

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 911

By: Easley, Fair, Long (Ed),
Kerr and Campbell of the
Senate

and

Rice, Hastings, Adkins,
Morgan, Thornbrugh,
Kinnamon, Hager, Voskuhl,
Taylor, Perry, Weaver,
Smith (Dale), Stites,
Smith (Bill), Mitchell
and Staggs of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to economically at-risk oil or gas leases; amending 68 O.S. 1991, Section 1001, as last amended by Section 1, Chapter 321, O.S.L. 1995, 1359, as last amended by Section 14 of Enrolled House Bill No. 2428 of the 2nd Session of the 45th Oklahoma Legislature, 2353, as amended by Section 24, Chapter 278, O.S.L. 1994 and 2357.11, as last amended by Section 25, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1995, Sections 1001, 1359, 2353 and 2357.11), which relate to certain taxes; modifying definition; clarifying statutory language; defining terms; providing for certain tax exemption; stating time period; providing for tax apportionment; requiring documentation for application; stating certain calculation for determining economically at-risk oil leases; authorizing the Corporation Commission to certify economically at-risk oil leases within certain time period; requiring Commission to promulgate certain rules; stating procedures for operators of economically at-risk oil leases; providing certain sales tax exemption for economically at-risk leases; providing for administration of certain exemption; specifying certain duties of Oklahoma Tax Commission; providing for refund of certain taxes paid and interest thereon; requiring certain documentation; specifying sales eligible for refund; modifying definition of taxable income; authorizing certain tax credit for Oklahoma-mined coal purchases; providing for certain tax credits to be transferable; stating transfer procedures; creating the Energy Administration Reform Task Force; stating membership; stating certain chairman and vice-chairman; providing for certain agency support; providing for staff; providing for meetings and subcommittees; requiring report by certain date; stating purpose; providing for termination date; providing for codification; providing for noncodification; 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 1, Chapter 321, O.S.L. 1995 (68 O.S. Supp. 1995, 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), (e), (f), (g), (h) and (i) 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:

- a. "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.
- b. "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 a of paragraph (5) of this subsection, 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, which production commenced after July 1, 1990, or producing prior to July 1, 1997, which production commenced after July 1, 1995, 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.

(f) (1) Except as otherwise provided in subsection (j) of this section, 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 twenty-eight (28) months from the date upon which production is reestablished. This exemption shall take effect July 1, 1994, and shall apply to wells for which production is reestablished prior to July 1, 1997. For all such production, a refund against gross production taxes shall be issued as provided in subsection (k) of this section.

(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) Except as otherwise provided in subsection (j) of this section, any incremental production 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 twenty-eight (28) months from the date of project completion of the production enhancement project. This exemption shall take effect July 1, 1994, and shall apply to production enhancement projects having a project beginning date prior to July 1, 1997. For all such production, a credit against gross production taxes shall be issued as provided in subsection (k) of this section.

(2) As used in this subsection:

- a. "production enhancement project" means any workover as defined in this paragraph, recompletion as defined in this paragraph, or fracturing of a producing well,
- b. "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,
- c. "base production" means the average monthly amount of production for the twelve-month period immediately prior to ~~the effective date of this act~~

either the filing of the application of the production enhancement project or the commencement of the project, whichever is earlier. If the well or wells covered in the application had production for less than the full twelve-month period prior to the filing of the application for the production enhancement project, then the base production shall be the average monthly production for the months during that period that the well or wells produced,

- d. "recompletion" means any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in said existing oil or gas well, and
- e. "workover" means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. "Workover" includes but is not limited to acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. "Workover" shall not mean the routine maintenance, routine repair, or like for like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

(h) (1) Except as otherwise provided in subsection (j) of this section, the production of oil, gas or oil and gas from wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the date of first sales for a period of twenty-eight (28) months. For all such wells spudded, a refund against

gross production taxes shall be issued as provided in subsection (k) of this section.

(2) In no case shall the total amount of gross production tax exemption provided for in paragraph (1) of this subsection exceed the total cost of drilling and completing the well.

