EHB 3304

**THE STATE SENATE**

**Wednesday, March 24, 2010**

# ENGROSSED

# House Bill No. 3304

## As Amended

ENGROSSED HOUSE BILL NO. 3304 - By: Thompson, Duncan and Walker of the House and Bingman of the Senate.

**[ revenue and taxation - oil and gas gross production taxes - effective date ]**

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1001, as last amended by Section 1, Chapter 312, O.S.L. 2009 (68 O.S. Supp. 2009, 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, ~~2010~~ 2013, 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, ~~2010~~ <u>2013</u>, 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, ~~2010~~ <u>2013</u>, 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, ~~2010~~ 2013, 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, ~~2010~~ 2013, 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, ~~2010~~ 2013, 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 projects approved or having an initial project beginning date on or after July 1, 2000, and before July 1, 2012, 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 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, 2012, 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, 2012, 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, 2012, 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, 2012. 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, 2012, “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, 2012. 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, 2012, "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, 2012, "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, 2012, "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, 2012, 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, 2011, 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, 2011, 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, 2012, 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, 2012, 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, 2012, 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, 2012, 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, 2012, 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, 2012, 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 average annual index price of Oklahoma oil exceeds Thirty Dollars ($30.00) per barrel calculated on an annual calendar year basis.

(1) The "average annual index price" will be calculated by multiplying the West Texas Intermediate closing price by the "index price

(1) ratio". The index price ratio is defined as the immediate preceding three-year historical average ratio of the actual weighted average wellhead price to the West Texas Intermediate close price published on the last business day of each month.

(2) The average annual index price will be updated annually by the Oklahoma Tax Commission no later than March 31 of each year.

(3) If the West Texas Intermediate Crude price is unavailable for any reason, an industry benchmark price may be substituted and used for the calculation of the index price as determined by the Oklahoma Tax Commission,

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 average annual index price of Oklahoma gas exceeds Five Dollars ($5.00) per thousand cubic feet (mcf) calculated on an annual calendar year basis.

(1) The “average annual index price” will be calculated by multiplying the Henry Hub 3-Day Average Close price by the “index price ratio”. The index price ratio is defined as the immediate preceding three-year historical average ratio of the actual weighted average wellhead price to the Henry Hub 3-Day Average Close price published on the last business day of each month.

(2) The average annual index price will be updated annually by the Oklahoma Tax Commission no later than March 31 of each year.

(3) If the Henry Hub 3-Day Average Close price is unavailable for any reason, an industry benchmark price may be substituted and used for the calculation of the index price as determined by the Oklahoma Tax Commission.

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 2. AMENDATORY Section 1, Chapter 436, O.S.L. 2005, as amended by Section 2, Chapter 260, O.S.L. 2007 (68 O.S. Supp. 2009, Section 1001.3a), is amended to read as follows:

Section 1001.3a A. As used in this section:

1. "Economically at-risk oil or gas lease" means any oil or gas lease operated at a net loss or at a net profit which is less than the total gross production tax remitted for such lease during the previous calendar year; and

2. "Lease" shall be defined as in Section 1001.2 of this title.

B. When certified as such pursuant to the provisions of this section, production from an economically at-risk oil or gas lease shall be eligible for an exemption from the gross production tax levied pursuant to subsection B of Section 1001 of this title for production on such lease during the previous calendar year in the following amounts:

1. If the gross production tax rate levied pursuant to subsection B of Section 1001 of this title was seven percent (7%), then the exemption shall equal six-sevenths (6/7) of the gross production tax levied;

2. If the gross production tax rate levied pursuant to subsection B of Section 1001 of this title was four percent (4%),

then the exemption shall equal three-fourths (3/4) of the gross production tax levied; and

3. If the gross production tax rate levied pursuant to subsection B of Section 1001 of this title was one percent (1%), no exemption shall apply.

C. For all production exempt from gross production taxes pursuant to this section, a refund of gross production taxes paid for production in the previous calendar year in the amounts specified in this subsection shall be issued to the well operator or a designee. The refund shall not be claimed until after July 1 of the year subsequent to the year of production.

D. Any operator making application for an economically at-risk oil or gas 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 such lease.

E. For the purposes of this section, determination of the economically at-risk oil or gas 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 or gas lease qualifies for certification as an economically at-risk oil or gas lease and shall make the determination within sixty (60) days after an application is filed for economically at-risk oil or gas 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 2005, 2006, 2007, 2008, 2009, ~~and~~ 2010, 2011, 2012 and 2013.

SECTION 3. This act shall become effective November 1, 2010.

COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-23-10 - DO PASS, As Amended and Coauthored.