ENGROSSED HOUSE
BILL NO. 1710

By: Calvey, Adkins, Dank, Rousselot and Terrill of the House

and

Gumm of the Senate

( revenue and taxation - amending 68 O.S., Sections 223, 1009, 1010 and 1022 - gross production tax - effective date -

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 willfully false or a fraudulent report or return, 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, or a proceeding in court may be begun for the collection of such tax without assessment at any time.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1009, as amended by Section 2, Chapter 444, O.S.L. 2004 (68 O.S. Supp. 2004, 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 and place 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 and place 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 and place 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. In case oil or gas is sold under circumstances where the sale price does not represent the wellhead 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 and place of production in said field for oil or gas of like kind, quality and character.

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 3. AMENDATORY 68 O.S. 2001, Section 1010, as amended by Section 3, Chapter 444, O.S.L. 2004 (68 O.S. Supp. 2004, Section 1010), is amended to read as follows:

Section 1010. A. The tax provided for in Section 1001 et seq. of this title shall be paid to the Oklahoma Tax Commission.

B. Except as otherwise provided in subsection G of this section, every person responsible for paying or remitting the tax levied by Section 1001 et seq. of this title on the production from any lease shall file with the Tax Commission a monthly report on each lease, regardless of sales or purchases of production from the lease during the report period, under oath, on forms prescribed by the Tax Commission, giving, with other information required, the following:

1. The Tax Commission assigned production unit number, subnumber and merge number, or, with the consent of the Tax Commission, the full description of the property by lease name, subdivision of quarter section, section, township, and range, from which the oil or gas was produced, or both, as may be required by the Tax Commission;

2. The Tax Commission assigned company reporting numbers of the producer and purchaser, or with the consent of the Tax Commission, the company name;

3. The gross amount of asphalt, ores bearing lead, zinc, jack, gold, silver or copper, oil or gas produced or purchased, or, in the event of no production or no sale or purchase during the report period, zero gross amount shall be reported;

4. The kind of mineral, oil, gas, or casinghead gas produced or purchased;

5. The total value of the mineral oil, gas, or casinghead gas, at the time and place of production, including any and all premiums paid for the sale thereof, at the price paid, if purchased at the time and place of production;

6. If requested by the Tax Commission, the prevailing market price of oil not sold at the time of production; and

7. The amount of royalty payable on the production from the lease, if the royalty is claimed to be exempt from taxation by law, and the facts on which such claim of exemption is based and such other information pertaining to the claim as the Tax Commission may require.

Each report required by the provisions of this section shall be filed on separate forms as to product and county.

C. No person shall engage in the mining or production within this state of asphalt or ores bearing lead, zinc, jack, gold, silver, or copper, oil or gas, prior to obtaining from the Tax Commission a Tax Commission assigned producer reporting number and a Tax Commission assigned production unit number, subnumber and merge number for each producing lease. No person shall engage in the purchase of asphalt, ores bearing lead, zinc, jack, gold, silver or copper, oil or gas from a producing lease prior to obtaining from the Tax Commission a Tax Commission assigned purchaser reporting number and the Tax Commission assigned production unit number, subnumber and merge number, of the lease from which the production is to be purchased.

1. Every producer and purchaser shall make application, upon forms prescribed by the Tax Commission, for a Tax Commission assigned producer or purchaser reporting number prior to producing or purchasing production. Every producer shall obtain, by making application upon forms prescribed by the Tax Commission, a Tax Commission assigned production unit number, subnumber and merge number for each lease from which lease production will be sold or disposed before disposing of production from any lease in the state.

Provided, however, the Tax Commission shall not approve any application for a Tax Commission assigned producer or purchaser reporting number without proper confirmation that the applicant has posted the requisite surety documents with the Corporation Commission pursuant to Section 318.1 of Title 52 of the Oklahoma Statutes.

2. Every producer or purchaser shall notify the Tax Commission within thirty (30) days of any changes of any producing lease in the state as may be required by the Tax Commission. Provided, the Tax Commission may relieve producers and purchasers of their duty to file the notification required by this paragraph if the Tax Commission determines that the notification is not necessary.

3. Gross production tax reports from either the purchaser or producer shall become due on the first day of each calendar month on all products subject to the tax levied by Section 1001 et seq. of this title produced in and saved during the preceding monthly period. If such reports are not received by the Tax Commission on or before the twenty-fifth day of the second calendar month following the month of production, the reports shall become delinquent. Any requested or required amended report or any requested information submitted in response to written demand for information which is not received by the Tax Commission on or before thirty (30) days after the mailing of the request or demand by the Tax Commission or any of its employees shall be delinquent.

