# HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1104 By: Sears of the House

and

Mazzei of the Senate

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 1010 and 1024, which relate to gross production taxes; modifying reporting requirements; modifying procedures related to release of information regarding certain production; amending 68 O.S. 2011, Section 1359, which relates to sales tax exemptions for certain manufacturers; modifying statutory reference; repealing 68 O.S. 2011, Section 1368.2, which relates to notices to sales tax vendors; 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. 2011, 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 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 2. AMENDATORY 68 O.S. 2011, Section 1024, is amended to read as follows:

Section 1024. A. The Tax Commission may ~~upon written request,~~ release to any person the volume of production, during any specified available period of time, of any substance taxable pursuant to the provisions of this article from any lease lawfully plugged, pursuant to the laws of this state after certification of said plugging by the ~~Oklahoma~~ Corporation Commission.

B. The Tax Commission may~~, upon oral or written request,~~ release the lease name, legal description, Oklahoma Tax Commission assigned production unit number for any lease or unit in this state and the Oklahoma Tax Commission assigned purchaser or producer reporting number and purchaser or producer name to any person.

C. The Tax Commission may~~, upon written request,~~ release the volume of production, producing formation and well classification, active or inactive, on a lease by lease basis to any person.

D. The Tax Commission shall~~, upon written request,~~ release information provided in the Reclaimer's and Transporters Monthly Tax Report of Lease Production Stored and Sold, OTC Form 323A-7-81, or any form succeeding this form, to any person.

E. The Tax Commission shall~~, upon written request,~~ release the following information to any person executing an affidavit, under penalty of perjury, declaring that they are an interest owner in the well, lease or unit for which the information is requested:

1. The gross, exempt and net volumes and values of production, tax reimbursements, additional values and taxes remitted thereon, during any available period of time of any substance taxable pursuant to the provisions of this article or the Petroleum Excise Tax of this state.

2. The lease name, legal description, industry or company well or lease unique number, Oklahoma Tax Commission assigned production unit number for any lease or unit in this state and the Oklahoma Tax Commission assigned purchaser or producer reporting number and purchaser or producer name.

3. The producing formation and well classification, active or inactive, on a lease by lease basis and if available, on a well by well basis, and British Thermal Unit content, NGPA classification, gas code, gravity, tier, category and oil class.

F. It is specifically provided that:

1. The Tax Commission shall establish a schedule of costs for the furnishing of the information in accordance with the provisions of subsections A and B of this section and shall collect said costs;

2. No civil or criminal liability shall attach to any member of the Tax Commission, or to any agents, servants, or employees of the Tax Commission for any error or omission in the preparation and publication of the requested information;

3. No costs shall be charged to the ~~Oklahoma~~ Corporation Commission Oil and Gas Conservation Division or Energy Conservation Services Division or to the Oklahoma Geological Survey for examination of the files and records of the Tax Commission; and

4. All funds collected pursuant to the provisions of this section shall be paid to the State Treasury and deposited to the credit of the Tax Commission Revolving Fund.

G. ~~A~~ In addition to the information which may be released in subsection A, B and C of this section, a duly authorized agent of the ~~Oklahoma~~ Corporation Commission Oil and Gas Conservation Division or Energy Conservation Services Division or of the Oklahoma Geological Survey may examine necessary records and files of the Tax Commission relating to the gross production tax for the purpose of estimating or forecasting reserves or production of oil or gas. Such examination shall be limited to information of volume of production, producing formation and well classification, active or inactive, on a lease by lease basis.

H. A duly authorized agent of the Commissioners of the Land Office may examine necessary records and files of the Tax Commission relating to the gross production tax for the purpose of determining the amount of erroneous payment of gross production tax made to the Oklahoma Tax Commission after January 1, 1978.

I. The provisions of this section shall be exceptions to the provisions of Sections 205 and 205.1 of this title and said sections shall be strictly construed against the disclosure of any other information contained in the records and files of the Tax Commission except as otherwise provided by law.

J. Any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable as provided for in Section 205 of this title.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 1359, is amended to read as follows:

Section 1359. Exemptions - Manufacturing.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation. Goods, wares, merchandise, property, machinery and equipment used in a nonmanufacturing activity or process as set forth in paragraph ~~9~~ 14 of Section 1352 of this title shall not be eligible for the exemption provided for in this subsection by virtue of the activity or process being performed in conjunction with or integrated into a manufacturing operation.

