LEGISLATIVE GENERAL COUNSEL
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S.B. 17
1st Sub. (Green)

Senator Kevin T. Van Tassell proposes the following substitute bill:

REVENUE AND TAXATION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: ____________

LONG TITLE

General Description:

This bill amends certain oil and gas severance tax statutes.

Highlighted Provisions:

This bill:

- defines terms;
- clarifies the formula for calculating the oil and gas severance tax; 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 2013, Chapter 310

59-5-103.1, as enacted by Laws of Utah 2004, Chapter 244

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

1st Sub. S.B. 17

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

59-5-102. Severance tax -- Rate -- Computation -- Annual exemption -- Tax credit -- Tax rate reduction.

(1) [~~(a) Subject to~~] As used in this section:

(a) "Royalty rate" means the percentage of the interests described in Subsection (2)(b)(i) as defined by a contract between the United States, the state, an Indian, or an Indian tribe and the oil or gas producer.

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

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

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

(c) "Taxable volume" means:

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

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

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

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

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

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

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

(i) produced; and

(ii) (A) saved;

(B) sold; or

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

(e) "Total volume" means:

(i) for oil, the number of barrels:

(A) produced; and

(B) (I) saved;

(II) sold; or

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

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

(A) produced; and

(B) (I) saved;

(II) sold; or

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

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

(2) (a) Except as provided in Subsection [~~(1)~~] (2)(b), a person owning an interest in oil or gas produced from a well in the state, including a working interest, royalty interest, payment out of production, or any other interest, or in the proceeds of the production of oil or gas, shall pay to the state a severance tax on [~~the basis of the value determined under Section 59-5-103.1~~] the owner's interest in the taxable value of the oil or gas:

(i) produced; and

(ii) (A) saved;

(B) sold; or

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

(b) [~~This section applies to an interest in oil or gas produced from a well in the state or in the proceeds of the production of oil or gas produced from a well in the state except for:~~] The severance tax imposed by Subsection (2)(a) does not apply to:

(i) an interest of:

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

[~~(ii) an interest of~~] (B) the state or a political subdivision of the state in oil or gas or in the proceeds of the production of oil or gas; [~~or~~] and

[~~(iii) an interest of~~] (C) an Indian or Indian tribe as defined in Section 9-9-101 in oil or gas or in the proceeds of the production of oil or gas produced from land under the jurisdiction of the United States[~~. (2) (a) Subject to Subsection (2)(d), the~~]; and

(ii) the value of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Subject to Subsection (8):

(a) the severance tax rate for oil is as follows:

(i) 3% of the taxable value of the oil up to and including the first $13 per barrel for oil; and

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

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

(i) 3% of the taxable value of the natural gas up to and including the first $1.50 per

MCF for gas; and

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

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

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

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

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

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

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

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

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

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

[~~(I) if an increase is required under Subsection (2)(d)(ii)(A), the total increase in the tax rates shall be by the amount necessary to generate for the calendar year beginning on January 1, 2005 revenues equal to the amount by which the revenues estimated under Subsection (2)(d)(i)(A) exceed the revenues estimated under Subsection (2)(d)(i)(B); or~~]

[~~(II) if a decrease is required under Subsection (2)(d)(ii)(B), the total decrease in the tax rates shall be by the amount necessary to reduce for the calendar year beginning on January 1, 2005 revenues equal to the amount by which the revenues estimated under Subsection (2)(d)(i)(B) exceed the revenues estimated under Subsection (2)(d)(i)(A); and~~]

[~~(B) an increase or decrease in each tax rate under Subsection (2)(d)(ii) shall be in~~

~~proportion to the amount of revenues generated by each tax rate under this part for the calendar year beginning on January 1, 2003.~~]

[~~(iv) (A) The commission shall calculate any tax rate increase or decrease required by Subsection (2)(d)(ii) using the best information available to the commission.~~]

[~~(B) If the tax rates described in Subsections (2)(a) through (c) are increased or decreased as provided in this Subsection (2)(d), the commission shall mail a notice to each person required to file a return under this part stating the tax rate in effect on January 1, 2005 as a result of the increase or decrease.~~]

[~~(3)~~] (5) If oil or gas is shipped outside the state:

(a) the shipment constitutes a sale; and

(b) the oil or gas is subject to the tax imposed by this section.

[~~(4)~~] (6) (a) Except as provided in Subsection [~~(4)~~] (6)(b), if the oil or gas is stockpiled, the tax is not imposed until the oil or gas is:

(i) sold;

(ii) transported; or

(iii) delivered.

