

SEVERANCE TAX REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes related to severance taxes.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that certain severance tax revenue be deposited into the Education Fund and the permanent state trust fund;
- ▶ makes changes to and repeals certain oil and gas severance tax exemptions;
- ▶ adjusts oil and gas severance tax rates; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2014.

Utah Code Sections Affected:

AMENDS:

51-9-305, as last amended by Laws of Utah 2011, Chapter 239

59-5-101, as last amended by Laws of Utah 2009, Chapter 344

59-5-102, as last amended by Laws of Utah 2011, Chapters 54 and 384

59-5-115, as last amended by Laws of Utah 2008, Chapter 141



28 REPEALS:

29 **59-5-120**, as enacted by Laws of Utah 2006, Chapter 346



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

32 Section 1. Section **51-9-305** is amended to read:

33 **51-9-305. Crediting of certain severance tax revenues to the permanent state**
34 **trust fund.**

35 (1) As used in this section:

36 (a) "Aggregate annual revenue" means the aggregate annual revenue collected in a
37 fiscal year from the taxes imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and
38 Mining, after subtracting the amounts required to be distributed under Sections 59-5-116 and
39 59-5-119.

40 (b) "Mining severance tax" means a tax imposed under Title 59, Chapter 5, Part 2,
41 Mining Severance Tax.

42 (c) "Oil and gas severance tax" means a tax imposed under Title 59, Chapter 5, Part 1,
43 Oil and Gas Severance Tax.

44 (d) "Permanent state trust fund deposit amount" means a deposit into the permanent
45 state trust fund equal to:

- 46 (i) 25% of the first \$50,000,000 of aggregate annual revenue;
- 47 (ii) 50% of the next \$50,000,000 of aggregate annual revenue; and
- 48 (iii) 75% of the aggregate annual revenue that exceeds \$100,000,000.

49 ~~[(1)(a)]~~ (2) After making the [distributions] deposits of oil and gas severance tax
50 [revenues] revenue as required under Sections 59-5-116 and 59-5-119, the Division of Finance
51 shall make the [distributions required under Subsections (2) through (5)] credit required under
52 Subsection (3).

53 ~~[(b) For purposes of this section, revenue collected from severance taxes on oil and gas~~
54 ~~imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and Mining, does not include~~
55 ~~revenue that is distributed under Section 59-5-116 or 59-5-119.]~~

56 ~~[(2) (a) Beginning with fiscal year 2008-09 and ending with fiscal year 2010-11, if~~
57 ~~authorized by law, the Division of Finance shall credit to the permanent state trust fund all~~
58 ~~revenue collected in a fiscal year from severance taxes on oil and gas imposed under Title 59,~~

59 Chapter 5, Severance Tax on Oil, Gas, and Mining, that exceed \$71,000,000.]

60 [(b) Beginning with fiscal year 2011-12, if authorized by law, the Division of Finance
61 shall credit to the permanent state trust fund all revenue collected in a fiscal year from
62 severance taxes on oil and gas imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas,
63 and Mining, that exceed \$77,000,000.]

64 [(3) Beginning with fiscal year 2008-09, if authorized by law, the Division of Finance
65 shall credit to the permanent state trust fund all revenue collected in a fiscal year from
66 severance taxes on mining imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and
67 Mining, that exceed \$27,600,000.]

68 (3) (a) The Division of Finance shall annually credit to the permanent state trust fund
69 the permanent state trust fund deposit amount.

70 (b) In crediting revenues to the permanent state trust fund in accordance with
71 Subsection (3)(a), the Division of Finance shall, up to the permanent state trust fund deposit
72 amount:

73 (i) first credit mining severance tax revenues; and

74 (ii) after crediting all mining severance tax revenues, credit oil and gas severance tax
75 revenues.

76 (4) The state treasurer shall invest and separately account for the earnings on funds that
77 are [~~deposited into~~] credited to the permanent state trust fund under this section.

78 (5) (a) In accordance with Utah Constitution Article XXII, Section 4, the interest and
79 dividends earned annually on revenue from severance taxes that are [~~deposited into~~] credited to
80 the permanent state trust fund shall be [~~deposited in~~] credited to the General Fund.

81 (b) Interest and dividends earned on revenue from severance taxes that are [~~deposited~~
82 ~~in~~] credited to the General Fund pursuant to Subsection (5)(a) shall be credited to the
83 Infrastructure and Economic Diversification Investment Account created in Section 51-9-303.

