

**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: Scott H. Chew

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**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

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



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

27 **59-5-102. Severance tax -- Rate -- Computation -- Annual exemption -- Tax credit**  
28 **-- Tax rate reduction.**

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

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

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

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

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

37 (c) "Taxable volume" means:

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

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

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

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

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

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

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

48 (i) produced; and

49 (ii) (A) saved;

50 (B) sold; or

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

52 (e) "Total volume" means:

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

54 (A) produced; and

55 (B) (I) saved;

56 (II) sold; or

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

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

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

71 (i) produced; and  
 72 (ii) (A) saved;  
 73 (B) sold; or  
 74 (C) transported from the field where the substance was produced.

75 (b) ~~[This section applies to an interest in oil or gas produced from a well in the state or~~  
 76 ~~in the proceeds of the production of oil or gas produced from a well in the state except for:]~~

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

78 (i) an interest of:  
 79 (A) the United States in oil or gas or in the proceeds of the production of oil or gas;  
 80 ~~[(ii) an interest of]~~ (B) the state or a political subdivision of the state in oil or gas or in  
 81 the proceeds of the production of oil or gas; ~~[or]~~ and  
 82 ~~[(iii) an interest of]~~ (C) an Indian or Indian tribe as defined in Section 9-9-101 in oil or  
 83 gas or in the proceeds of the production of oil or gas produced from land under the jurisdiction  
 84 of the United States~~[-(2)-(a) Subject to Subsection (2)(d), the];~~ and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (4) Subject to Subsection (8):

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

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

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

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

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

119 MCF for gas; and

120 (ii) 5% of the taxable value of the natural gas from \$1.51 and above per MCF for  
121 gas[:]; and

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

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

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

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

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

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

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

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

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

141 [~~(I) if an increase is required under Subsection (2)(d)(ii)(A), the total increase in the tax  
142 rates shall be by the amount necessary to generate for the calendar year beginning on January 1,  
143 2005 revenues equal to the amount by which the revenues estimated under Subsection  
144 (2)(d)(i)(A) exceed the revenues estimated under Subsection (2)(d)(i)(B); or]~~

145 [~~(II) if a decrease is required under Subsection (2)(d)(ii)(B), the total decrease in the  
146 tax rates shall be by the amount necessary to reduce for the calendar year beginning on January  
147 1, 2005 revenues equal to the amount by which the revenues estimated under Subsection  
148 (2)(d)(i)(B) exceed the revenues estimated under Subsection (2)(d)(i)(A); and]~~

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

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

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

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

158 [~~(3)~~ (5) If oil or gas is shipped outside the state:

159 (a) the shipment constitutes a sale; and

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

161 [~~(4)~~ (6) (a) Except as provided in Subsection [~~(4)~~ (6)(b), if the oil or gas is stockpiled,  
162 the tax is not imposed until the oil or gas is:

163 (i) sold;

164 (ii) transported; or

165 (iii) delivered.

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

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

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

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

173 [~~(c) the first six months of production for development wells started after January 1,  
174 1990.]~~

175 [~~(6)~~ (7) (a) Subject to Subsections [~~(6)~~ (7)(b) and (c), a [~~working interest owner~~  
176 taxpayer who pays for all or part of the expenses of a recompletion or workover may claim a  
177 nonrefundable tax credit equal to 20% of the amount paid.

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

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

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

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

187 [~~(7)~~] (8) A 50% reduction in the tax rate is imposed upon the incremental production  
 188 achieved from an enhanced recovery project.

189 [~~(8)~~] (9) The taxes imposed by this section are:

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

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

193 (i) produced; and

194 (ii) (A) saved;

195 (B) sold; or

196 (C) transported from the field.

197 [~~(9)~~] (10) With respect to the tax imposed by this section on each owner of an interest  
 198 in the production of oil or gas or in the proceeds of the production of [~~those substances~~  
 199 ~~produced~~] oil or gas in the state, each owner is liable for the tax in proportion to the owner's  
 200 interest in the production or in the proceeds of the production.

201 [~~(10)~~] (11) The tax imposed by this section shall be reported and paid by each producer  
 202 that takes oil or gas in kind pursuant to an agreement on behalf of the producer and on behalf of  
 203 each owner entitled to participate in the oil or gas sold by the producer or transported by the  
 204 producer from the field where the oil or gas is produced.

205 [~~(11)~~] (12) Each producer shall deduct the tax imposed by this section from the  
 206 amounts due to other owners for the production or the proceeds of the production.

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

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

212 ~~tar sands technology.]~~

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

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

217 **59-5-103.1. Valuation of oil or gas -- Deductions.**

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

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

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

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

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

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

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

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

234 ~~[(F) oil; and]~~

235 ~~[(H) gas; and]~~

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

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

239 ~~[(F) oil; or]~~

240 ~~[(H) gas:]~~

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

242 (a) a parent company and a subsidiary company;



243 (b) companies wholly owned or partially owned by a common parent company; or  
244 (c) companies otherwise affiliated.

245 Section 3. **Effective date.**

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

250 Section 4. **Retrospective operation.**

251 This bill has retrospective operation for a taxable year beginning on or after January 1,  
252 2015, and applies to an oil and gas severance tax for any taxable year, including a taxable year  
253 beginning before January 1, 2015, that is the subject of an appeal that was filed or pending on  
254 or after January 1, 2016.