(b) [~~Notwithstanding Subsection (4)(a), if~~] If oil or gas is stockpiled for more than two years, the oil or gas is subject to the tax imposed by this section.

[~~(5) A tax is not imposed under this section upon:~~]

[~~(a) stripper wells, unless the exemption prevents the severance tax from being treated as a deduction for federal tax purposes;~~]

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

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

[~~(6)~~] (7) (a) Subject to Subsections [~~(6)~~] (7)(b) and (c), a [~~working interest owner~~] taxpayer who pays for all or part of the expenses of a recompletion or workover may claim a nonrefundable tax credit equal to 20% of the amount paid.

(b) The tax credit under Subsection [~~(6)~~] (7)(a) for each recompletion or workover may not exceed $30,000 per well during each calendar year.

[~~(c) If any amount of tax credit a taxpayer is allowed under this Subsection (6) exceeds~~

~~the taxpayer's tax liability under this part for the calendar year for which the taxpayer claims the tax credit, the amount of tax credit exceeding the taxpayer's tax liability for the calendar year may be carried forward for the next three calendar years.~~]

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

[~~(7)~~] (8) A 50% reduction in the tax rate is imposed upon the incremental production achieved from an enhanced recovery project.

[~~(8)~~] (9) The taxes imposed by this section are:

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

(b) delinquent, unless otherwise deferred, on June 1 [~~next succeeding~~] following the calendar year when the oil or gas is:

(i) produced; and

(ii) (A) saved;

(B) sold; or

(C) transported from the field.

[~~(9)~~] (10) With respect to the tax imposed by this section on each owner of an interest in the production of oil or gas or in the proceeds of the production of [~~those substances produced~~] oil or gas in the state, each owner is liable for the tax in proportion to the owner's interest in the production or in the proceeds of the production.

[~~(10)~~] (11) The tax imposed by this section shall be reported and paid by each producer that takes oil or gas in kind pursuant to an agreement on behalf of the producer and on behalf of each owner entitled to participate in the oil or gas sold by the producer or transported by the producer from the field where the oil or gas is produced.

[~~(11)~~] (12) Each producer shall deduct the tax imposed by this section from the amounts due to other owners for the production or the proceeds of the production.

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

[~~(b) The Revenue and Taxation Interim Committee shall address in its review the cost and benefit of not applying the tax provided for in this chapter to coal-to-liquids, oil shale, and~~

~~tar sands technology.~~]

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

Section 2. Section **59-5-103.1** is amended to read:

59-5-103.1. Valuation of oil or gas -- Deductions.

(1) (a) For purposes of the tax imposed under Section 59-5-102 and subject to Subsection (2), the value of oil or gas shall be determined at the first point closest to the well at which the fair market value for the oil or gas may be determined by:

(i) a sale pursuant to an arm's-length contract; or

(ii) for a sale other than a sale described in Subsection (1)(a)(i), comparison to other sales of oil or gas.

(b) For purposes of determining the fair market value of oil or gas under this Subsection (1), a person subject to a tax under Section 59-5-102 may deduct:

(i) all processing costs from the value of[~~:~~] oil or gas, including processing costs attributable to the value of oil and gas that is exempt from taxation under Section 59-5-102; and

[~~(A) oil; or~~]

[~~(B) gas; and~~]

(ii) [~~(A)~~] except as provided in Subsection (1)[~~(b)(ii)(B),~~](c), all transportation costs from the value of[~~:~~]oil or gas, including transportation costs attributable to the value of oil and gas that is exempt from taxation under Section 59-5-102.

[~~(I) oil; and~~]

[~~(II) gas; and~~]

[~~(B) notwithstanding Subsection (1)(b)(ii)(A), the~~]

(c) The deduction for transportation costs may not exceed 50% of the value of the[~~:~~] oil or gas.

[~~(I) oil; or~~]

[~~(II) gas.~~]

(2) Subsection (1)(a)(ii) applies to a sale of oil or gas between:

(a) a parent company and a subsidiary company;

(b) companies wholly owned or partially owned by a common parent company; or

(c) companies otherwise affiliated.

Section 3. **Effective date.**

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

Section 4. **Retrospective operation.**

This bill has retrospective operation for a taxable year beginning on or after January 1, 2015, and applies to an oil and gas severance tax that is the subject of an appeal that was filed or pending on or after January 1, 2016.