(3) The ~~Oklahoma~~ Corporation Commission shall deliver to the Legislature a report on the number of wells as defined by paragraph (1) of this subsection that are drilled and the amount of production from those wells. The first such report shall be delivered to the Legislature no later than February 1, 1996, and each February 1, thereafter, until the conclusion of the program.

(i) (1) Except as otherwise provided in subsection (j) of this section, the production of oil, gas or oil and gas from wells spudded or re-entered between July 1, 1995, and June 30, 1997, which qualify as a new discovery pursuant to this subsection shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the date of first sales for a period of twenty-eight (28) months. For all such wells spudded or re-entered, a refund against gross production taxes shall be issued as provided in subsection (k) of this section. As used in this subsection, "new discovery" means production of oil, gas or oil and gas from:

- a. a well that discovers crude oil in paying quantities that is more than one (1) mile from the nearest oil well producing from the same producing formation,
- b. a well that discovers crude oil in paying quantities beneath current production in a deeper producing formation that is more than one (1) mile from the nearest oil well producing from the same deeper producing formation,
- c. a well that discovers natural gas in paying quantities that is more than two (2) miles from the nearest gas well producing from the same producing formation, or
- d. a well that discovers natural gas in paying quantities beneath current production in a deeper

producing formation that is more than two (2) miles from the nearest gas well producing from the same deeper producing formation.

(2) In no case shall the total amount of gross production tax exemption or credit provided for in paragraph (1) of this subsection exceed the total cost of drilling and completing the well.

(3) The ~~Oklahoma~~ Corporation Commission shall deliver to the Legislature a report on the number of wells as defined by paragraph (1) of this subsection that are drilled and the amount of production from those wells. The first such report shall be delivered to the Legislature no later than February 1, 1997, and each February 1, thereafter, until the conclusion of the program.

(j) (1) The exemptions provided for in subsections (f), (g), (h) and (i) of this section shall not apply:

- a. to the severance or production of oil, upon determination by the Oklahoma Tax Commission that the weighted average price of Oklahoma oil exceeds Twenty Dollars (\$20.00) per barrel calculated on an annual calendar year basis, and
- b. to the severance or production of gas, upon determination by the Oklahoma Tax Commission that the weighted average wellhead price of Oklahoma gas exceeds Two Dollars and fifty cents (\$2.50) per Million British Thermal Units ~~(MMBTU)~~ (1MM BTU) calculated on an annual calendar year basis.

(2) Notwithstanding the exemptions granted pursuant to subsections (e), (f), (g), (h) and (i) of this section, there shall continue to be levied upon the production of petroleum or other crude or mineral oil or natural gas or casinghead gas, as provided in subsection (b) of this section, from any wells provided for in subsection (e), (f), (g), (h) or (i) of this section, a tax equal to one percent (1%) of the gross value of the production of petroleum or other crude or mineral oil or natural gas or casinghead gas. The tax hereby levied shall be apportioned as follows:

- a. fifty percent (50%) of the sum collected shall be apportioned to the County Highway Fund as provided in paragraph 3 of Section 1004 of this title, and
- b. fifty percent (50%) of the sum collected shall be apportioned to the appropriate school district as provided in paragraph 4 of Section 1004 of this title.

Upon the expiration of the exemption granted pursuant to subsection (e), (f), (g), (h) or (i) of this section, the provisions of this paragraph shall have no force or effect.

(k) For all production exempt from gross production taxes pursuant to subsections (f), (g) and (h) of this section between July 1, 1994, and June 30, 1995, a refund against gross production taxes shall be issued to the well operator or a designee in the amount of such gross production taxes paid from the date of first sales through June 30, 1995, which shall not be claimed until after July 1, 1995. For all production exempt from gross production taxes pursuant to subsections (e), (f), (g), (h) and (i) of this section between July 1, 1995, and June 30, 1996, a refund against gross production taxes shall be issued to the well operator or a designee in the amount of such gross production taxes paid during such period, which shall not be claimed until after July 1, 1996. For all such production between July 1, 1996, and June 30, 1997, a refund against gross production taxes shall be issued to the well operator or a designee in the amount of such gross production taxes paid during such period, which shall not be claimed until after July 1, 1997.

(1) (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 the rules shall contain provisions for verification of any wells from which production may be qualified for the exemptions.

