

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1104

By: Sears

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

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

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

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

20 1. Every producer and purchaser shall make application, upon
21 forms prescribed by the Tax Commission, for a Tax Commission
22 assigned producer or purchaser reporting number prior to producing
23 or purchasing production. Every producer shall obtain, by making
24 application upon forms prescribed by the Tax Commission, a Tax

1 Commission assigned production unit number, subnumber and merge
2 number for each lease from which lease production will be sold or
3 disposed before disposing of production from any lease in the state.

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

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

16 3. Gross production tax reports from either the purchaser or
17 producer shall become due on the first day of each calendar month on
18 all products subject to the tax levied by Section 1001 et seq. of
19 this title produced in and saved during the preceding monthly
20 period. If such reports are not received by the Tax Commission on
21 or before the twenty-fifth day of the second calendar month
22 following the month of production, the reports shall become
23 delinquent. Any requested or required amended report or any
24 requested information submitted in response to written demand for

1 information which is not received by the Tax Commission on or before
2 thirty (30) days after the mailing of the request or demand by the
3 Tax Commission or any of its employees shall be delinquent.

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

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

21 2. If within twelve (12) months after a previous assessment of
22 penalties as provided for by this section a subsequent delinquency
23 occurs, penalties may be assessed at the rate of Ten Dollars
24 (\$10.00) per day for each Tax Commission assigned production unit

1 number or subnumber or merge number, or product code; provided such
2 penalty shall not be assessed for an amount in excess of One
3 Thousand Five Hundred Dollars (\$1,500.00). The penalty thereon may
4 be waived, in whole or in part, by the Tax Commission, for good
5 cause shown.

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

10 E. Gross production tax forms reports, amended reports, or
11 requested information in response to written demands which are
12 received by the Tax Commission on or after the time fixed for
13 delinquency, but which were mailed prior to the time fixed for
14 delinquency, shall be deemed to have been received by the Tax
15 Commission before becoming delinquent. Postmark or registry or
16 certified receipt showing deposit in the U.S. mails shall be
17 conclusive evidence of the date of mailing. Provided all
18 remittances due under such reports or amended reports must be
19 received by the Tax Commission on or before the date specified by
20 law regardless of when mailed.

21 F. In the event a person required to remit the tax levied by
22 the provisions of Section 1001 et seq. of this title becomes
23 delinquent in reporting or remitting the tax, or upon a
24 determination by the Tax Commission that the state may lose tax

1 revenues due to the difficulty of collecting same, the Tax
2 Commission may require any person required to remit the tax to
3 furnish a sufficient cash deposit, bond, or other security in an
4 amount as will protect the tax revenues of this state.

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

13 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1024, is
14 amended to read as follows:

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

21 B. The Tax Commission may, ~~upon oral or written request,~~
22 release the lease name, legal description, Oklahoma Tax Commission
23 assigned production unit number for any lease or unit in this state
24

1 and the Oklahoma Tax Commission assigned purchaser or producer
2 reporting number and purchaser or producer name to any person.

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

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

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

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

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

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

5 F. It is specifically provided that:

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

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

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

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

20 G. A In addition to the information which may be released in
21 subsection A, B and C of this section, a duly authorized agent of
22 the ~~Oklahoma~~ Corporation Commission Oil and Gas Conservation
23 Division or Energy Conservation Services Division or of the Oklahoma
24 Geological Survey may examine necessary records and files of the Tax

1 Commission relating to the gross production tax for the purpose of
2 estimating or forecasting reserves or production of oil or gas.
3 Such examination shall be limited to information of volume of
4 production, producing formation and well classification, active or
5 inactive, on a lease by lease basis.

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

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

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

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

21 Section 1359. Exemptions - Manufacturing.

22 There are hereby specifically exempted from the tax levied by
23 Section 1350 et seq. of this title:
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1 1. Sales of goods, wares, merchandise, tangible personal
2 property, machinery and equipment to a manufacturer for use in a
3 manufacturing operation. Goods, wares, merchandise, property,
4 machinery and equipment used in a nonmanufacturing activity or
5 process as set forth in paragraph ~~9~~ 14 of Section 1352 of this title
6 shall not be eligible for the exemption provided for in this
7 subsection by virtue of the activity or process being performed in
8 conjunction with or integrated into a manufacturing operation.

9 For the purposes of this paragraph, sales made to any person,
10 firm or entity that has entered into a contractual relationship for
11 the construction and improvement of manufacturing goods, wares,
12 merchandise, property, machinery and equipment for use in a
13 manufacturing operation shall be considered sales made to a
14 manufacturer which is defined or classified in the North American
15 Classification System (NAICS) Manual under Industry Group No.
16 324110. Such purchase shall be evidenced by a copy of the sales
17 ticket or invoice to be retained by the vendor indicating that the
18 purchases are made for and on behalf of such manufacturer and set
19 out the name of such manufacturer as well as include a copy of the
20 Manufacturing Exemption Permit of the manufacturer. Any person who
21 wrongfully or erroneously certifies that purchases are being made on
22 behalf of such manufacturer or who otherwise violates this paragraph
23 shall be guilty of a misdemeanor and upon conviction thereof shall
24

1 be fined an amount equal to double the amount of sales tax involved
2 or incarcerated for not more than sixty (60) days or both;

3 2. Ethyl alcohol when sold and used for the purpose of blending
4 same with motor fuel on which motor fuel tax is levied by Section
5 500.4 of this title;

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

22 4. Sales of or transfers of title to or possession of any
23 containers, after June 30, 1987, used or to be used more than once
24 and which are ordinarily known as returnable containers and which do

