ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2411

By: Adkins and DePue of the House

and

Gumm of the Senate

(revenue and taxation - amending 68 O.S., Sections 223 and 1001 - gross production taxes - exemptions - effective date - emergency)

AUTHORS: Add the following Senate Coauthors: Crutchfield and Bass

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause and entire bill and insert

"An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 223, 1001, as last amended by Section 1, Chapter 297, O.S.L. 2005 and 1009, as amended by Section 2, Chapter 444, O.S.L. 2004 (68 O.S. Supp. 2005, Sections 1001 and 1009), which relate to assessments and gross production taxes; clarifying assessment procedures under specified circumstances; extending expiration date for certain gross production tax exemptions; modifying procedure by which price of oil and gas is determined when sale is between related entities; establishing meaning of related entities; providing for construction; 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. 2001, Section 223, is amended to read as follows:

Section 223. A. No assessment of any tax levied under the provisions of any state tax law except as provided in this section, shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was

filed, whichever period expires the later, and no proceedings by tax warrant or in court without the previous assessment for the collection of such tax shall be begun after the expiration of such period. No assessment shall be required if a report or return, signed by the taxpayer, was filed and the liability evidenced by the report or return has not been paid. If the assessment has been made within the limitation period set forth in this subsection, the tax may be collected by tax warrant or court proceeding, but only if the tax warrant is issued or the proceeding begun within ten (10) years after the assessment of the tax has become final.

B. Where before the expiration of the time prescribed in subsection A of this section for the assessment of the tax, both the Tax Commission and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon, and the period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In those instances where the time to file a claim for a refund has not expired at the date the extension agreement is entered into, the entering into such an agreement shall automatically extend the period in which a refund may be allowed or a claim for a refund may be filed to the final date of such agreement.

C. In the case of ~~either~~ a false or ~~a~~ fraudulent report or return, with intent to evade tax, ~~or failure to file a report or return, as required under any state tax law, the Tax Commission is authorized to compute, determine and assess the estimated amount of tax due from any information in its possession~~ the tax may be assessed, or a proceeding in court ~~may be begun~~ for ~~the~~ collection of such tax may be begun without assessment, at any time. The term "false or fraudulent" as used in this subsection shall have the same meaning as when used in Section 6501 of the Internal Revenue Code.

D. In the case of a willful attempt in any manner to defeat or evade tax imposed by this title, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

E. In the case of a failure to file a report or return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1001, as last amended by Section 1, Chapter 297, O.S.L. 2005 (68 O.S. Supp. 2005, 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. 1. Effective January 1, 1999, through June 30, 2007, except as otherwise exempted pursuant to subsections D, E, F, G, H, I and J of this section, there is hereby levied upon the production of oil a tax as set forth in this subsection on 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. If the average price of Oklahoma oil as determined by the Oklahoma Tax Commission pursuant to the provisions of paragraph 3 of this subsection equals or exceeds Seventeen Dollars ($17.00) per barrel, then the tax shall be seven percent (7%). If the average price of Oklahoma oil as determined by the Tax Commission pursuant to paragraph 3 of this subsection is less than Seventeen Dollars ($17.00) but is equal to or exceeds Fourteen Dollars ($14.00) per barrel, then the tax shall be four percent (4%). If the average price of Oklahoma oil as determined by the Tax Commission pursuant to paragraph 3 of this subsection is less than Fourteen Dollars ($14.00) per barrel, then the tax shall be one percent (1%).

2. Effective July 1, 2007, except as otherwise exempted pursuant to subsections D, E, F, G, H, I and J of this section, there shall be 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.