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

(3) Any person seeking an exemption shall:

- a. file an application for the exemption with the Oklahoma Tax Commission which, upon determination of qualification by the Oklahoma Corporation Commission, shall approve the application for an exemption, and
- b. provide a copy of said approved application to the remitter of the gross production tax.

(4) The Tax Commission may require any person requesting an exemption to furnish necessary financial and other information or records in order to determine and justify the refund.

(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. If a person who qualifies for the exemption elects to remit his or her own gross production tax during the exemption period, the first purchaser shall not be liable to withhold or remit the tax until the first day of the month following the receipt of written notification from the person who is qualified for such exemption stating that such exemption has expired and directing the first purchaser to resume tax remittance on his or her behalf.

(m) 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.

(n) The Tax Commission shall have the power to require any such person engaged in mining or the production or the purchase of

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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.

(o) 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 or her 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 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.

(p) 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.

(q) 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.

(r) 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.

(s) The exemption from ad valorem tax set forth in subsections (q) and (r) of this section shall continue to apply to all property from which production of oil, gas or oil and gas is

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exempt from gross production tax pursuant to subsection (d), (e), (f), (g), (h) or (i) of this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1001.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. "Economically at-risk oil lease" means any lease operated at a net loss or net profit which is less than the total gross production tax remitted for said lease during the previous tax reporting year. For the purpose of this section "lease" shall be defined as in Section 1001.2 of Title 68 of the Oklahoma Statutes.

B. When certified as such pursuant to the provisions of this section, an economically at-risk oil lease shall be eligible for an exemption equaling six-sevenths (6/7) of the gross production tax levied pursuant to subsection (b) of Section 1001 of Title 68 of the Oklahoma Statutes for production on said lease during the previous calendar year. The exemption shall not apply if it is determined by the Tax Commission that during the previous calendar year the weighted average price of Oklahoma oil exceeds Twenty-two Dollars (\$22.00) per barrel calculated on an annual calendar year basis. For all production exempt from gross production taxes pursuant to this section, a refund of gross production taxes paid in the previous calendar year shall be issued to the well operator or a designee. The refund shall not be claimed until after July 1 of the subsequent year.

C. Notwithstanding the exemption granted pursuant to this section, all revenue derived from the one-seventh (1/7) remaining of the tax levy imposed by Section 1001 of Title 68 of the Oklahoma Statutes as gross production tax after the exemption shall be apportioned as follows:

1. Fifty percent (50%) of the sum collected shall be apportioned to the County Highway Fund as provided in paragraph 3 of Section 1004 of Title 68 of the Oklahoma Statutes; and

2. Fifty percent (50%) of the sum collected shall be apportioned to the appropriate school district as provided in paragraph 4 of Section 1004 of Title 68 of the Oklahoma Statutes.

D. Any operator making application for an economically at-risk oil lease status under the provisions of this section shall submit documentation to the Tax Commission, as determined by the Tax Commission to be appropriate and necessary, including, but not limited to, the operator's federal income tax return for the previous year for said lease.

E. For the purposes of this section, determination of the economically at-risk oil lease status shall be made by subtracting from the gross revenue of that lease for the previous calendar year severance taxes, if any, royalty, operating expenses of the lease to include expendable workover and recompletion costs for the previous calendar year, and including overhead costs up to the maximum overhead percentage allowed by the Council of Petroleum Accountants Societies (COPAS) guidelines. For the purposes of this calculation, depreciation, depletion or intangible drilling costs shall not be included as lease operating expenses.

F. The Tax Commission shall have sole authority to determine if an oil lease qualifies for certification as an economically at-risk lease and shall make the determination within sixty (60) days after an application is filed for economically at-risk oil lease status. The Tax Commission shall promulgate rules governing the certification process.

G. Gross production tax exemptions under the provisions of this section shall be limited to production from calendar years 1996, 1997 and 1998.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1359, as last amended by Section 14 of Enrolled House Bill No. 2428 of the 2nd Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 1359. Exemptions - Manufacturers.