84 Section 2. Section **59-5-101** is amended to read:

85 **59-5-101. Definitions.**

86 As used in this part:

87 (1) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.

88 (2) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

89 (3) "Condensate" means those hydrocarbons, regardless of gravity, that occur naturally

90 in the gaseous phase in the reservoir that are separated from the natural gas as liquids through
91 the process of condensation either in the reservoir, in the wellbore, or at the surface in field
92 separators.

93 (4) "Crude oil" means those hydrocarbons, regardless of gravity, that occur naturally in
94 the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

95 (5) "Development well" means any oil and gas producing well other than a wildcat
96 well.

97 (6) "Division" means the Division of Oil, Gas, and Mining established under Title 40,
98 Chapter 6.

99 (7) "Enhanced recovery project" means:

100 (a) the injection of liquids or hydrocarbon or nonhydrocarbon gases directly into a
101 reservoir for the purpose of:

102 (i) augmenting reservoir energy;

103 (ii) modifying the properties of the fluids or gases in a reservoir; or

104 (iii) changing the reservoir conditions to increase the recoverable oil, gas, or oil and
105 gas through the joint use of two or more well bores; and

106 (b) a project initially approved by the board as a new or expanded enhanced recovery
107 project on or after January 1, 1996.

108 (8) (a) "Gas" means:

109 (i) natural gas;

110 (ii) natural gas liquids; or

111 (iii) any mixture of natural gas and natural gas liquids.

112 (b) "Gas" does not include solid hydrocarbons.

113 (9) "Incremental production" means that part of production, certified by the Division of
114 Oil, Gas, and Mining, which is achieved from an enhanced recovery project that would not
115 have economically occurred under the reservoir conditions existing before the project and that
116 has been approved by the division as incremental production.

117 (10) "Natural gas" means those hydrocarbons, other than oil and other than natural gas
118 liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and
119 are produced and recovered at the wellhead in gaseous form.

120 (11) "Natural gas liquids" means those hydrocarbons initially in reservoir natural gas,

121 regardless of gravity, that are separated in gas processing plants from the natural gas as liquids
122 at the surface through the process of condensation, absorption, adsorption, or other methods.

123 (12) (a) "Oil" means:

124 (i) crude oil;

125 (ii) condensate; or

126 (iii) any mixture of crude oil and condensate.

127 (b) "Oil" does not include solid hydrocarbons.

128 (13) "Oil or gas field" means a geographical area overlying oil or gas structures. The
129 boundaries of oil or gas fields shall conform with the boundaries as fixed by the Board and
130 Division of Oil, Gas, and Mining under Title 40, Chapter 6, Board and Division of Oil, Gas,
131 and Mining.

132 (14) "Oil shale" means a group of fine black to dark brown shales containing
133 bituminous material that yields petroleum upon distillation.

134 (15) "Operator" means any person engaged in the business of operating an oil or gas
135 well, regardless of whether the person is:

136 (a) a working interest owner;

137 (b) an independent contractor; or

138 (c) acting in a capacity similar to Subsection (15)(a) or (b) as determined by the
139 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
140 Rulemaking Act.

141 (16) "Owner" means any person having a working interest, royalty interest, payment
142 out of production, or any other interest in the oil or gas produced or extracted from an oil or gas
143 well in the state, or in the proceeds of this production.

144 (17) (a) Subject to Subsections (17)(b) and (c), "processing costs" means the
145 reasonable actual costs of processing oil or gas to remove:

146 (i) natural gas liquids; or

147 (ii) contaminants.

148 (b) If processing costs are determined on the basis of an arm's-length contract,
149 processing costs are the actual costs.

150 (c) (i) If processing costs are determined on a basis other than an arm's-length contract,
151 processing costs are those reasonable costs associated with:

152 (A) actual operating and maintenance expenses, including oil or gas used or consumed
153 in processing;

154 (B) overhead directly attributable and allocable to the operation and maintenance; and

155 (C) (I) depreciation and a return on undepreciated capital investment; or

156 (II) a cost equal to a return on the investment in the processing facilities as determined
157 by the commission.

158 (ii) Subsection (17)(c)(i) includes situations where the producer performs the
159 processing for the producer's product.

160 (18) "Producer" means any working interest owner in any lands in any oil or gas field
161 from which gas or oil is produced.