3. Effective January 1, 1999, through June 30, 2007, the average price of Oklahoma oil for purposes of this section shall be computed by the Tax Commission based on the total value of oil reported each month that is subject to the tax levied under this section. At the first of each month, the Tax Commission shall compute the average price paid per barrel of oil reported on the monthly tax report for the most current production month on file. The average price as computed by the Tax Commission shall be used to determine the applicable tax rate for the third month following production. Effective July 1, 2002, through June 30, 2007, the average price of gas for purposes of this section shall be computed by the Tax Commission based on the total value of gas reported each month that is subject to the tax levied by this section. At the first of each month, the Tax Commission shall compute the average price paid per thousand cubic feet (mcf) of gas as reported on the monthly tax report for the most current production month on file. The average price as computed by the Tax Commission shall be used to determine the applicable tax rate for the third month following production.

4. Effective July 1, 2002, through June 30, 2007, except as otherwise exempted pursuant to subsections D, E, F, G, H, I and J of this section, there is hereby levied upon the production of gas a tax as set forth in this subsection on the gross value of the production of gas. If the average price of gas as determined by the Tax Commission pursuant to the provisions of paragraph 3 of this

subsection equals or exceeds Two Dollars and ten cents ($2.10) per thousand cubic feet (mcf), then the tax shall be seven percent (7%). If the average price of gas as determined by the Tax Commission pursuant to the provisions of paragraph 3 of this subsection is less than Two Dollars and ten cents ($2.10) per thousand cubic feet (mcf) but is equal to or exceeds One Dollar and seventy-five cents ($1.75) per thousand cubic feet (mcf), then the tax shall be four percent (4%). If the average price of gas as determined by the Tax Commission pursuant to the provisions of paragraph 3 of this subsection is less than One Dollar and seventy-five cents ($1.75) per thousand cubic feet (mcf), then the tax shall be one percent (1%).

5. Effective July 1, 2007, except as otherwise exempted pursuant to subsections D, E, F, G, H, I and J of this section, there shall be levied a tax equal to seven percent (7%) of the gross value of the production of gas.

C. The taxes hereby levied shall also attach to, and are levied on, what is known as the royalty interest, and the amount of such tax shall be a lien on such interest.

D. 1. Except as otherwise provided in this section, 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 Tax Commission for projects qualifying during such period.

2. Except as otherwise provided in this section, for secondary recovery projects approved and having a project beginning date on or after July 1, 1993, and before July 1, 2000, 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. Except as otherwise provided in this section, for secondary recovery ~~properties~~ projects approved or having an initial project beginning date on or after July 1, 2000, and before ~~July 1, 2006~~ July 1, 2009, any incremental production attributable to the working interest owners which results from such secondary recovery ~~property~~ projects shall be exempt from the gross production tax levied pursuant to this section for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, whichever occurs first.

4. Except as otherwise provided in this section, for tertiary recovery projects approved and having a project beginning date on or after July 1, 1993, and before ~~July 1, 2006~~ July 1, 2009, 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.

5. 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.

6. 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, and

b. "project beginning date" means the date on which the injection of liquids, gases, or other matter begins on an enhanced recovery project.

7. The 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 6 of this subsection, and the establishment of appropriate payback indicators as approved by the Tax Commission for the determination of project payback for each of the exemptions authorized by this subsection.

8. For new secondary recovery projects and tertiary recovery projects approved by the Corporation Commission on or after July 1, 1993, and before ~~July 1, 2006~~ July 1, 2009, such approval shall constitute qualification for an exemption.

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

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

11. 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. Except as otherwise provided in this section, the production of oil, gas or oil and gas from a horizontally drilled well producing prior to July 1, 2002, 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. Except as

otherwise provided in this section, the production of oil, gas or oil and gas from a horizontally drilled well producing prior to ~~July 1, 2006~~ July 1, 2009, which production commenced after July 1, 2002, 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 forty-eight (48) 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 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 the formation.

F. 1. Except as otherwise provided by 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 work to reestablish or enhance production began on or after July 1, 1994, and for which production is reestablished prior

to ~~July 1, 2006~~ July 1, 2009. For all such production, a refund against gross production taxes shall be issued as provided in subsection L of this section.