There are hereby specifically exempted from the tax levied by this article:

1. Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property

become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

2. Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by ~~Section 529 of~~ this title;

3. Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased or equipment built on site and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such. For the purposes of this paragraph, sales made to a contractor or subcontractor of persons who are determined to be qualified for incentive benefits pursuant to the Oklahoma Quality Jobs Program Act shall be considered sales made to such persons; provided, the sales were made after July 1, 1993, and before December 31, 1995, but not more than twelve (12) months before such person was determined to be qualified for incentive benefits and that the sales are otherwise qualified for the exemption provided by this paragraph and that the property which is the subject of the sales is utilized for the purpose of the contract by which the person obtained the services of the contractor or subcontractor;

4. Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers,

except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. Additionally, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

5. Sales of or transfers of title to or possession of any containers, after June 30, 1987, used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

6. Sale of tangible personal property when sold by the manufacturer to a person who transports it to a state other than Oklahoma for immediate and exclusive use in a state other than Oklahoma. Provided, no sales at a retail outlet shall qualify for the exemption under this paragraph;

7. Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department of Environmental Quality for the cleanup of a site of contamination. The term "hazardous waste" may include low-level radioactive waste for the purpose of this subsection;

8. Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual

relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility. Provided, however, where the total cost of construction material for a new or expanded facility exceeds Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this subsection exceeds the sum of Fifty Million Dollars (\$50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code and shall also mean building and land improvements used for the purpose of packing, repackaging, labeling or assembling for distribution to market, products at least seventy percent (70%) of which are made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. It shall not include a retail outlet unless said retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility. Up to ten percent (10%) of the square feet of a manufacturing facility building may be devoted to office space used to provide clerical support for the manufacturing operation.

Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

9. Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. This exemption begins with the equipment used in producing live programming or the electronic equipment directly behind the satellite receiving dish or antenna, and ends with the transmission of the broadcast signal from the broadcast antenna system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

10. Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

11. Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a manufacturer of tangible personal property or producer of

agricultural products. This exemption shall not apply to the sale of any packaging material which can be used more than once or which is ordinarily known as a returnable container;

12. Sales of any pattern used in the process of manufacturing iron, steel or other metal castings. The exemption provided by this subsection shall be applicable irrespective of ownership of the pattern provided that such pattern is used in the commercial production of metal castings; ~~and~~

13. Deposits or other charges made and which are subsequently refunded for returnable cartons, crates, pallets, and containers used to transport cement and cement products; and

14. Sales of tangible personal property purchased and used exclusively by or on behalf of an oil operator on leases certified as economically at-risk oil leases pursuant to Section 3 of this act. This exemption shall not apply unless such property is used directly in the process of repairing, recompleting or otherwise enhancing the production from these certified leases. The exemption provided for in this paragraph shall be limited to a period of twenty-four (24) months after such lease is certified. The exemption shall not apply if it is determined by the Tax Commission that the weighted average price of Oklahoma oil exceeds Twenty-two Dollars (\$22.00) per barrel calculated on an annual calendar year basis.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1359.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to administer the exemption for sales of tangible personal property purchased or used on leases certified as economically at-risk oil leases as provided by paragraph 14 of Section 1359 of this title, there shall be made a sales tax refund for state and local sales taxes paid by a qualified purchaser for the purchase of said items.

B. The Oklahoma Tax Commission shall transfer each month from sales tax collected the amount which the Commission estimates to be necessary to make the sales tax refund provided by this section to an account designated as the Commission determines.

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local sales taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified purchaser of tangible personal property purchased or used on leases certified as economically at-risk oil leases upon the principal amount of any refund made to such purchaser for purposes of administering the exemption provided by paragraph 14 of Section 1359 of this title, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-months Treasury Bill of the United States government as of the first working day of the month and such interest shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. The qualified purchaser of tangible personal property purchased or used on leases certified as economically at-risk oil leases shall file, within thirty-six (36) months of the date of purchase, with the Oklahoma Tax Commission, the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local sales tax paid;

2. Affidavit of each vendor that state and local sales tax billed to the purchaser has not been audited, rebated, or refunded to the purchaser but rather the sales tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and

3. All additional documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

E. Only sales of tangible personal property purchased or used on leases certified as economically at-risk oil leases made after

the effective date of this act shall be eligible for the refund established by this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1404.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to administer the exemption for sales of tangible personal property purchased or used on leases certified as economically at-risk oil leases as provided by paragraph 14 of Section 1359 of this title, as applicable to the use tax imposed by law, there shall be made a use tax refund for state and local taxes paid by a qualified purchaser for tangible personal property purchased or used on leases certified as economically at-risk oil leases from the account created by this section.