For the purposes of this paragraph, sales made to any person, firm or entity that has entered into a contractual relationship for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation shall be considered sales made to a manufacturer which is defined or classified in the North American Classification System (NAICS) Manual under Industry Group No. 324110. Such purchase shall be evidenced by a copy of the sales ticket or invoice to be retained by the vendor indicating that the purchases are made for and on behalf of such manufacturer and set out the name of such manufacturer as well as include a copy of the

Manufacturing Exemption Permit of the manufacturer. Any person who wrongfully or erroneously certifies that purchases are being made on behalf of such manufacturer or who otherwise violates this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

2. Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 500.4 of this title;

3. Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. Additionally, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not

necessary or absolutely essential to the sale of the sold merchandise;

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

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

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

7. Except as otherwise provided by subsection I of Section 3658 of this title pursuant to which the exemption authorized by this paragraph may not be claimed, sales of tangible personal property to a qualified manufacturer or distributor to be consumed or incorporated in a new manufacturing or distribution facility or to expand an existing manufacturing or distribution facility. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer or distributor for construction or expansion of a manufacturing or distribution facility shall be considered sales made to a qualified manufacturer or distributor. For the purposes of this paragraph, "qualified manufacturer or distributor" means:

a. any manufacturing enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Five Million Dollars ($5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility,

b. any manufacturing enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Ten Million Dollars ($10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this paragraph exceeds the sum of Fifty Million Dollars ($50,000,000.00) and in which at least seventy-five (75) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility,

c. any manufacturing enterprise whose total cost of construction of an expanded facility exceeds the sum of Three Hundred Million Dollars ($300,000,000.00) and in which the manufacturer has and maintains an average employment level of at least one thousand seven hundred fifty (1,750) full-time-equivalent employees, as certified by the Employment Security Commission, or

d. any enterprise primarily engaged in the general wholesale distribution of groceries defined or classified in the North American Industry Classification System (NAICS) Manual under Industry Groups No. 4244 and 4245 and which has at least seventy-five percent (75%) of its total sales to in-state customers or buyers and whose total cost of construction of a new or expanded facility exceeds the sum of Forty Million Dollars ($40,000,000.00) with such construction commencing on or after July 1, 2005, and before December 31, 2005, and which at least fifty new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility.

For purposes of this paragraph, the total cost of construction shall include building and construction material and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility. The total cost of construction shall not include attorney fees. For purposes of subparagraph c of this paragraph, the total cost of construction shall also include the cost of qualified depreciable property as defined in Section 2357.4 of this title and labor services performed in the construction of an expanded facility. For the purpose of subparagraph d of this paragraph, the total cost of construction shall also include the cost of all parking, security and dock structures or facilities necessary to manage, process or secure vehicles used to receive and/or distribute groceries through such a facility. The employment requirement of this paragraph can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing or distribution facility that is related to or supported by the new or expanded manufacturing or distribution facility as long as both facilities are owned by one person or business entity. For purposes of this section, "manufacturing facility" shall mean building and land improvements used in manufacturing as defined in Section 1352 of this title and shall also mean building and land improvements used for the purpose of packing, repackaging, labeling or assembling for distribution to market, products at least seventy percent (70%) of which are made in Oklahoma by the same company but at an off-site, in-state manufacturing or distribution facility or facilities. It shall not include a retail outlet unless the retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility. Up to ten percent (10%) of the square feet of a manufacturing or distribution facility building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing or distribution facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this paragraph. The exemption authorized pursuant to subparagraph d of this paragraph shall only become effective when the governing body of the municipality in which the enterprise is located approves a resolution expressing the municipality’s support for the construction for such new or expanded facility. Upon approval by the municipality, the municipality shall forward a copy of such resolution to the Oklahoma Tax Commission;

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

9. Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This

exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this paragraph, “proper production” shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

10. Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a producer of agricultural products. This exemption shall not apply to the sale of any packaging material which is ordinarily known as a returnable container;

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

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

13. Beginning January 1, 1998, machinery, electricity, fuels, explosives and materials, excluding chemicals, used in the mining of coal in this state;

14. Deposits, rent or other charges made for returnable cartons, crates, pallets, and containers used to transport mushrooms or mushroom products from a farm for resale to the consumer or processor; and

15. Sales of tangible personal property and services used or consumed in all phases of the extraction and manufacturing of crushed stone and sand, including but not limited to site preparation, dredging, overburden removal, explosive placement and detonation, onsite material hauling and/or transfer, material washing, screening and/or crushing, product weighing and site

SECTION 4. REPEALER 68 O.S. 2011, Section 1368.2, is hereby repealed.

SECTION 5. This act shall become effective July 1, 2013.

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.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 02/14/2013 - DO PASS, As Coauthored.