

SHORT TITLE: Revenue and taxation; gross production tax exemptions;
repealing conservation excise tax; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 841

By: Easley

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 1001, as last amended by Section 4, Chapter 273, O.S.L. 1993 and 1001.1 (68 O.S. Supp. 1993, Section 1001), which relate to gross production tax; modifying exemption from gross production tax for certain incremental production; modifying period of certain exemptions from gross production tax; providing definitions; modifying exemption from gross production tax to include certain deep wells; providing an exemption from gross production tax for production from certain pool; providing that severance or production of certain oil or gas from inactive wells be exempt from gross production tax; providing procedures for application and qualification for exemptions; authorizing requirement that certain information be provided; requiring Corporation Commission and Tax Commission to promulgate certain rules; modifying statutory references; repealing 68 O.S. 1991, Sections 1107, 1108, 1109, 1110 and 1111, which relate to conservation excise taxes; 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 last amended by Section 4, Chapter 273, O.S.L. 1993 (68 O.S. Supp. 1993, 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) 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 attributable to the working interest owners 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 July 1, 1988. This exemption shall take effect July 1, 1988 and shall apply to enhanced recovery projects approved or having a project beginning date prior to July 1, 1993. Project payback pursuant to this paragraph for enhanced recovery projects qualifying for this exemption on or after July 1, 1990, and on or before June 30, 1993, shall be determined by appropriate payback indicators which will not

include any expenses beyond the completion date of the well. Project payback pursuant to this paragraph for enhanced recovery projects qualifying for this exemption on or after October 17, 1987, and on or before June 30, 1990, shall be determined by appropriate payback indicators as previously established and allowed by the Oklahoma Tax Commission for projects qualifying during such period.

(2) For secondary recovery projects approved and having a project beginning date on or after July 1, 1993, and before July 1, 1998, any incremental production attributable to the working interest owners which results from such secondary recovery projects shall be exempt from the gross production tax levied pursuant to this section from the project beginning date until project payback is achieved but not to exceed a period of ten (10) years. Project payback pursuant to this paragraph shall be determined by appropriate payback indicators which will provide for the recovery of capital expenses and fifty percent (50%) of operating expenses, in determining project payback.

(3) For tertiary recovery projects approved and having a project beginning date on or after July 1, 1993, and before July 1, 1998, any incremental production attributable to the working interest owners which results from such tertiary recovery projects shall be exempt from the gross production tax levied pursuant to this section from the project beginning date until project payback is achieved, but not to exceed a period of ten (10) years. Project payback pursuant to this paragraph shall be determined by appropriate payback indicators which will provide for the recovery of capital expenses and operating expenses, excluding administrative expenses, in determining project payback. The capital expenses of pipelines constructed to transport carbon dioxide to a tertiary recovery project shall not be included in determining project payback pursuant to this paragraph.

(4) 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.

(5) 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.

(6) 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 (5) of subsection (d) of this section, and the establishment of appropriate payback indicators as approved by the Oklahoma Tax Commission for the determination of project payback for each of the exemptions authorized by this subsection.

(7) For new secondary recovery projects and tertiary recovery projects approved by the Oklahoma Corporation Commission on or after July 1, 1993, and before July 1, 1998, such approval shall constitute qualification for an exemption.

(8) Any person seeking an 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.

(9) 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.

(10) 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~~ 1999, 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~~ 1999, 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) The severance or production of oil, gas or oil and gas from an inactive well shall be exempt from the gross production tax levied pursuant to subsection (b) of this section for a period of two (2) years from the date upon which production is reestablished.

(2) As used in this subsection, "inactive well" means any well that has not produced oil, gas or oil and gas for a period of not less than two (2) years as evidenced by the appropriate forms on file with the Corporation Commission reflecting the well's status.

(g) (1) Any incremental production attributable to the working interest owners which results from a production enhancement project shall be exempt from the gross production tax levied pursuant to subsection (b) of this section for a period of two (2) years from the date of project completion of the production enhancement project.

(2) As used in this subsection:

(i) "production enhancement project" means any workover, recompletion, compression, mechanical or equipment replacement or fracturing of a producing well,

(ii) "incremental production" means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production, and

(iii) "base production" means the average monthly amount of production for the two-month period immediately prior to beginning the production enhancement project.

