

TAX INCENTIVE OVERSIGHT AMENDMENTS

2019 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: Lincoln Fillmore

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

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.