B. The Oklahoma Tax Commission shall transfer each month from use tax collected the amount which the Commission estimates to be necessary to make the use tax refund provided by this section to an account designated as the Commission determines.

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local use taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified purchaser of tangible personal property purchased or used on leases certified as economically at-risk oil leases upon the principal amount of any refund made to such purchaser for purposes of administering the exemption provided by paragraph 14 of Section 1359 of this title, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-

month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. The qualified purchaser of tangible personal property purchased or used on leases certified as economically at-risk oil leases shall file, within thirty-six (36) months of the date of purchase, with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local use tax billed;
2. Affidavit of each vendor that state and local use tax billed has not been audited, rebated, or refunded to the qualified facility but rather the use tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and
3. All additional documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

E. Only sales of tangible personal property purchased or used on leases certified as economically at-risk oil leases made after the effective date of this act shall be eligible for the refund established by this section.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 2353, as amended by Section 24, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1995, Section 2353), is amended to read as follows:

Section 2353. For the purpose of and when used in this article unless the context otherwise requires:

1. The term "Tax Commission" means the Oklahoma Tax Commission;
2. "Internal Revenue Code" means the United States Internal Revenue Code, as the same may be amended or adopted from time to time applicable to the taxable year; and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time applicable to the taxable year;

3. Any term used in this act shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a different meaning is clearly required. For all taxable periods covered by this act, the tax status and all elections of all taxpayers covered by this act shall be the same for all purposes material hereto as they are for federal income tax purposes except when this act specifically provides otherwise;

4. "Resident individual" means a natural person who is domiciled in this state, and any other natural person who spends in the aggregate more than seven (7) months of the taxable year within this state shall be presumed to be a resident for purposes of this act in absence of proof to the contrary. A natural person who resides less than seven (7) months of the taxable year within this state is presumed to be a "part-year resident individual" for purposes of the Oklahoma Income Tax Code, Section 2351 et seq. of this title, in absence of proof to the contrary. A "nonresident individual" means an individual other than a resident individual or a part-year resident individual.

For all tax years beginning after December 31, 1981, a nonresident individual, with respect to foreign earned income and deductions, shall include an individual who:

- a. during any period of twenty-four (24) consecutive months is out of the United States at least five hundred fifty (550) days,
- b. during such period referred to in subparagraph a is not present in this state for more than ninety (90) days during any taxable year,
- c. during any period of less than an entire taxable year, which period is contained within the period referred to in subparagraph a, is not present in this state for a number of days in excess of an amount which bears the same ratio to ninety (90) days as the number of days contained in the period of less than an entire taxable year bears to three hundred sixty-five (365), and

d. during such period referred to in subparagraph a does not maintain a permanent place of abode in this state at which the spouse of the individual, unless such spouse is legally separated, or minor children of the individual are present for more than one hundred eighty (180) days;

5. "Resident estate" means the estate of a decedent who at his death was domiciled in this state. "Nonresident estate" means an estate other than a resident estate;

6. "Resident trust" means (a) a trust, or a portion of a trust, consisting of property transferred by will of a decedent domiciled in this state at his death, or (b) a trust, or a portion of a trust, consisting of the property of a person domiciled in this state if such trust is not irrevocable and (c) a trust, or portion of a trust, consisting of property of a person domiciled in this state at the time such property was transferred to the trust if such trust or portion was then irrevocable or a person domiciled in this state at the time such trust or portion became irrevocable. A trust, or portion of a trust, is irrevocable if it is not subject to a power exercisable solely by the transferor of such property, at any time, to revest title in himself.