162 (19) "Recompletion" means any downhole operation that is:

163 (a) conducted to reestablish the producibility or serviceability of a well in any geologic
164 interval; and

165 (b) approved by the division as a recompletion.

166 (20) "Research and development" means the process of inquiry or experimentation
167 aimed at the discovery of facts, devices, technologies, or applications and the process of
168 preparing those devices, technologies, or applications for marketing.

169 (21) "Royalty interest owner" means the owner of an interest in oil or gas, or in the
170 proceeds of production from the oil or gas who does not have the obligation to share in the
171 expenses of developing and operating the property.

172 (22) "Solid hydrocarbons" means:

173 (a) coal;

174 (b) gilsonite;

175 (c) ozocerite;

176 (d) elaterite;

177 (e) oil shale;

178 (f) tar sands; and

179 (g) all other hydrocarbon substances that occur naturally in solid form.

180 (23) "Stripper well" means:

181 (a) an oil well whose average daily production for the days the well has produced has
182 been [20] 10 barrels or less of crude oil a day during any consecutive 12-month period; or

183 (b) a gas well whose average daily production for the days the well has produced has
184 been 60 MCF or less of natural gas a day during any consecutive 90-day period.

185 (24) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
186 and require further processing other than mechanical blending before becoming finished
187 petroleum products.

188 (25) (a) Subject to Subsections (25)(b) and (c), "transportation costs" means the
189 reasonable actual costs of transporting oil or gas products from the well to the point of sale.

190 (b) If transportation costs are determined on the basis of an arm's-length contract,
191 transportation costs are the actual costs.

192 (c) (i) If transportation costs are determined on a basis other than an arm's-length
193 contract, transportation costs are those reasonable costs associated with:

194 (A) actual operating and maintenance expenses, including fuel used or consumed in
195 transporting the oil or gas;

196 (B) overhead costs directly attributable and allocable to the operation and maintenance;
197 and

198 (C) depreciation and a return on undepreciated capital investment.

199 (ii) Subsection (25)(c)(i) includes situations where the producer performs the
200 transportation for the producer's product.

201 (d) Regardless of whether transportation costs are determined on the basis of an
202 arm's-length contract or a basis other than an arm's-length contract, transportation costs
203 include:

204 (i) carbon dioxide removal;

205 (ii) compression;

206 (iii) dehydration;

207 (iv) gathering;

208 (v) separating;

209 (vi) treating; or

210 (vii) a process similar to Subsections (25)(d)(i) through (vi), as determined by the
211 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
212 Rulemaking Act.

213 (26) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

214 (27) "Well or wells" means any extractive means from which oil or gas is produced or
215 extracted, located within an oil or gas field, and operated by one person.

216 (28) "Wildcat well" means an oil and gas producing well ~~[which]~~ that is drilled and
217 completed in a pool, as defined under Section 40-6-2, in which a well has not been previously
218 completed as a well capable of producing in commercial quantities.

219 (29) "Working interest owner" means the owner of an interest in oil or gas burdened
220 with a share of the expenses of developing and operating the property.

221 (30) (a) "Workover" means any downhole operation that is:

222 (i) conducted to sustain, restore, or increase the producibility or serviceability of a well
223 in the geologic intervals in which the well is currently completed; and

224 (ii) approved by the division as a workover.

225 (b) "Workover" does not include operations that are conducted primarily as routine
226 maintenance or to replace worn or damaged equipment.

227 Section 3. Section **59-5-102** is amended to read:

228 **59-5-102. Severance tax -- Rate -- Computation -- Annual exemption -- Tax credit**
229 **-- Tax rate reduction -- Study by Revenue and Taxation Interim Committee.**

230 (1) (a) Subject to Subsection (1)(b), a person owning an interest in oil or gas produced
231 from a well in the state, including a working interest, royalty interest, payment out of
232 production, or any other interest, or in the proceeds of the production of oil or gas, shall pay to
233 the state a severance tax on the basis of the value determined under Section 59-5-103.1 of the
234 oil or gas:

235 (i) produced; and

236 (ii) (A) saved;

237 (B) sold; or

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

239 (b) This section applies to an interest in oil or gas produced from a well in the state or
240 in the proceeds of the production of oil or gas produced from a well in the state except for:

241 (i) an interest of the United States in oil or gas or in the proceeds of the production of
242 oil or gas;

243 (ii) an interest of the state or a political subdivision of the state in oil or gas or in the
244 proceeds of the production of oil or gas; or

245 (iii) an interest of an Indian or Indian tribe as defined in Section 9-9-101 in oil or gas or
246 in the proceeds of the production of oil or gas produced from land under the jurisdiction of the
247 United States.

