

HOUSE BILL 285

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Nate Gentry

This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. In addition, it includes changes adopted by Gentry HFLR Amendments 1 and 2. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO TAXATION; CREATING A **TEMPORARY** TAX RATE DIFFERENTIAL FOR OIL PRODUCED FROM A QUALIFIED ENHANCED RECOVERY PROJECT THAT USES ANTHROPOGENIC CARBON DIOXIDE TO DISPLACE THE OIL FROM NATURAL GAS; AMENDING A SECTION OF THE OIL AND GAS SEVERANCE TAX ACT; DEFINING "POSTED PRICE" IN THE OIL AND GAS SEVERANCE TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-29-2 NMSA 1978 (being Laws 1959, Chapter 52, Section 2, as amended) is amended to read:

"7-29-2. DEFINITIONS.--As used in the Oil and Gas Severance Tax Act:

A. "anthropogenic carbon dioxide" means that portion of carbon dioxide in the atmosphere that is found in the

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atmosphere as direct result of human activities, including the burning of hydrocarbons; ~~A. "anthropogenic carbon dioxide" means that portion of carbon dioxide in the atmosphere that is produced directly by human activities, including the burning of fossil fuels;~~

~~B.A.~~ "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

~~C.B.~~ "production unit" means a unit of property designated by the department from which products of common ownership are severed;

~~D.C.~~ "severance" means the taking from the soil of any product in any manner whatsoever;

~~E.D.~~ "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

~~F.E.~~ "posted price" means the price of west Texas intermediate light sweet crude oil as published by the United States energy information administration;

~~F.]~~ ~~G.F.~~ "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

~~F.]~~ ~~H.G.~~ "operator" means any person:

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(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for ~~his~~ the person's interest;

~~G.~~ **I.H.** "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the wellbore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

~~H.~~ **J.I.** "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

~~I.~~ **K.J.** "person" means any individual, estate, trust, receiver, business trust, corporation, firm, co-partnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

~~J.~~ **L.K.** "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit,

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or who has a right to a monetary payment that is determined by the value of such products;

~~[K.]~~ ~~M.L.~~ "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

~~[L.]~~ ~~N.M.~~ "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act, for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

~~[M.]~~ ~~O.N.~~ "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary

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recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

~~[N.]~~ ~~P.O.~~ "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993, as approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

~~[O.]~~ ~~Q.P.~~ "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

~~[P.]~~ ~~R.Q.~~ "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the

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preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

[Q.] ~~S.R.~~ "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

[R.] ~~T.R.~~ "tax" means the oil and gas severance tax."

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SECTION 2. Section 7-29-4 NMSA 1978 (being Laws 1980, Chapter 62, Section 5, as amended) is amended to read:

"7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED--
COLLECTION--INTEREST OWNER'S LIABILITY TO STATE--INDIAN
LIABILITY.--

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, except as provided in Subsection B of this section. The measure of the tax and the rates are:

(1) on natural gas severed and sold, except as provided in Paragraphs [~~(4), (6) and (7)~~] (5), (7) and (8) of this subsection, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (3), [~~(5), (8) and (9)~~] (4), (6), (9) and (10) of this subsection, three and three-fourths percent of taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(3) except as provided in Paragraph (4) of this subsection, on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project that does not involve the injection [redacted] of anthropogenic carbon dioxide in the process of displacing oil and other liquid hydrocarbons removed

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~~from natural gas~~, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-eight dollars (\$28.00) per barrel;

(4) beginning on July 1, 2016 and before July 1, 2026, on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project that involves the ~~application~~injection of anthropogenic carbon dioxide in the process of displacing oil and other liquid hydrocarbons removed from natural gas, ~~one and seven-eighths percent~~the following percentages of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than sixty dollars (\$60.00) per barrel;

(a) two and three-fourths percent if twenty-five to fifty percent of the total amount of carbon dioxide injected during the taxable period consists of anthropogenic

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carbon dioxide; and

(b) one and three-fourths percent if more than fifty percent of the total amount of carbon dioxide injected during the taxable period consists of anthropogenic carbon dioxide;

~~(4)~~ (5) on the natural gas from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel;

~~(5)~~ (6) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided that the annual average price of west Texas intermediate crude oil, determined by the department by

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averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel;

[~~(6)~~] (7) on the natural gas from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents (\$1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

[~~(7)~~] (8) on the natural gas from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents (\$1.15) per thousand cubic feet but not more than one dollar thirty-five cents (\$1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

[~~(8)~~] (9) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided that the average annual taxable value of oil was

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equal to or less than fifteen dollars (\$15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

~~(9)~~ (10) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978; provided that the average annual taxable value of oil was greater than fifteen dollars (\$15.00) per barrel but not more than eighteen dollars (\$18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

~~(10)~~ (11) on carbon dioxide, helium and non-hydrocarbon gases, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978.

B. The tax imposed in Subsection A of this section shall not be imposed on:

(1) natural gas severed and sold from a production restoration project during the first ten years of production following the restoration of production; provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in

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which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel; and

(2) oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a production restoration project during the first ten years of production following the restoration of production; provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel.

C. Every interest owner shall be liable for the tax to the extent of [his] the interest owner's interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for the tax to the extent authorized or permitted by law.

D. The tax imposed by this section may be referred to as the "oil and gas severance tax".

~~SECTION 3. EFFECTIVE DATE. The effective date of the provisions of this section is July 1, 2016.~~