2. As used in this subsection, for wells for which production is reestablished prior to July 1, 1997, "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. As used in this subsection, for wells for which production is reestablished on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, "inactive well" means any well that has not produced oil, gas or oil and gas for a period of not less than one (1) year as evidenced by the appropriate forms on file with the Corporation Commission reflecting the well's status. Wells which experience mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including but not limited to, casing leaks, collapse of casing or loss of equipment in a wellbore, or any similar event which causes cessation of production, shall also be considered inactive wells.

G. 1. Except as otherwise provided by 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 first sale after 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 on or after July 1, 1994, and prior to ~~July 1, 2006~~ July 1, 2009. For all such production, a refund against gross production taxes shall be issued as provided in subsection L of this section.

2. As used in this subsection:

a. (1) for production enhancement projects having a project beginning date prior to July 1, 1997, "production enhancement project" means any workover as defined in this paragraph, recompletion as defined in this paragraph, or fracturing of a producing well, and

(2) for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, "production enhancement project" means any workover as defined in this paragraph, recompletion as defined in this paragraph, reentry of plugged and abandoned wellbores, or addition of a well or field compression,

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 commencement of the project or the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. 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 commencement of the project based on the production history of the well. 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, the base production shall be the average monthly production for the months during that period that the well or wells produced,

d. (1) for production enhancement projects having a project beginning date prior to July 1, 1997, "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 such existing oil or gas well, and

(2) for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, "recompletion" means any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation, 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 the existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, "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. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, "workover" includes, but is not limited to:

(1) acidizing,

(2) reperforating,

(3) fracture treating,

(4) sand/paraffin/scale removal or other wellbore cleanouts,

(5) casing repair,

(6) squeeze cementing,

(7) installation of compression on a well or group of wells or initial installation of artificial lifts on gas wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings,

(8) downsizing existing tubing to reduce well loading,

(9) downhole commingling,

(10) bacteria treatments,

(11) upgrading the size of pumping unit equipment,

(12) setting bridge plugs to isolate water production zones, or

(13) 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. For purposes of this subsection, "depth" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

2. Except as otherwise provided in subsection K of this section:

a. the production of oil, gas or oil and gas from wells spudded between July 1, 1997, and July 1, 2005, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater and wells spudded between July 1, 2005, and ~~July 1, 2006~~ July 1, 2009, and drilled to a depth between twelve thousand five hundred (12,500) feet and fourteen thousand nine hundred ninety-nine (14,999) feet 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;

b. the production of oil, gas or oil and gas from wells spudded between July 1, 2002, and July 1, 2005, and drilled to a depth of fifteen thousand (15,000) feet or greater and wells spudded between July 1, 2005, and July 1, 2008, and drilled to a depth between fifteen thousand (15,000) feet and seventeen thousand four hundred ninety-nine (17,499) feet 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 forty-eight (48) months; and

c. the production of oil, gas or oil and gas from wells spudded between July 1, 2002, and July 1, 2008, and drilled to a depth of seventeen thousand five hundred (17,500) 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 sixty (60) months.

3. Except as otherwise provided for in this subsection, for all such wells spudded, a refund against gross production taxes shall be issued as provided in subsection L of this section.

4. For all wells spudded after July 1, 2005, and which are exempt from gross production tax pursuant to subparagraphs b and c of paragraph 2 of this subsection, the amount of refunds paid by the Tax Commission shall be limited as follows:

a. for the fiscal year ending June 30, 2006, no claims for refunds shall be paid,

b. for the fiscal year ending June 30, 2007, the total amount of refunds paid shall be equal to or less than Seventeen Million Dollars ($17,000,000.00),

c. for the fiscal year ending June 30, 2008, the total amount of refunds paid shall be equal to or less than Twenty Million Dollars ($20,000,000.00), and

d. for the fiscal year ending June 30, 2009, and any fiscal year thereafter, the total amount of refunds paid each fiscal year shall be equal to or less than Twenty-five Million Dollars ($25,000,000.00).