248 [~~(2) (a) Subject to Subsection (2)(d), the severance tax rate for oil is as follows:]~~

249 [~~(i) 3% of the value of the oil up to and including the first \$13 per barrel for oil; and]~~

250 [~~(ii) 5% of the value of the oil from \$13.01 and above per barrel for oil.]~~

251 [~~(b) Subject to Subsection (2)(d), the severance tax rate for natural gas is as follows:]~~

252 [~~(i) 3% of the value of the natural gas up to and including the first \$1.50 per MCF for
253 gas; and]~~

254 [~~(ii) 5% of the value of the natural gas from \$1.51 and above per MCF for gas.]~~

255 [~~(c) Subject to Subsection (2)(d), the severance tax rate for natural gas liquids is 4% of
256 the value of the natural gas liquids.]~~

257 [~~(d) (i) On or before December 15, 2004, the Office of the Legislative Fiscal Analyst
258 and the Governor's Office of Planning and Budget shall prepare a revenue forecast estimating
259 the amount of revenues that:]~~

260 [~~(A) would be generated by the taxes imposed by this part for the calendar year
261 beginning on January 1, 2004 had 2004 General Session S.B. 191 not taken effect; and]~~

262 [~~(B) will be generated by the taxes imposed by this part for the calendar year beginning
263 on January 1, 2004.]~~

264 [~~(ii) Effective on January 1, 2005, the tax rates described in Subsections (2)(a) through
265 (c) shall be:]~~

266 [~~(A) increased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated
267 under Subsection (2)(d)(i)(B) is less than the amount of revenues estimated under Subsection
268 (2)(d)(i)(A); or]~~

269 [~~(B) decreased as provided in Subsection (2)(d)(iii) if the amount of revenues
270 estimated under Subsection (2)(d)(i)(B) is greater than the amount of revenues estimated under
271 Subsection (2)(d)(i)(A).]~~

272 [~~(iii) For purposes of Subsection (2)(d)(ii):]~~

273 [~~(A) subject to Subsection (2)(d)(iv)(B):]~~

274 [~~(f) if an increase is required under Subsection (2)(d)(ii)(A), the total increase in the tax
275 rates shall be by the amount necessary to generate for the calendar year beginning on January 1,~~

276 2005 revenues equal to the amount by which the revenues estimated under Subsection
277 (2)(d)(i)(A) exceed the revenues estimated under Subsection (2)(d)(i)(B); or]
278 [(H) if a decrease is required under Subsection (2)(d)(ii)(B), the total decrease in the
279 tax rates shall be by the amount necessary to reduce for the calendar year beginning on January
280 1, 2005 revenues equal to the amount by which the revenues estimated under Subsection
281 (2)(d)(i)(B) exceed the revenues estimated under Subsection (2)(d)(i)(A); and]
282 [(B) an increase or decrease in each tax rate under Subsection (2)(d)(ii) shall be in
283 proportion to the amount of revenues generated by each tax rate under this part for the calendar
284 year beginning on January 1, 2003.]
285 [(iv) (A) The commission shall calculate any tax rate increase or decrease required by
286 Subsection (2)(d)(ii) using the best information available to the commission.]
287 [(B) If the tax rates described in Subsections (2)(a) through (c) are increased or
288 decreased as provided in this Subsection (2)(d), the commission shall mail a notice to each
289 person required to file a return under this part stating the tax rate in effect on January 1, 2005
290 as a result of the increase or decrease.]
291 (2) (a) The severance tax rate for oil is 5% of the value of the oil.
292 (b) The severance tax rate for natural gas is 5% of the value of the natural gas.
293 (c) The severance tax rate for natural gas liquids is 5% of the value of the natural gas
294 liquids.
295 (3) If oil or gas is shipped outside the state:
296 (a) the shipment constitutes a sale; and
297 (b) the oil or gas is subject to the tax imposed by this section.
298 (4) (a) Except as provided in Subsection (4)(b), if the oil or gas is stockpiled, the tax is
299 not imposed until the oil or gas is:
300 (i) sold;
301 (ii) transported; or
302 (iii) delivered.
303 (b) Notwithstanding Subsection (4)(a), if oil or gas is stockpiled for more than two
304 years, the oil or gas is subject to the tax imposed by this section.
305 (5) A stripper well is exempt from a tax [is not] imposed under this section [upon]
306 unless:

