

**TAX INCENTIVE OVERSIGHT AMENDMENTS**

2019 FIRST SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Kay J. Christofferson**

Senate Sponsor: Lincoln Fillmore

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**LONG TITLE**

**General Description:**

This bill modifies the severance tax credit for well recompletion or workover and the motion picture income tax credit.

**Highlighted Provisions:**

This bill:

- ▶ modifies the independent certified public accountant review provisions of the severance tax credit for well recompletion or workover and the motion picture income tax credit; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-5-102**, as last amended by Laws of Utah 2019, Chapter 247

**63N-8-103**, as last amended by Laws of Utah 2018, Chapter 469

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **59-5-102** is amended to read:

**59-5-102. Definitions -- Severance tax -- Computation -- Rate -- Annual**

30 **exemption -- Tax credits -- Tax rate reduction.**

31 (1) As used in this section:

32 (a) "Division" means the Division of Oil, Gas, and Mining created in Section 40-6-15.

33 (b) "Office" means the Office of Energy Development created in Section 63M-4-401.

34 (c) "Royalty rate" means the percentage of the interests described in Subsection

35 (2)(b)(i) as defined by a contract between the United States, the state, an Indian, or an Indian  
36 tribe and the oil or gas producer.

37 (d) "Taxable value" means the total value of the oil or gas minus:

38 (i) any royalties paid to, or the value of oil or gas taken in kind by, the interest holders  
39 described in Subsection (2)(b)(i); and

40 (ii) the total value of oil or gas exempt from severance tax under Subsection (2)(b)(ii).

41 (e) "Taxable volume" means:

42 (i) for oil, the total volume of barrels minus:

43 (A) for an interest described in Subsection (2)(b)(i), the product of the royalty rate and  
44 the total volume of barrels; and

45 (B) the number of barrels that are exempt under Subsection (2)(b)(ii); and

46 (ii) for natural gas, the total volume of MCFs minus:

47 (A) for an interest described in Subsection (2)(b)(i), the product of the royalty rate and  
48 the total volume of MCFs; and

49 (B) the number of MCFs that are exempt under Subsection (2)(b)(ii).

50 (f) "Total value" means the value, as determined by Section 59-5-103.1, of all oil or  
51 gas that is:

52 (i) produced; and

53 (ii) (A) saved;

54 (B) sold; or

55 (C) transported from the field where the oil or gas was produced.

56 (g) "Total volume" means:

57 (i) for oil, the number of barrels:

- 58 (A) produced; and
- 59 (B) (I) saved;
- 60 (II) sold; or
- 61 (III) transported from the field where the oil was produced; and
- 62 (ii) for natural gas, the number of MCFs:
- 63 (A) produced; and
- 64 (B) (I) saved;
- 65 (II) sold; or
- 66 (III) transported from the field where the natural gas was produced.

67 (h) "Value of oil or gas taken in kind" means the volume of oil or gas taken in kind  
68 multiplied by the market price for oil or gas at the location where the oil or gas was produced  
69 on the date the oil or gas was taken in kind.

70 (2) (a) Except as provided in Subsection (2)(b), a person owning an interest in oil or  
71 gas produced from a well in the state, including a working interest, royalty interest, payment  
72 out of production, or any other interest, or in the proceeds of the production of oil or gas, shall  
73 pay to the state a severance tax on the owner's interest in the taxable value of the oil or gas:

- 74 (i) produced; and
- 75 (ii) (A) saved;
- 76 (B) sold; or
- 77 (C) transported from the field where the substance was produced.
- 78 (b) The severance tax imposed by Subsection (2)(a) does not apply to:
- 79 (i) an interest of:
- 80 (A) the United States in oil or gas or in the proceeds of the production of oil or gas;
- 81 (B) the state or a political subdivision of the state in oil or gas or in the proceeds of the  
82 production of oil or gas; and
- 83 (C) an Indian or Indian tribe as defined in Section [9-9-101](#) in oil or gas or in the  
84 proceeds of the production of oil or gas produced from land under the jurisdiction of the United  
85 States; and

86 (ii) the value of:

87 (A) oil or gas produced from stripper wells, unless the exemption prevents the  
88 severance tax from being treated as a deduction for federal tax purposes;

89 (B) oil or gas produced in the first 12 months of production for wildcat wells started  
90 after January 1, 1990; and

91 (C) oil or gas produced in the first six months of production for development wells  
92 started after January 1, 1990.