5. Except as otherwise provided for in paragraph 7 of this subsection and paragraph 2 of subsection L of this section, for the fiscal year ending June 30, 2006, and each fiscal year thereafter, in order to qualify for a refund of gross production tax on wells which are exempt pursuant to subparagraphs b and c of paragraph 2 of this subsection, claims for refunds shall be filed within six (6) months after the first day of the fiscal year in which the refund is first available pursuant to subsection L of this section. When processing applications for qualification for an exemption as provided for in paragraph 2 of subsection M of this section, the Corporation Commission shall give priority to those applications filed for an exemption pursuant to subparagraphs b and c of

paragraph 2 of this subsection in order for applicants to comply with the six-month filing period as provided for in this paragraph.

6. If the total amount of claims for refunds made during any fiscal year are greater than the total amount of refunds allowed for that fiscal year as provided for in paragraph 4 of this subsection, the Tax Commission shall proportionately reduce the amount of each claim so that the total amount of claims equal the total amount allowed for refunds.

7. If the total amount of claims for a refund filed within the six-month filing period for a fiscal year is less than the total amount of refunds allowed for that fiscal year as provided for in paragraph 4 of this subsection, the Tax Commission shall pay the claims that have been filed. Then for any remaining funds, the Tax Commission shall extend the claims-filing period for three (3) months and shall pay any claims filed during the extended filing period up to the total amount of remaining funds. If the amount of claims for refunds filed during the extended filing period is greater than the total amount of remaining funds, the Tax Commission shall proportionately reduce the amount of each claim as provided for in paragraph 6 of this subsection.

I. 1. Except as otherwise provided by this section, the production of oil, gas or oil and gas from wells spudded or reentered between July 1, 1995, and ~~July 1, 2006~~ July 1, 2009, 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 reentered, a refund against gross production taxes shall be issued as provided in subsection L of this section. As used in this subsection, "new discovery" means production of oil, gas or oil and gas from:

a. (1) for wells spudded or reentered on or after July 1, 1997, 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, and

(2) for wells spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, 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 interval of the same formation,

b. (1) for wells spudded or reentered prior to July 1, 1997, 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, and

(2) for wells spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, a well that discovers crude oil in paying quantities beneath current production in a deeper producing interval that is more than one (1) mile from the nearest oil well producing from the same deeper producing interval,

c. (1) for wells spudded or reentered prior to July 1, 1997, 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, and

(2) for wells spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, 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 interval, or

d. (1) for wells spudded or reentered prior to July 1, 1997, 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, and

(2) for wells spudded or reentered on and after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, a well that discovers natural gas in paying quantities beneath current production in a deeper producing interval that is more than two (2) miles from the nearest gas well producing from the same deeper producing interval.

2. The 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. Except as otherwise provided by this section, the production of oil, gas or oil and gas from any well, drilling of which is commenced after July 1, 2000, and prior to ~~July 1, 2006~~ July 1, 2009, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, shall be exempt from the gross production tax levied pursuant to subsection B of this section from the date of first sales as follows:

1. If the three-dimensional seismic shoot is shot prior to July 1, 2000, for a period of eighteen (18) months; and

2. If the three-dimensional seismic shoot is shot on or after July 1, 2000, for a period of twenty-eight (28) months.

For all such production, a refund against gross production taxes shall be issued as provided in subsection L of this section.

K. 1. The exemptions provided for in subsections F, G, I and J of this section, the exemption provided for in subparagraph a of paragraph 2 of subsection H of this section, and the exemptions provided for in subparagraphs b and c of paragraph 2 of subsection H of this section for production from wells spudded before July 1, 2005, shall not apply:

a. to the severance or production of oil, upon determination by the Tax Commission that the weighted average price of Oklahoma oil exceeds Thirty Dollars ($30.00) per barrel calculated on an annual calendar year basis,

b. to the severance or production of oil or gas upon which gross production taxes are paid at a rate of one percent (1%) pursuant to the provisions of subsection B of this section, and

c. to the severance or production of gas, upon determination by the Tax Commission that the weighted average wellhead price of Oklahoma gas exceeds Five Dollars ($5.00) per thousand cubic feet (mcf) calculated on an annual calendar year basis.