(h) The production of oil, gas or oil and gas from wells commenced on or after July 1, 1994, from a depth of greater than fifteen thousand (15,000) feet shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the date of first production until project payback is achieved but not to exceed a period of two (2) years. Project payback pursuant to this paragraph shall be determined by appropriate

payback indicators which shall not include any expenses beyond the completion date of the well.

(i) (1) The severance and production of oil, gas or oil and gas from any pool from which oil, gas or oil and gas was first produced after June 30, 1994, as determined by the Oklahoma Corporation Commission and certified by the Oklahoma Tax Commission, and continuing for a period of two (2) years from the month in which oil or gas was first produced from such pool as evidenced by an affidavit of completion of a well, filed with the Corporation Commission and certified by the Tax Commission, shall be exempt from the gross production tax levied pursuant to subsection (b) of this section. The exemption granted under this subsection shall be valid for a period of two (2) years following the month in which oil or gas was first produced from such pool.

(2) As used in this subsection, "pool" means an underground accumulation of oil or gas in a single or separate natural reservoir characterized by a single pressure system so that production from one part of the pool affects the reservoir pressure throughout its extent.

(j) (1) The Corporation Commission and the Oklahoma Tax Commission shall promulgate joint rules for the qualification for the exemptions provided for in subsections (e), (f), (g), (h) and (i) of this section and such rules shall contain provisions for verification of any wells from which production may be qualified for such exemptions.

(2) Any person requesting any such exemption shall file an application for qualification for such exemption with the Oklahoma Corporation Commission which, upon finding that the well meets the requirements of subsection (e), (f), (g), (h) or (i) of this section, shall approve the application for qualification.

(3) 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.

(4) 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.

(5) Upon the expiration of the exemption granted pursuant to subsection (e), (f), (g), (h) or (i) of this section, the Tax Commission shall collect the gross production tax levied pursuant to this section.

(k) 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), (f), (g), (h) or (i) 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), (f), (g), (h) or (i) 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), (f), (g), (h) or (i) of this section has expired.

~~(g)~~ (l) 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)~~ (m) 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)~~ (n) 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)~~ (o) 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)~~ (p) 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)~~ (q) The exemption from ad valorem tax set forth in subsections ~~(j)~~ (o) and ~~(k)~~ (p) 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~~ subsection (d) and, (e), (f), (g), (h) or (i) of this section.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1001.1, is amended to read as follows:

Section 1001.1 The Oklahoma Tax Commission shall adopt rules and regulations which establish guidelines for the determination of property exempt from ad valorem taxation pursuant to the provisions of subsections ~~(j)~~ (o) and ~~(k)~~ (p) of Section 1001 of this title. Said guidelines shall include, but are not limited to, the following:

1. "Producing leases" means:

- a. wells which have had production during the previous calendar year which is subject to the gross production tax levied by Section 1001 of this title and which have not been abandoned or required to be plugged as required by law on or before January 1 of the year for which the assessment or valuation is made, or
- b. wells which have had production which is subject to the gross production tax levied by Section 1001 of this title during at least one of the first three (3) months of the year for which the assessment or valuation is made;

2. "Payment of gross production tax" means payment of the tax levied by Section 1001 of this title on production during the calendar year immediately prior to January 1 of the year for which the assessment or valuation is made or on production during at least one of the first three (3) months of the year for which the assessment or valuation is made; and

3. Property exempt from ad valorem tax pursuant to the provisions of subsections ~~(j)~~ (o) and ~~(k)~~ (p) of Section 1001 of this title shall include, but is not limited to, lease production tanks, lease production meters, and lease disposal systems which are not for commercial purposes. Such exempt property shall remain exempt as long as the property is essential to the production of oil and gas in commercial quantities. The county assessor shall be notified when such property becomes nonexempt.

SECTION 3. REPEALER 68 O.S. 1991, Sections 1107, 1108, 1109, 1110 and 1111 are hereby repealed.

SECTION 4. This act shall become effective July 1, 1994.

SECTION 5. 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.

44-2-1826 CD