound reservoir engineering principles.

(ii) Project beginning date means the date on which the injection of liquids, gases, or other matter begins on an enhanced recovery project.

(4) The Oklahoma Corporation Commission shall promulgate rules for the qualification for this exemption which shall include, but not be limited to, procedures for determining incremental production as defined in subparagraph (i) of paragraph (3) of subsection (d) of this section, and the establishment of appropriate payback indicators which will not include any expenses beyond the completion date of the well.

(5) Any person requesting such exemption for projects existing on the effective date of this act shall file an application for qualification for such exemption with the Oklahoma Corporation Commission which, upon finding that the enhanced recovery project meets the requirements of this subsection, shall approve the application for qualification. For new enhanced recovery projects approved by the Oklahoma Corporation Commission after the effective date of this act, such approval shall constitute qualification for the exemption.

(6) Any person seeking such exemption shall file an application for such exemption with the Oklahoma Tax Commission which, upon determination of qualification by the Oklahoma Corporation Commission, shall approve the application for such exemption.

(7) The Tax Commission may require any person requesting such exemption to furnish information or records concerning the exemption as is deemed necessary by the Commission.

(8) Upon the expiration of the exemption granted pursuant to this subsection, the Tax Commission shall collect the gross production tax levied pursuant to this section.

(e) (1) The production of oil, gas or oil and gas from a horizontally drilled well producing prior to July 1, 1994 which production commenced after the effective date of this act, shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the project beginning date until project payback is achieved but not to exceed a period of twenty-four (24) months commencing with the month of initial production from the horizontally drilled well. Provided, any incremental production which results from a horizontally drilled well producing prior to July 1, 1994, shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the project beginning date until project payback is achieved but not to exceed a period of twenty-four (24) months commencing with the month of initial production from the horizontally drilled well. For purposes of subsection (d) of this section and this subsection, project payback shall be determined as of the date of the completion of the well and shall not include any expenses beyond the completion date of the well, and subject to the approval of the Oklahoma Tax Commission.

(2) As used in this subsection, "horizontally drilled well" shall mean an oil, gas or oil and gas well drilled or recompleted in a manner which encounters and subsequently produces from a geological formation at an angle in excess of seventy (70) degrees from vertical and which laterally penetrates a minimum of one hundred fifty (150) feet into the pay zone of said formation.

(3) The Corporation Commission and the Oklahoma Tax Commission shall promulgate joint rules for the qualification for this exemption and such rules shall contain provisions for verification of any horizontally drilled wells.

(4) Any person requesting such exemption shall file an application for qualification for such exemption with the Oklahoma Corporation Commission which, upon finding that the horizontally drilled well meets the requirements of this subsection, shall approve the application for qualification.

(5) Any person seeking such exemption shall file an application for such exemption with the Oklahoma Tax Commission which, upon determination of qualification by the Oklahoma Corporation Commission, shall approve the application for such exemption.

(6) The Tax Commission shall require any person requesting such exemption to furnish necessary financial and other information or records in order to determine and justify the exemption and to determine the project payback.

(7) Upon the expiration of the exemption granted pursuant to this subsection, the Tax Commission shall collect the gross production tax levied pursuant to this section.

(f) (1) Any petroleum or other crude oil which is produced from a marginal well shall be exempt from the gross production tax levied pursuant to this section for each calendar month that the well is a marginal well. For purposes of this section, a marginal well shall refer to wells on leases with an average daily production of three (3) barrels or less per day for all producing wells, and whose production has not been significantly curtailed by reason of mechanical failure or disruption of production.

(2) The severance and production of oil which is from a marginal well may be partially exempted from the gross production tax levied by subsection (b) of this section.