307 ~~[(a) stripper wells, unless]~~

308 (a) the exemption prevents the severance tax from being treated as a deduction for
309 federal tax purposes; or

310 (b) (i) for an oil stripper well, the average crude oil price for the prior calendar year as
311 reported by the United States Department of Energy is greater than or equal to \$40 per barrel;
312 or

313 (ii) for a gas stripper well, the average wellhead price for the prior calendar year as
314 reported by the United States Department of Energy is greater than or equal to \$1.50 per
315 thousand cubic feet.

316 ~~[(b) the first 12 months of production for wildcat wells started after January 1, 1990;~~
317 ~~or]~~

318 ~~[(c) the first six months of production for development wells started after January 1,~~
319 ~~1990.]~~

320 ~~[(6) (a) Subject to Subsections (6)(b) and (c), a working interest owner who pays for all~~
321 ~~or part of the expenses of a recompletion or workover may claim a nonrefundable tax credit~~
322 ~~equal to 20% of the amount paid.]~~

323 ~~[(b) The tax credit under Subsection (6)(a) for each recompletion or workover may not~~
324 ~~exceed \$30,000 per well during each calendar year.]~~

325 ~~[(c) If any amount of tax credit a taxpayer is allowed under this Subsection (6) exceeds~~
326 ~~the taxpayer's tax liability under this part for the calendar year for which the taxpayer claims~~
327 ~~the tax credit, the amount of tax credit exceeding the taxpayer's tax liability for the calendar~~
328 ~~year may be carried forward for the next three calendar years.]~~

329 ~~[(7) A 50% reduction in the tax rate is imposed upon the incremental production~~
330 ~~achieved from an enhanced recovery project.]~~

331 ~~[(8)]~~ (6) The taxes imposed by this section are:

332 (a) in addition to all other taxes provided by law; and

333 (b) delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year
334 when the oil or gas is:

335 (i) produced; and

336 (ii) (A) saved;

337 (B) sold; or

338 (C) transported from the field.

339 [(9)] (7) With respect to the tax imposed by this section on each owner of oil or gas or
340 in the proceeds of the production of those substances produced in the state, each owner is liable
341 for the tax in proportion to the owner's interest in the production or in the proceeds of the
342 production.

343 [(10)] (8) The tax imposed by this section shall be reported and paid by each producer
344 that takes oil or gas in kind pursuant to agreement on behalf of the producer and on behalf of
345 each owner entitled to participate in the oil or gas sold by the producer or transported by the
346 producer from the field where the oil or gas is produced.

347 [(11)] (9) Each producer shall deduct the tax imposed by this section from the amounts
348 due to other owners for the production or the proceeds of the production.

349 [(12)(a) The Revenue and Taxation Interim Committee shall review the applicability
350 of the tax provided for in this chapter to coal-to-liquids, oil shale, and tar sands technology on
351 or before the October 2011 interim meeting.]

352 [(b) The Revenue and Taxation Interim Committee shall address in its review the cost
353 and benefit of not applying the tax provided for in this chapter to coal-to-liquids, oil shale, and
354 tar sands technology.]

355 [(c) The Revenue and Taxation Interim Committee shall report its findings and
356 recommendations under this Subsection (12) to the Legislative Management Committee on or
357 before the November 2011 interim meeting.]

358 Section 4. Section **59-5-115** is amended to read:

359 **59-5-115. Disposition of taxes collected -- Credit to Education Fund.**

360 [All taxes] Except as provided in Section 51-9-305, 59-5-116, or 59-5-119, a tax
361 imposed and collected under Section 59-5-102 shall be paid to the commission, promptly
362 remitted to the state treasurer, and [except those taxes otherwise allocated under Section
363 51-9-305, 59-5-116, or 59-5-119,] credited to the [General Fund] Education Fund for allocation
364 to public education.

365 Section 5. **Repealer.**

366 This bill repeals:

367 Section **59-5-120, Exemption.**

368 Section 6. **Effective date.**

369

This bill takes effect on January 1, 2014.

Legislative Review Note
as of 1-18-13 4:08 PM

Office of Legislative Research and General Counsel