"Nonresident trust" means a trust other than a resident trust;

7. "Resident partner" means a partner who is a resident individual, a resident estate, a resident trust or a resident corporation. "Nonresident partner" means a partner other than a resident partner;

8. "Resident beneficiary" means a beneficiary of an estate or trust which beneficiary is a resident individual, a resident estate, a resident trust or a resident corporation. "Nonresident beneficiary" means a beneficiary other than a resident beneficiary;

9. "Resident corporation" means a corporation whose principal place of business is located within the State of Oklahoma. "Nonresident corporation" means any corporation other than a resident corporation;

10. "Taxable income" with respect to any taxpayer means the "taxable income", "life insurance company taxable income", "mutual insurance company taxable income", "(regulated) investment company taxable income", "real estate investment trust taxable income", and "cooperatives' taxable income" and any other "taxable income" as defined in the Internal Revenue Code as applies to such taxpayer or any other income of such taxpayer including, but not limited to, lump sum distributions as defined by the Internal Revenue Code of 1986, as amended; provided, in the case of income derived from oil and gas well production, any taxpayer, at his or her option, may deduct as an allowance for depletion, in lieu of other calculation of depletion based on the cost of the oil and gas deposit, twenty-two percent (22%) of the gross income derived from the properties during the taxable year, ~~but such allowance shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property;~~ if a depletion allowance is allowed as a deduction in arriving at the adjusted gross income in the case of an individual, or taxable income for corporations and trusts, or distributable income of partnerships by the Internal Revenue Service, the percentage depletion so calculated shall in no event be a duplication of depletion allowed on the Federal Income Tax Return;

11. "Adjusted gross income" means "adjusted gross income" as defined in the Internal Revenue Code;

12. "Oklahoma taxable income" means "taxable income" as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;

13. "Oklahoma adjusted gross income" means "adjusted gross income" as reported to the federal government (or as would have been reported by the taxpayer had a return been filed), or in the event of adjustments thereby by the federal government as finally

ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;

14. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision thereof; and

15. "Taxpayer" means any person subject to a tax imposed by this Article, or whose income is, in whole or in part, subject to a tax imposed by any provision of this article.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 2357.11, as last amended by Section 25, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1995, Section 2357.11), is amended to read as follows:

Section 2357.11 A. ~~For tax years beginning on or after January 1, 1993, there~~ There shall be allowed a credit against the tax imposed by Section 1803 or Section 2355 of this title for every corporation in this state furnishing water, heat, light or power to the state or its citizens, or for every corporation in this state burning coal to generate heat, light or power for use in manufacturing operations located in this state. ~~The,~~ as follows:

1. For tax years beginning on or after January 1, 1993, and ending on or before December 31, 1994, the credit shall be in the amount of One Dollar (\$1.00) per ton for each ton of Oklahoma-mined coal purchased by such corporation;

2. For tax years beginning on or after January 1, 1995, and ending on or before December 31, 1996, the credit shall be in the amount of Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal purchased by such corporation; and

3. For tax years beginning on or after January 1, 1997, and ending on or before December 31, 1999, the credit shall be in the amount of Five Dollars (\$5.00) per ton for each ton of Oklahoma-mined coal purchased by such corporation. ~~Except as otherwise provided by subsection C of this section, this credit shall be prorated equally against the corporation's estimated payments for the tax year in which the coal was purchased.~~

~~B. For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2004, there shall be allowed, in addition to the credit allowed pursuant to subsection A of this section, a credit against the tax imposed by Section 1803 or Section 2355 of this title for every corporation in this state furnishing water, heat, light or power to the state or its citizens, or for every corporation in this state burning coal to generate heat, light or power for use in manufacturing operations located in this state. The additional credit shall be in the amount of One Dollar (\$1.00) per ton for each ton of Oklahoma-mined coal purchased by such corporation.~~

~~C. Any credits allowed but not used in any tax year may be carried over in order to each of the five (5) years following the year of qualification.~~

C. Any credits, not to exceed Three Dollars (\$3.00) per ton for each ton of Oklahoma-mined coal purchased by a corporation specified in subsection A of this section, allowed after January 1, 1997, but not used, shall be freely transferable by written agreement to subsequent transferees at any time during the five (5) years following the year of qualification pursuant to the provisions of subsection A of this section. An eligible transferee shall be any taxpayer subject to the tax imposed by Section 1803 or Section 2355 of this title. The corporation originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring corporation and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of any tax credit claimed upon an income tax return but shall not promulgate any rules which unduly restrict or hinder the transfers of the tax credit.