D. Every person required to file such forms or reports or who has been requested to file an amended report to provide information by written demand, or who has purchased oil or gas from a lease prior to being authorized by the Tax Commission to purchase production from such lease, will be subject to and may be assessed the following penalties for each delinquency:

1. Five Dollars ($5.00) per day for each Tax Commission assigned production unit number or subnumber or merge number or product code, upon which a form, report, amended report, or for which requested information in response to written demand is delinquent and for each day from the date a purchaser buys production from a lease from which it is not authorized to purchase to the date the Tax Commission approves the purchaser to buy from such lease; provided, such penalty shall not be assessed for an amount in excess of One Thousand Five Hundred Dollars ($1,500.00). The penalties may be waived by the Tax Commission or its designee for good cause shown; and

2. If within twelve (12) months after a previous assessment of penalties as provided for by this section a subsequent delinquency occurs, penalties may be assessed at the rate of Ten Dollars ($10.00) per day for each Tax Commission assigned production unit number or subnumber or merge number, or product code; provided such penalty shall not be assessed for an amount in excess of One Thousand Five Hundred Dollars ($1,500.00). The penalty thereon may be waived, in whole or in part, by the Tax Commission, for good cause shown.

The penalties prescribed herein shall be in addition to other penalties assessable by the Tax Commission pursuant to the laws of this state. The penalties prescribed by this section may be collected and shall be apportioned to the General Revenue Fund.

E. Gross production tax forms reports, amended reports, or requested information in response to written demands which are

received by the Tax Commission on or after the time fixed for delinquency, but which were mailed prior to the time fixed for delinquency, shall be deemed to have been received by the Tax Commission before becoming delinquent. Postmark or registry or certified receipt showing deposit in the U.S. mails shall be conclusive evidence of the date of mailing. Provided all remittances due under such reports or amended reports must be received by the Tax Commission on or before the date specified by law regardless of when mailed.

F. In the event a person required to remit the tax levied by the provisions of Section 1001 et seq. of this title becomes delinquent in reporting or remitting the tax, or upon a determination by the Tax Commission that the state may lose tax revenues due to the difficulty of collecting same, the Tax Commission may require any person required to remit the tax to furnish a sufficient cash deposit, bond, or other security in an amount as will protect the tax revenues of this state.

G. In lieu of monthly reporting, a royalty owner taking gas in kind for the royalty owner's own consumption who is responsible for remitting the tax levied by Section 1001 et seq. of this title may file semiannual reports and remit taxes due thereunder to the Tax Commission on or before the first day of January and July of each year for the preceding six-month period. If not received on or before the last day of such month, the report and tax shall be delinquent.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 1022, is amended to read as follows:

Section 1022. When an increase in the gross value of petroleum or other crude or mineral oil, natural gas, casinghead gas or liquids extracted therefrom sold by a producer is subject to the approval of an agency of the United States of America or a court of competent jurisdiction adjudicating an appeal from said agency, the

gross production tax provided for in this article on any such proposed increase in gross value when collected by a producer shall be separately reported and conditionally paid, subject to and pending the final outcome of any proceeding by such agency or court relating to a determination of the amount of such increase in gross value; provided, however that nothing herein shall be construed to impose any duty upon a producer to collect any proposed increase in gross value; and provided further, that "gross value" or "increase in gross value" as used in this section shall mean the amount a producer is collecting for the wellhead sale of any petroleum or other crude or mineral oil, natural gas, casinghead gas or liquids extracted therefrom sold which is subject to the jurisdiction of such agency or court. All monies so conditionally collected by the Tax Commission under the provisions of this section shall be accounted for in the following manner:

~~(a)~~ 1. At least once each month the Tax Commission shall deposit such collections in a special account in a bank or banks approved as a depository for monies of the State of Oklahoma. Each bank in which such monies are deposited shall credit the account at the end of each calendar quarter with the highest rate of interest then being paid by such bank for deposited monies of the State of Oklahoma, calculated on the total daily average balance on deposit during such calendar quarter.

~~(b)~~ 2. When a producer or purchaser gives written notice to the Tax Commission that such agency or court has, by final order, disapproved, in whole or in part, the proposed increase in gross value, then the Tax Commission shall, within thirty (30) days after receipt of such notice, withdraw from the bank holding such monies an amount of money equal to the tax conditionally paid on the proposed increase in gross value which has been disapproved, together with the interest earned on such money, and remit it to the

person, firm, association or corporation which conditionally paid such tax.

~~(c)~~ 3. When such agency or court approves, by final order, the proposed increase in gross value, in whole or in part, the producer or purchaser involved having paid the tax conditionally shall immediately give written notice of such approval to the Tax Commission and it shall promptly withdraw from the bank holding such monies an amount of money equal to said tax conditionally paid on the proposed increase in gross value which has been approved, together with the interest earned on such money, and shall distribute the same as provided by the law then in force for the distribution of gross production taxes.

SECTION 5. This act shall become effective July 1, 2005.

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 House of Representatives the 1st day of March, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2005.

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Presiding Officer of the Senate