(3) Gross production tax exemptions authorized by paragraph (2) of this subsection shall be granted on a percentage basis. The applicable percentage shall be determined by reference to the "average price per barrel" of oil as defined by paragraph (4) of this subsection. The following scale shall be employed in determining the exemption percentages:

(i) Where the average price per barrel as determined by paragraph (4) of this subsection is Eighteen Dollars ($18.00) or less, the person shall pay one percent (1%) of the gross value of the production pursuant to subsection (b) of this section,

(ii) Where the average price per barrel as determined by paragraph (4) of this subsection exceeds Eighteen Dollars ($18.00) and is less than or equal to Twenty-one Dollars ($21.00), the person shall pay three percent (3%) of the gross value of the production pursuant to subsection (b) of this section,

(iii) Where the average price per barrel as determined by paragraph (4) of this subsection exceeds Twenty-one Dollars ($21.00) and is less than or equal to Twenty-four Dollars ($24.00), the person shall pay five percent (5%) of the gross value of the production pursuant to subsection (b) of this section,

(iv) Where the average price per barrel as determined by paragraph (4) of this subsection exceeds Twenty-four Dollars ($24.00), the person shall pay seven percent (7%) of the gross value of the production pursuant to subsection (b) of this section.

(4) The term "average price per barrel" as used in paragraph (3) of this subsection is that price which is determined by the Oklahoma Tax Commission to be the average price per barrel paid by the first purchaser of crude oil in this state during the previous twelve-month time period. The Oklahoma Tax Commission shall determine the average prices from statistics compiled and provided by the U.S. Department of Energy, and it shall adjust its determinations on an annual basis. The Oklahoma Tax Commission shall make its initial average price per barrel determination on July 1, 1993, the date on which the exemptions of paragraph (2) of this subsection shall take effect.

(5) No person shall be entitled to an exemption until the person makes application with the Oklahoma Tax Commission, and until the Oklahoma Tax Commission determines that the person is qualified for the exemption. Qualification determinations shall be based on production of leases during the twelve (12) months previous to the filing of the application for exemption. Exemptions granted shall be valid for a period of one (1) year following the date of certification by the Oklahoma Tax Commission. Persons who are granted exemptions shall annually refile certifications with the Oklahoma Tax Commission in order to retain their exempted status.

(6) Gross production tax exemptions as authorized by paragraph (2) of this subsection shall be disbursed by the Oklahoma Tax Commission on an annual rebate basis, incorporating documentation similar to the Oklahoma Tax Commission's form which allows producers to claim refunds on incapable wells.

(7) In the case of gross production taxes partially exempted by paragraph (2) of this subsection, the nonexempt sums collected from each county where the oil was produced shall be paid in the following manner to the county treasurer into the County Highway Fund:

(i) Where the person pays one percent (1%) of the gross value of the production pursuant to subparagraph (i) of paragraph (3) of this subsection, one-half (1/2) of the sum collected shall be paid,

(ii) Where the person pays in excess of one percent (1%) of the gross value of the production pursuant to subparagraphs (ii), (iii), and (iv) of paragraph (3) of this subsection, one-half (1/2) of the first one percent (1%) shall be paid to the County Highway Fund with the balance reverting to the general fund of the county, excepting those sums apportioned in paragraph (8) of this subsection.

(8) In the case of gross production taxes partially exempted by paragraph (2) of this subsection, the nonexempt sums collected from each county where oil was produced shall be apportioned, on an average daily attendance per capita distribution basis, as certified by the State Board of Education, to the school districts of the county where such pupils attend school regardless of residence of such pupil, provided the school district makes an ad valorem tax levy of fifteen (15) mills for the current year and maintains twelve (12) years of instruction. The amounts to be apportioned shall be paid in the following manner:

(i) Where the person pays one percent (1%) of the gross value of the production pursuant to subparagraph (i) of paragraph (3) of this subsection, one-half (1/2) of the sum collected shall be paid,

(ii) Where the person pays in excess of one percent (1%) of the gross value of the production pursuant to subparagraphs (ii), (iii) and (iv) of paragraph (3) of this subsection, one-half (1/2) of the first one percent (1%) shall be paid to the school district pursuant to paragraph (8) of this subsection with the balance reverting to the general fund of the county, excepting those sums apportioned in paragraph (7) of this subsection.

