

TAX INCENTIVE OVERSIGHT AMENDMENTS

2019 FIRST SPECIAL SESSION

STATE OF UTAH

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

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 exemption -- Tax credits -- Tax rate reduction.

(1) As used in this section:

- (a) "Division" means the Division of Oil, Gas, and Mining created in Section 40-6-15.
- (b) "Office" means the Office of Energy Development created in Section 63M-4-401.
- (c) "Royalty rate" means the percentage of the interests described in Subsection

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

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

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

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

39 (e) "Taxable volume" means:

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

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

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

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

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

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

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

50 (i) produced; and

51 (ii) (A) saved;

52 (B) sold; or

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

54 (g) "Total volume" means:

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

56 (A) produced; and

57 (B) (I) saved;

58 (II) sold; or

59 (III) transported from the field where the oil was produced; and

60 (ii) for natural gas, the number of MCFs:

61 (A) produced; and

62 (B) (I) saved;

63 (II) sold; or

64 (III) transported from the field where the natural gas was produced.

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

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

72 (i) produced; and

73 (ii) (A) saved;

74 (B) sold; or

75 (C) transported from the field where the substance was produced.

76 (b) The severance tax imposed by Subsection (2)(a) does not apply to:

77 (i) an interest of:

78 (A) the United States in oil or gas or in the proceeds of the production of oil or gas;

79 (B) the state or a political subdivision of the state in oil or gas or in the proceeds of the
80 production of oil or gas; and

81 (C) an Indian or Indian tribe as defined in Section 9-9-101 in oil or gas or in the
82 proceeds of the production of oil or gas produced from land under the jurisdiction of the United
83 States; and

84 (ii) the value of:

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

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

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

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

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

93 (ii) (A) multiplying the rate described in Subsection (4)(a)(i) by the portion of the
94 figure calculated in Subsection (3)(a)(i) that is subject to the rate described in Subsection

- 95 (4)(a)(i); and
- 96 (B) multiplying the rate described in Subsection (4)(a)(ii) by the portion of the figure
97 calculated in Subsection (3)(a)(i) that is subject to the rate described in Subsection (4)(a)(ii);
- 98 (iii) adding together the figures calculated in Subsections (3)(a)(ii)(A) and (B); and
- 99 (iv) multiplying the figure calculated in Subsection (3)(a)(iii) by the taxable volume.
- 100 (b) The severance tax on natural gas shall be calculated as follows:
- 101 (i) dividing the taxable value by the taxable volume;
- 102 (ii) (A) multiplying the rate described in Subsection (4)(b)(i) by the portion of the
103 figure calculated in Subsection (3)(b)(i) that is subject to the rate described in Subsection
104 (4)(b)(i); and
- 105 (B) multiplying the rate described in Subsection (4)(b)(ii) by the portion of the figure
106 calculated in Subsection (3)(b)(i) that is subject to the rate described in Subsection (4)(b)(ii);
- 107 (iii) adding together the figures calculated in Subsections (3)(b)(ii)(A) and (B); and
- 108 (iv) multiplying the figure calculated in Subsection (3)(b)(iii) by the taxable volume.
- 109 (c) The severance tax on natural gas liquids shall be calculated by multiplying the
110 taxable value of the natural gas liquids by the severance tax rate in Subsection (4)(c).
- 111 (4) Subject to Subsection (9):
- 112 (a) the severance tax rate for oil is as follows:
- 113 (i) 3% of the taxable value of the oil up to and including the first \$13 per barrel for oil;
- 114 and
- 115 (ii) 5% of the taxable value of the oil from \$13.01 and above per barrel for oil;
- 116 (b) the severance tax rate for natural gas is as follows:
- 117 (i) 3% of the taxable value of the natural gas up to and including the first \$1.50 per
118 MCF for gas; and
- 119 (ii) 5% of the taxable value of the natural gas from \$1.51 and above per MCF for gas;
- 120 and
- 121 (c) the severance tax rate for natural gas liquids is 4% of the taxable value of the
122 natural gas liquids.
- 123 (5) If oil or gas is shipped outside the state:
- 124 (a) the shipment constitutes a sale; and
- 125 (b) the oil or gas is subject to the tax imposed by this section.