1 or will contain beverages defined by paragraphs 4 and 14 of Section
2 506 of Title 37 of the Oklahoma Statutes, or water for human
3 consumption and the cartons, crates, pallets, and containers used to
4 transport such returnable containers;

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

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

19 7. Except as otherwise provided by subsection I of Section 3658
20 of this title pursuant to which the exemption authorized by this
21 paragraph may not be claimed, sales of tangible personal property to
22 a qualified manufacturer or distributor to be consumed or
23 incorporated in a new manufacturing or distribution facility or to
24 expand an existing manufacturing or distribution facility. For

1 purposes of this paragraph, sales made to a contractor or
2 subcontractor that has previously entered into a contractual
3 relationship with a qualified manufacturer or distributor for
4 construction or expansion of a manufacturing or distribution
5 facility shall be considered sales made to a qualified manufacturer
6 or distributor. For the purposes of this paragraph, "qualified
7 manufacturer or distributor" means:

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

17 b. any manufacturing enterprise whose total cost of
18 construction of a new or expanded facility exceeds the
19 sum of Ten Million Dollars (\$10,000,000.00) and the
20 combined cost of construction material, machinery,
21 equipment and other tangible personal property exempt
22 from sales tax under the provisions of this paragraph
23 exceeds the sum of Fifty Million Dollars
24 (\$50,000,000.00) and in which at least seventy-five

1 (75) new full-time-equivalent employees, as certified
2 by the Oklahoma Employment Security Commission, are
3 added and maintained for a period of at least thirty-
4 six (36) months as a direct result of the new or
5 expanded facility,

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

13 d. any enterprise primarily engaged in the general
14 wholesale distribution of groceries defined or
15 classified in the North American Industry
16 Classification System (NAICS) Manual under Industry
17 Groups No. 4244 and 4245 and which has at least
18 seventy-five percent (75%) of its total sales to in-
19 state customers or buyers and whose total cost of
20 construction of a new or expanded facility exceeds the
21 sum of Forty Million Dollars (\$40,000,000.00) with
22 such construction commencing on or after July 1, 2005,
23 and before December 31, 2005, and which at least fifty
24 new full-time-equivalent employees, as certified by

1 the Oklahoma Employment Security Commission, are added
2 and maintained for a period of at least thirty-six
3 (36) months as a direct result of the new or expanded
4 facility.

5 For purposes of this paragraph, the total cost of construction
6 shall include building and construction material and engineering and
7 architectural fees or charges directly associated with the
8 construction of a new or expanded facility. The total cost of
9 construction shall not include attorney fees. For purposes of
10 subparagraph c of this paragraph, the total cost of construction
11 shall also include the cost of qualified depreciable property as
12 defined in Section 2357.4 of this title and labor services performed
13 in the construction of an expanded facility. For the purpose of
14 subparagraph d of this paragraph, the total cost of construction
15 shall also include the cost of all parking, security and dock
16 structures or facilities necessary to manage, process or secure
17 vehicles used to receive and/or distribute groceries through such a
18 facility. The employment requirement of this paragraph can be
19 satisfied by the employment of a portion of the required number of
20 new full-time-equivalent employees at a manufacturing or
21 distribution facility that is related to or supported by the new or
22 expanded manufacturing or distribution facility as long as both
23 facilities are owned by one person or business entity. For purposes
24 of this section, "manufacturing facility" shall mean building and

1 land improvements used in manufacturing as defined in Section 1352
2 of this title and shall also mean building and land improvements
3 used for the purpose of packing, repackaging, labeling or assembling
4 for distribution to market, products at least seventy percent (70%)
5 of which are made in Oklahoma by the same company but at an off-
6 site, in-state manufacturing or distribution facility or facilities.
7 It shall not include a retail outlet unless the retail outlet is
8 operated in conjunction with and on the same site or premises as the
9 manufacturing facility. Up to ten percent (10%) of the square feet
10 of a manufacturing or distribution facility building may be devoted
11 to office space used to provide clerical support for the
12 manufacturing operation. Such ten percent (10%) may be in a
13 separate building as long as it is part of the same contiguous tract
14 of property on which the manufacturing or distribution facility is
15 located. Only sales of tangible personal property made after June
16 1, 1988, shall be eligible for the exemption provided by this
17 paragraph. The exemption authorized pursuant to subparagraph d of
18 this paragraph shall only become effective when the governing body
19 of the municipality in which the enterprise is located approves a
20 resolution expressing the municipality's support for the
21 construction for such new or expanded facility. Upon approval by
22 the municipality, the municipality shall forward a copy of such
23 resolution to the Oklahoma Tax Commission;

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

14 9. Sales of tangible personal property purchased or used by a
15 licensed cable television operator in cablecasting. This exemption
16 shall not apply unless such machinery and equipment is used directly
17 in the manufacturing process, is necessary for the proper production
18 of a cablecast signal or is such that the failure of the machinery
19 or equipment to operate would cause cablecasting to cease. This
20 exemption begins with the equipment used in producing local
21 programming or the electronic equipment behind the satellite
22 receiving dish, microwave tower or antenna, and ends with the
23 transmission of the signal from the cablecast head-end system. For
24 purposes of this paragraph, "proper production" shall include, but

1 not be limited to, machinery or equipment required by Federal
2 Communications Commission rules and regulations;

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

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

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

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

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

23 15. Sales of tangible personal property and services used or
24 consumed in all phases of the extraction and manufacturing of

1 crushed stone and sand, including but not limited to site
2 preparation, dredging, overburden removal, explosive placement and
3 detonation, onsite material hauling and/or transfer, material
4 washing, screening and/or crushing, product weighing and site

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

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

8 SECTION 6. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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