2. Notwithstanding the exemptions granted pursuant to subsections E, F, G, H, I and J 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, I or J 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 subparagraph b of paragraph 1 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 subparagraph c of paragraph 1 of Section 1004 of this title.

Upon the expiration of the exemption granted pursuant to subsection E, F, G, H, I or J of this section, the provisions of this paragraph shall have no force or effect.

L. For all oil and gas production exempt from gross production taxes pursuant to subsections E, F, G, H, I and J of this section during a given fiscal year, a refund of 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, subject to the following provisions:

1. A refund shall not be claimed until after the end of such fiscal year. As used in this subsection, a fiscal year shall be deemed to begin on July 1 of one calendar year and shall end on June 30 of the subsequent calendar year;

2. No claims for refunds pursuant to the provisions of this subsection shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is first available;

3. No claims for refunds pursuant to the provisions of this subsection shall be filed by or on behalf of persons other than the operator or a working interest owner of record at the time of production;

4. No refunds shall be claimed or paid pursuant to the provisions of this subsection for oil or gas production upon which a

tax is paid at a rate of one percent (1%) as specified in subsection B of this section; and

5. No refund shall be paid unless the person making the claim for refund demonstrates by affidavit or other means prescribed by the Tax Commission that an amount equal to or greater than the amount of the refund has been invested in the exploration for or production of crude oil or natural gas in this state by such person not more than three (3) years prior to the date of the claim. No amount of investment used to qualify for a refund pursuant to the provisions of this paragraph may be used to qualify for another refund pursuant to the provisions of this paragraph.

If there are insufficient funds collected from the production of oil to satisfy the refunds claimed for oil production pursuant to subsection E, F, G, H, I or J of this section, the Tax Commission shall pay the balance of the refund claims out of the gross production taxes collected from the production of gas.

M. 1. The Corporation Commission and the Tax Commission shall promulgate joint rules for the qualification for the exemptions provided for in subsections E, F, G, H, I and J 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 Corporation Commission which, upon finding that the well meets the requirements of subsection E, F, G, H, I or J 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 Tax Commission which, upon determination of qualification by the Corporation Commission, shall approve the application for an exemption, and

b. provide a copy of the 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, I or J 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.

N. 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, I or J 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, I or J 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, I or J of this section has expired.

O. 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 the 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.

P. 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.

Q. 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 the tax.

R. 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 the 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.

S. 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.

T. The exemption from ad valorem tax set forth in subsections R and S 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 subsection D, E, F, G, H, I or J of this section.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 1009, as amended by Section 2, Chapter 444, O.S.L. 2004 (68 O.S. Supp. 2005, Section 1009), is amended to read as follows:

Section 1009. A. The gross production tax on asphalt and on ores bearing lead, zinc, jack, gold, silver or copper, and on petroleum oil, tank bottoms, pit oil, and liquid hydrocarbons from which petroleum oil is extracted, and on gas shall be paid on a monthly basis in accordance with this article.

B. The gross production tax shall become due on the first day of each calendar month on all lead, zinc, jack, gold, silver or copper, petroleum oil, tank bottoms, pit oil, and liquid hydrocarbons from which petroleum oil is extracted, natural gas or casinghead gas produced in and saved during the preceding monthly period, and, if the tax is not paid on or before the twenty-fifth day of the second calendar month following the month of production, the tax shall become delinquent and shall be collected in the manner provided by law for the collection of delinquent gross production taxes. The provisions of this subsection shall apply to payment of gross production taxes irrespective of any other statute relating thereto.

C. On all petroleum oil extracted from tank bottoms, pit oil, or liquid hydrocarbons, the gross production tax shall be paid by the operator of the reclaiming plant, unless the tax levied by this article has already been paid thereon.