93 (3) (a) The severance tax on oil shall be calculated as follows:

94 (i) dividing the taxable value by the taxable volume;

95 (ii) (A) multiplying the rate described in Subsection (4)(a)(i) by the portion of the  
96 figure calculated in Subsection (3)(a)(i) that is subject to the rate described in Subsection  
97 (4)(a)(i); and

98 (B) multiplying the rate described in Subsection (4)(a)(ii) by the portion of the figure  
99 calculated in Subsection (3)(a)(i) that is subject to the rate described in Subsection (4)(a)(ii);

100 (iii) adding together the figures calculated in Subsections (3)(a)(ii)(A) and (B); and

101 (iv) multiplying the figure calculated in Subsection (3)(a)(iii) by the taxable volume.

102 (b) The severance tax on natural gas shall be calculated as follows:

103 (i) dividing the taxable value by the taxable volume;

104 (ii) (A) multiplying the rate described in Subsection (4)(b)(i) by the portion of the  
105 figure calculated in Subsection (3)(b)(i) that is subject to the rate described in Subsection  
106 (4)(b)(i); and

107 (B) multiplying the rate described in Subsection (4)(b)(ii) by the portion of the figure  
108 calculated in Subsection (3)(b)(i) that is subject to the rate described in Subsection (4)(b)(ii);

109 (iii) adding together the figures calculated in Subsections (3)(b)(ii)(A) and (B); and

110 (iv) multiplying the figure calculated in Subsection (3)(b)(iii) by the taxable volume.

111 (c) The severance tax on natural gas liquids shall be calculated by multiplying the  
112 taxable value of the natural gas liquids by the severance tax rate in Subsection (4)(c).

113 (4) Subject to Subsection (9):

- 114 (a) the severance tax rate for oil is as follows:
- 115 (i) 3% of the taxable value of the oil up to and including the first \$13 per barrel for oil;
- 116 and
- 117 (ii) 5% of the taxable value of the oil from \$13.01 and above per barrel for oil;
- 118 (b) the severance tax rate for natural gas is as follows:
- 119 (i) 3% of the taxable value of the natural gas up to and including the first \$1.50 per
- 120 MCF for gas; and
- 121 (ii) 5% of the taxable value of the natural gas from \$1.51 and above per MCF for gas;
- 122 and
- 123 (c) the severance tax rate for natural gas liquids is 4% of the taxable value of the
- 124 natural gas liquids.
- 125 (5) If oil or gas is shipped outside the state:
- 126 (a) the shipment constitutes a sale; and
- 127 (b) the oil or gas is subject to the tax imposed by this section.
- 128 (6) (a) Except as provided in Subsection (6)(b), if the oil or gas is stockpiled, the tax is
- 129 not imposed until the oil or gas is:
- 130 (i) sold;
- 131 (ii) transported; or
- 132 (iii) delivered.
- 133 (b) If oil or gas is stockpiled for more than two years, the oil or gas is subject to the tax
- 134 imposed by this section.
- 135 (7) (a) Subject to other provisions of this Subsection (7), a taxpayer that pays for all or
- 136 part of the expenses of a recompletion or workover may claim a nonrefundable tax credit equal
- 137 to the amount stated on a tax credit certificate that the office issues to the taxpayer.
- 138 (b) The maximum tax credit per taxpayer per well in a calendar year is the lesser of:
- 139 (i) 20% of the taxpayer's payment of expenses of a well recompletion or workover
- 140 during the calendar year; and
- 141 (ii) \$30,000.

142 (c) A taxpayer may carry forward a tax credit allowed under this Subsection (7) for the  
143 next three calendar years if the tax credit exceeds the taxpayer's tax liability under this part for  
144 the calendar year in which the taxpayer claims the tax credit.

145 (d) (i) To claim a tax credit under this Subsection (7), a taxpayer shall follow the  
146 procedures and requirements of this Subsection (7)(d).

147 (ii) The taxpayer shall prepare a [~~report~~] summary of the taxpayer's expenses of a well  
148 recompletion or [~~well~~] workover during the calendar year that the well recompletion or  
149 workover is completed.

150 (iii) An independent certified public accountant shall:

151 (A) review the [~~report~~] summary from the taxpayer; and

152 (B) [~~attest to~~] provide a report on the accuracy and validity of [~~the report, including~~]  
153 the amount of expenses of a well recompletion or [~~well~~] workover that the taxpayer included in  
154 the summary, in accordance with the agreed upon procedures.