D. The tax credit allowed by this section, upon election of the taxpayer, shall be treated and may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or Section 2355 of this title.

SECTION 8. A. There is hereby created a legislative task force to be known as the Energy Administration Reform Task Force. The Energy Administration Reform Task Force shall consist of thirty-three (33) members. Appointments to the Task Force shall be made by July 1, 1996. Members of the Task Force shall be as follows:

1. The Chairman of the Senate Committee on Energy, Environmental Resources and Regulatory Affairs;

2. The Chairman of the House Committee on Energy and Environment;

3. The Chairman of the Oklahoma Corporation Commission;

4. The Secretary of Energy;

5. The President Pro Tempore of the Senate shall appoint 15 members as follows:

a. three members of the Senate, to include at least one member of the minority party,

b. one member representing the purchasers and transporters of natural gas,

c. one member representing the mineral bar,

d. one member representing the citizens of the state,

e. one member representing retail petroleum marketers,

f. one member representing underground storage tank consultants or contractors,

g. two members representing royalty owners, one of whom shall be an attorney,

h. one member representing major oil companies, and

i. four members representing independent oil and gas producers, two of whom shall be primarily oil producers and one of whom shall be primarily a natural gas producer; and

6. The Speaker of the House of Representatives shall appoint 14 members as follows:

- a. three members of the House of Representatives, to include at least one member of the minority party,
- b. one member representing the purchasers and transporters of oil,
- c. one member representing the mineral bar,
- d. one member representing the environmental groups of the state,
- e. one member representing retail petroleum marketers,
- f. two members representing royalty owners, one of whom shall also represent the interests of landowners,
- g. one member representing major oil companies, and
- h. three members representing independent oil and gas producers, two of whom shall be primarily natural gas producers and one of whom shall be primarily an oil producer.

B. The Chairman of the Senate Committee on Energy, Environmental Resources and Regulatory Affairs shall serve as Chairman of the Energy Administration Reform Task Force. The Chairman of the House of Representatives Committee on Energy and Environment shall serve as Vice-Chairman. The Corporation Commission, the Liquefied Petroleum Gas Board, the Office of Public Affairs and all other agencies of the state are directed to cooperate fully with the Task Force and to provide such support and information as the Task Force or its Chairman shall request. Staffing for the Task Force shall be provided by the staffs of the Oklahoma State Senate and the Oklahoma House of Representatives. The Chairman in his discretion may arrange to hire additional outside staff to the extent that funds are available for such purpose.

C. The Energy Administration Reform Task Force shall meet as often as required to carry out its responsibilities. Meetings shall be called by the Chairman. In addition, the Chairman may establish such subcommittees as the Chairman shall deem appropriate to assist the Task Force in carrying out its responsibilities. Such subcommittees shall consist of Task Force members designated by the Chairman and such other persons as the

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Chairman feels may assist a subcommittee. Subcommittees shall have duties and responsibilities as set forth by the Chairman. All activities of the Task Force and its subcommittees shall be open to public participation.

D. The Task Force shall submit its report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before January 15, 1997. The purpose of the Task Force shall be to review Enrolled Senate Bill No. 793 of the 2nd Session of the 45th Oklahoma Legislature and issues related to the reform of energy administration and regulation activities of the state and the consolidation of energy related functions within the independent Department of Energy. Issues to be specifically addressed by the Task Force shall include, but not be limited to, maintaining exclusive regulatory jurisdiction over the oil and gas industry, streamlining the hearing and permitting process while maintaining the existing judicial review process, providing adequate and stable funding sources for the regulation of the energy industry, improving the operation and efficiency of the regulation of the energy industry, meeting the needs of the energy industry as it evolves into the 21st Century and providing strong, responsive leadership for the energy industry at the state level of government. The report of the Task Force shall provide specific recommendations for implementation by the Legislature and shall include specific legislative proposals to carry out its recommendations.

E. The Task Force shall cease to exist as of May 31, 1997.

SECTION 9. NONCODIFICATION The provisions of Section 8 of this act shall not be codified in the Oklahoma Statutes.

SECTION 10. This act shall become effective July 1, 1996.

SECTION 11. 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.