(g) All persons shall only be entitled to either the exemption granted pursuant to subsection (d) of this section or the exemption granted pursuant to subsection (e) of this section for each oil, gas or oil and gas well drilled or recompleted in this state. However, any person who qualifies for the exemption granted pursuant to subsection (e) of this section shall not be prohibited from qualification for the exemption granted pursuant to subsection (d) of this section, if the exemption granted pursuant to subsection (e) of this section has expired.

~~(g)~~ (h) The Tax Commission shall have the power to require any such person engaged in mining or the production or the purchase of such asphalt, mineral ores aforesaid, oil, or gas, or the owner of any royalty interest therein to furnish any additional information by it deemed to be necessary for the purpose of correctly computing the amount of said tax; and to examine the books, records and files of such person; and shall have power to conduct hearings and compel the attendance of witnesses, and the production of books, records and papers of any person.

~~(h)~~ (i) Any person or any member of any firm or association, or any officer, official, agent or employee of any corporation who shall fail or refuse to testify; or who shall fail or refuse to produce any books, records or papers which the Tax Commission shall require; or who shall fail or refuse to furnish any other evidence or information which the Tax Commission may require; or who shall fail or refuse to answer any competent questions which may be put to him by the Tax Commission, touching the business, property, assets or effects of any such person relating to the gross production tax imposed by this article or exemption authorized pursuant to subsection (d) of this section or other laws, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred

Dollars ($500.00), or imprisonment in the jail of the county where such offense shall have been committed, for not more than one (1) year, or by both such fine and imprisonment; and each day of such refusal on the part of such person shall constitute a separate and distinct offense.

~~(i)~~ (j) The Tax Commission shall have the power and authority to ascertain and determine whether or not any report herein required to be filed with it is a true and correct report of the gross products, and of the value thereof, of such person engaged in the mining or production or purchase of asphalt and ores bearing minerals aforesaid and of oil and gas. If any person has made an untrue or incorrect report of the gross production or value or volume thereof, or shall have failed or refused to make such report, the Tax Commission shall, under the rules prescribed by it, ascertain the correct amount of either, and compute said tax.

~~(j)~~ (k) The payment of the taxes herein levied shall be in full, and in lieu of all taxes by the state, counties, cities, towns, school districts and other municipalities upon any property rights attached to or inherent in the right to said minerals, upon producing leases for the mining of asphalt and ores bearing lead, zinc, jack, gold, silver or copper, or for oil, or for gas, upon the mineral rights and privileges for the minerals aforesaid belonging or appertaining to land, upon the machinery, appliances and equipment used in and around any well producing oil, or gas, or any mine producing asphalt or any of the mineral ores aforesaid and actually used in the operation of such well or mine. The payment of gross production tax shall also be in lieu of all taxes upon the oil, gas, asphalt or ores bearing minerals hereinbefore mentioned during the tax year in which the same is produced, and upon any investment in any of the leases, rights, privileges, minerals or other property described herein. Any interest in the land, other than that herein enumerated, and oil in storage, asphalt and ores bearing minerals hereinbefore named, mined, produced and on hand at the date as of which property is assessed for general and ad valorem taxation for any subsequent tax year, shall be assessed and taxed as other property within the taxing district in which such property is situated at the time.

~~(k)~~ (l) No equipment, material or property shall be exempt from the payment of ad valorem tax by reason of the payment of the gross production tax except such equipment, machinery, tools, material or property as is actually necessary and being used and in use in the production of asphalt or of ores bearing lead, zinc, jack, gold, silver or copper or of oil or gas. It is expressly declared that no ice plants, hospitals, office buildings, garages, residences, gasoline extraction or absorption plants, water systems, fuel systems, rooming houses and other buildings, nor any equipment or material used in connection therewith, shall be exempt from ad valorem tax.

~~(l)~~ (m) The exemption from ad valorem tax set forth in subsections ~~(j) and~~ (k) and (l) of this section shall continue to apply to all property from which production of oil, gas or oil and gas is exempt from gross production tax pursuant to subsections (d) and (e) of this section.

SECTION 2. This act shall become effective July 1, 1993.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-6519 JAF