155 (iv) The taxpayer shall submit the taxpayer's [~~report and the attestation~~] summary and  
156 the independent certified public accountant's report to the division to verify that the expenses  
157 certified by the independent certified public accountant are well recompletion or workover  
158 expenses.

159 (v) The division shall return to the taxpayer:

160 (A) the taxpayer's [~~report~~] summary;

161 (B) the [~~attestation~~] report by the independent certified public accountant; and

162 (C) a report by the division that includes the amount of approved well recompletion or  
163 workover expenses.

164 (vi) The taxpayer shall apply to the office for a tax credit certificate to receive a written  
165 certification, on a form approved by the commission, that includes:

166 (A) the amount of the taxpayer's payments of expenses of a well recompletion or  
167 workover during the calendar year; and

168 (B) the amount of the taxpayer's tax credit.

169 (vii) A taxpayer that receives a tax credit certificate shall retain the tax credit certificate

170 for the same time period that a person is required to keep books and records under Section  
171 [59-1-1406](#).

172 (e) The office shall submit to the commission an electronic list that includes:

173 (i) the name and identifying information of each taxpayer to which the office issues a  
174 tax credit certificate; and

175 (ii) for each taxpayer, the amount of the tax credit listed on the tax credit certificate.

176 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[~~7~~]:

177 (i) the office may make rules to govern the application process for receiving a tax  
178 credit [~~certification~~] certificate under this Subsection (7)[~~7~~]; and

179 (ii) the division shall make rules to establish the agreed upon procedures described in  
180 Subsection (7)(d)(iii).

181 (8) (a) Subject to the other provisions of this Subsection (8), a taxpayer may claim a  
182 tax credit against a severance tax owing on natural gas under this section if:

183 (i) the taxpayer is required to pay a severance tax on natural gas under this section;

184 (ii) the taxpayer owns or operates a plant in the state that converts natural gas to  
185 hydrogen fuel; and

186 (iii) all of the natural gas for which the taxpayer owes a severance tax under this  
187 section is used for the production in the state of hydrogen fuel for use in zero emission motor  
188 vehicles.

189 (b) The taxpayer may claim a tax credit equal to the lesser of:

190 (i) the amount of tax that the taxpayer owes under this section; and

191 (ii) \$5,000,000.

192 (c) (i) To claim a tax credit under this Subsection (8), a taxpayer shall follow the  
193 procedures and requirements of this Subsection (8)(c).

194 (ii) The taxpayer shall request that the division verify that the taxpayer owns or  
195 operates a plant in this state:

196 (A) that converts natural gas to hydrogen fuel; and

197 (B) at which all natural gas is converted to hydrogen fuel for use in zero emission

198 motor vehicles.

199 (d) The division shall submit to the commission an electronic list that includes the  
200 name and identifying information of each taxpayer for which the division completed the  
201 verification described in Subsection (8)(c).

202 (9) A 50% reduction in the tax rate is imposed upon the incremental production  
203 achieved from an enhanced recovery project.

204 (10) The taxes imposed by this section are:

205 (a) in addition to all other taxes provided by law; and  
206 (b) delinquent, unless otherwise deferred, on June 1 following the calendar year when  
207 the oil or gas is:

208 (i) produced; and

209 (ii) (A) saved;

210 (B) sold; or

211 (C) transported from the field.

212 (11) With respect to the tax imposed by this section on each owner of an interest in the  
213 production of oil or gas or in the proceeds of the production of oil or gas in the state, each  
214 owner is liable for the tax in proportion to the owner's interest in the production or in the  
215 proceeds of the production.

216 (12) The tax imposed by this section shall be reported and paid by each producer that  
217 takes oil or gas in kind pursuant to an agreement on behalf of the producer and on behalf of  
218 each owner entitled to participate in the oil or gas sold by the producer or transported by the  
219 producer from the field where the oil or gas is produced.

220 (13) Each producer shall deduct the tax imposed by this section from the amounts due  
221 to other owners for the production or the proceeds of the production.

222 Section 2. Section **63N-8-103** is amended to read:

223 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**  
224 **Refundable tax credit incentives.**

225 (1) (a) There is created within the General Fund a restricted account known as the

226 Motion Picture Incentive Account, which the office shall use to provide cash rebate incentives  
227 for state-approved productions by a motion picture company.

228 (b) All interest generated from investment of money in the restricted account shall be  
229 deposited in the restricted account.

230 (c) The restricted account shall consist of an annual appropriation by the Legislature.