126 (6) (a) Except as provided in Subsection (6)(b), if the oil or gas is stockpiled, the tax is
127 not imposed until the oil or gas is:

128 (i) sold;

129 (ii) transported; or

130 (iii) delivered.

131 (b) If oil or gas is stockpiled for more than two years, the oil or gas is subject to the tax
132 imposed by this section.

133 (7) (a) Subject to other provisions of this Subsection (7), a taxpayer that pays for all or
134 part of the expenses of a recompletion or workover may claim a nonrefundable tax credit equal
135 to the amount stated on a tax credit certificate that the office issues to the taxpayer.

136 (b) The maximum tax credit per taxpayer per well in a calendar year is the lesser of:

137 (i) 20% of the taxpayer's payment of expenses of a well recompletion or workover
138 during the calendar year; and

139 (ii) \$30,000.

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

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

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

148 (iii) An independent certified public accountant shall:

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

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

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

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

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

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

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

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

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

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

167 (vii) A taxpayer that receives a tax credit certificate shall retain the tax credit certificate
168 for the same time period that a person is required to keep books and records under Section
169 59-1-1406.

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

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

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

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

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

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

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

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

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

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

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

- 188 (i) the amount of tax that the taxpayer owes under this section; and
- 189 (ii) \$5,000,000.
- 190 (c) (i) To claim a tax credit under this Subsection (8), a taxpayer shall follow the
- 191 procedures and requirements of this Subsection (8)(c).
- 192 (ii) The taxpayer shall request that the division verify that the taxpayer owns or
- 193 operates a plant in this state:
- 194 (A) that converts natural gas to hydrogen fuel; and
- 195 (B) at which all natural gas is converted to hydrogen fuel for use in zero emission
- 196 motor vehicles.
- 197 (d) The division shall submit to the commission an electronic list that includes the
- 198 name and identifying information of each taxpayer for which the division completed the
- 199 verification described in Subsection (8)(c).
- 200 (9) A 50% reduction in the tax rate is imposed upon the incremental production
- 201 achieved from an enhanced recovery project.
- 202 (10) The taxes imposed by this section are:
- 203 (a) in addition to all other taxes provided by law; and
- 204 (b) delinquent, unless otherwise deferred, on June 1 following the calendar year when
- 205 the oil or gas is:
- 206 (i) produced; and
- 207 (ii) (A) saved;
- 208 (B) sold; or
- 209 (C) transported from the field.
- 210 (11) With respect to the tax imposed by this section on each owner of an interest in the
- 211 production of oil or gas or in the proceeds of the production of oil or gas in the state, each
- 212 owner is liable for the tax in proportion to the owner's interest in the production or in the
- 213 proceeds of the production.
- 214 (12) The tax imposed by this section shall be reported and paid by each producer that
- 215 takes oil or gas in kind pursuant to an agreement on behalf of the producer and on behalf of
- 216 each owner entitled to participate in the oil or gas sold by the producer or transported by the
- 217 producer from the field where the oil or gas is produced.
- 218 (13) Each producer shall deduct the tax imposed by this section from the amounts due

219 to other owners for the production or the proceeds of the production.

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

221 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**
222 **Refundable tax credit incentives.**

223 (1) (a) There is created within the General Fund a restricted account known as the
224 Motion Picture Incentive Account, which the office shall use to provide cash rebate incentives
225 for state-approved productions by a motion picture company.

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

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

229 (d) The office shall:

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

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

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

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

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

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

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

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

249 (d) The motion picture company, digital media company, payroll company, or loan-out

250 corporation shall provide the office with a document that expressly directs and authorizes the
251 State Tax Commission to disclose the entity's tax returns and other information concerning the
252 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section
253 6103, Internal Revenue Code, to the office.

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

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

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

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

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

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

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

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

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

276 (j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or
277 59-10-1108, the office shall:

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

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

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

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

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

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

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

296 Section 3. **Effective date.**

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

301 Section 4. **Retrospective operation.**

302 This bill has retrospective operation for a taxable year beginning on or after January 1,
303 2019.