D. On oil and gas sold at the time of production, the gross production tax shall be paid by the purchaser of such products, and such purchaser shall, and is hereby authorized to deduct in making settlements with the producer and/or royalty owner, the amount of tax so paid. In the event oil is not sold at the time of production

but is retained by the producer, the tax on such oil not so sold shall be paid by the producer for himself including the tax due on royalty oil not sold; provided, that in settlement with the royalty owner such producer shall have the right to deduct the amount of such tax so paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time such tax becomes due with the amount of the tax paid. The gross production tax upon asphalt, or on ores bearing lead, zinc, jack, gold, silver or copper shall be paid by the producer for himself, including the royalty interest; provided, that in settlement with the royalty owner such producer shall have the right to deduct the amount of such tax so paid on royalty asphalt, or on ores bearing lead, zinc, jack, gold, silver or copper, or to deduct therefrom royalty asphalt, or ores bearing lead, zinc, jack, gold, silver or copper, equivalent in value at the time such tax became due, to the amount of tax paid.

E. 1. Producers, either as operators of producing wells or as nonoperating working interest owners who take gas in kind at the wellhead at the time of production, may elect to report and pay the gross production tax on such gas in accordance with the provisions of this section, if the first sale of such gas by the producer is to a final consumer or user of the gas. This election shall not be available to a producer if the first sale of such gas is to a purchaser who is approved and bonded to remit gross production taxes or unless prior approval of the Oklahoma Tax Commission is obtained by the producer. This election shall not be controlled by any contractual provisions between the producer and the purchaser. This election shall be made only by the producer upon forms prescribed therefor.

Upon exercise of the election to report and pay the gross production tax by a producer, the purchaser of such gas shall not be liable for the gross production tax and shall not be required to obtain a purchaser’s reporting number for such gas.

2. Gas when produced and utilized in any manner, except when used in the operation of the lease or premises in the production of oil or gas, or for repressuring, shall be considered for the purpose of this article, as to the amount utilized, as gas actually produced and saved.

F. 1. In case oil or gas is sold under circumstances where the sale price does not represent the cash price prevailing for oil or gas of like kind, character or quality in the field from which such product is produced, the Tax Commission may require the said tax to be paid upon the basis of the prevailing price then being paid at the time of production for sales in said field for oil or gas of like kind, quality and character and on no other basis.

2. In the case where the sale of oil or gas is between related entities, the taxpayer shall have the burden of proving with evidence of arm's-length sales between unrelated parties that the sales price represents the cash price prevailing for oil or gas of like kind, character or quality for sales in the field from which such product is produced. In the absence of such proof, the prevailing price shall be presumed to be the average price of oil or gas produced for sales in the county from which the product is produced, as determined by the Tax Commission from monthly tax reports filed pursuant to Section 1010 of this title. In determining the average price, the Tax Commission shall not include the sales of oil or gas under review and shall not include prices from other sales that have been previously adjusted by the Tax Commission pursuant to this subsection.

3. For the purposes of this subsection, an entity is related to another entity if:

a. the two entities have significant common purposes and substantial common membership,

b. the two entities have direct or indirect substantial common direction or control, or

c. either entity owns, directly or through one or more entities, a fifty percent (50%) or greater interest in the capital or profits of the other entity.

G. Pursuant to the provisions of a gas purchase contract or agreement, if the first purchaser makes payments to the producer as a result of the failure or refusal of said purchaser to take gas, said payments, for purposes of this article, are hereby deemed to be part of the gross value of gas taken according to said contract or agreement. The gross production tax shall be calculated upon the gross value, including said payments, in accordance with the provisions of this article. Gas on which the gross production tax has been paid in this manner when taken by said purchaser shall be reported as gas on which said tax has been paid. If said gas, which corresponds to such payments, is not taken but payments therefor are retained by the producer, then said payments are hereby deemed to be a premium on gas which was taken under said contract or agreement.

SECTION 4. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Section 1 of this act is hereby declared to be a clarification of the law as it existed prior to the effective date of this act and shall not be considered or construed to be a change of the law as it existed prior to the effective date of this act.

SECTION 5. This act shall become effective July 1, 2006.

SECTION 6. 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.”

Passed the Senate the 26th day of April, 2006.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

_____
Presiding Officer of the House
of Representatives