231 (d) The office shall:

232 (i) with the advice of the board, administer the restricted account; and

233 (ii) make payments from the restricted account as required under this section.

234 (e) The cost of administering the restricted account shall be paid from money in the  
235 restricted account.

236 (2) (a) A motion picture company or digital media company seeking disbursement of  
237 an incentive allowed under an agreement with the office shall follow the procedures and  
238 requirements of this Subsection (2).

239 (b) The motion picture company or digital media company shall provide the office with  
240 ~~[a report]~~ an incentive request form, provided by the office, identifying and documenting the  
241 dollars left in the state and new state revenues generated by the motion picture company or  
242 digital media company for ~~[its]~~ state-approved production, including any related tax returns by  
243 the motion picture company, payroll company, digital media company, or loan-out corporation  
244 under Subsection (2)(d).

245 (c) For a motion picture company, an independent certified public accountant shall:

246 (i) review the ~~[report]~~ incentive request form submitted by the motion picture  
247 company; and

248 (ii) ~~[attest to]~~ provide a report on the accuracy and validity of the [report] incentive  
249 request form, including the amount of dollars left in the state, in accordance with the agreed  
250 upon procedures established by the office by rule.

251 (d) The motion picture company, digital media company, payroll company, or loan-out  
252 corporation shall provide the office with a document that expressly directs and authorizes the  
253 State Tax Commission to disclose the entity's tax returns and other information concerning the

254 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section  
255 6103, Internal Revenue Code, to the office.

256 (e) The office shall submit the document described in Subsection (2)(d) to the State  
257 Tax Commission.

258 (f) Upon receipt of the document described in Subsection (2)(d), the State Tax  
259 Commission shall provide the office with the information requested by the office that the  
260 motion picture company, digital media company, payroll company, or loan-out corporation  
261 directed or authorized the State Tax Commission to provide to the office in the document  
262 described in Subsection (2)(d).

263 (g) Subject to Subsection (3), for a motion picture company the office shall:

264 (i) review the [~~report~~] incentive request form from the motion picture company  
265 described in Subsection (2)(b) and verify that [it] the incentive request form was reviewed by  
266 an independent certified public accountant as described in Subsection (2)(c); and

267 (ii) based upon the independent certified public accountant's [~~attestation~~] report under  
268 Subsection (2)(c), determine the amount of the incentive that the motion picture company is  
269 entitled to under [its] the motion picture company's agreement with the office.

270 (h) Subject to Subsection (3), for a digital media company, the office shall:

271 (i) ensure the digital media project results in new state [~~revenue~~] revenues; and

272 (ii) based upon review of new state [~~revenue~~] revenues, determine the amount of the  
273 incentive that a digital media company is entitled to under [its] the digital media company's  
274 agreement with the office.

275 (i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office  
276 shall pay the incentive from the restricted account to the motion picture company,  
277 notwithstanding Subsections 51-5-3(23)(b) and 63J-1-105(6).

278 (j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or  
279 59-10-1108, the office shall:

280 (i) issue a tax credit certificate to the motion picture company or digital media  
281 company; and

282 (ii) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

283 (k) A motion picture company or digital media company may not claim a motion  
284 picture tax credit under Section 59-7-614.5 or 59-10-1108 unless the motion picture company  
285 or digital media company has received a tax credit certificate for the claim issued by the office  
286 under Subsection (2)(j)(i).

287 (l) A motion picture company or digital media company may claim a motion picture  
288 tax credit on ~~[its]~~ the motion picture company's or the digital media company's tax return for  
289 the amount listed on the tax credit certificate issued by the office.

290 (m) A motion picture company or digital media company that claims a tax credit under  
291 Subsection (2)(l) shall retain the tax credit certificate and all supporting documentation in  
292 accordance with Subsection 63N-8-104(6).

293 (3) (a) Subject to Subsection (3)(b), the office may issue \$6,793,700 in tax credit  
294 certificates under this part in a fiscal year.

295 (b) If the office does not issue tax credit certificates in a fiscal year totaling the amount  
296 authorized under Subsection (3)(a), ~~[it]~~ the office may carry over that amount for issuance in  
297 subsequent fiscal years.

298 **Section 3. Effective date.**

299 If approved by two-thirds of all the members elected to each house, this bill takes effect  
300 upon approval by the governor, or the day following the constitutional time limit of Utah  
301 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
302 the date of veto override.

303 **Section 4. Retrospective operation.**

304 This bill has retrospective operation for a taxable year beginning on or after January 1,  
305 2019.