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SENATE BILL 974

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

ROD ADAIR

AN ACT

RELATING TO TAXATION; PROVIDING FOR AN EXEMPTION FROM THE OIL AND GAS SEVERANCE TAX FOR THREE YEARS FOR A WILDCAT WELL PROJECT PURSUANT TO THE PROVISIONS OF THE NATURAL GAS AND CRUDE OIL PRODUCTION INCENTIVE ACT; AMENDING SECTIONS OF THE NMSA 1978.

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. "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;

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

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

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

9 E. "product" or "products" means oil, natural gas or
10 liquid hydrocarbon, individually or any combination thereof, or
11 carbon dioxide;

12 F. "operator" means any person:

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

15 (2) owning an interest in any product at the
16 time of severance who receives a portion or all of such product
17 for his interest;

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

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1 H. "purchaser" means a person who is the first
2 purchaser of a product after severance from a production unit,
3 except as otherwise provided in the Oil and Gas Severance Tax
4 Act;

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

10 J. "interest owner" means a person owning an entire
11 or fractional interest of whatsoever kind or nature in the
12 products at the time of severance from a production unit, or who
13 has a right to a monetary payment that is determined by the
14 value of such products;

15 K. "new production natural gas well" means a
16 producing crude oil or natural gas well proration unit that
17 begins its initial natural gas production on or after May 1,
18 1987 as determined by the oil conservation division of the
19 energy, minerals and natural resources department;

20 L. "qualified enhanced recovery project", prior to
21 January 1, 1994, means the use or the expanded use of carbon
22 dioxide, when approved by the oil conservation division of the
23 energy, minerals and natural resources department pursuant to
24 the Enhanced Oil Recovery Act, for the displacement of oil and
25 of other liquid hydrocarbons removed from natural gas at or near

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1 the wellhead from an oil well or pool classified by the oil
2 conservation division pursuant to Paragraph (11) of Subsection B
3 of Section 70-2-12 NMSA 1978;

4 M "qualified enhanced recovery project", on and
5 after January 1, 1994, means the use or the expanded use of any
6 process approved by the oil conservation division of the energy,
7 minerals and natural resources department pursuant to the
8 Enhanced Oil Recovery Act for the displacement of oil and of
9 other liquid hydrocarbons removed from natural gas at or near
10 the wellhead from an oil well or pool classified by the oil
11 conservation division pursuant to Paragraph (11) of Subsection B
12 of Section 70-2-12 NMSA 1978, other than a primary recovery
13 process; the term includes but is not limited to the use of a
14 pressure maintenance process, a water flooding process and
15 immiscible, miscible, chemical, thermal or biological process or
16 any other related process;

17 N. "production restoration project" means the use of
18 any process for returning to production a natural gas or oil
19 well that had thirty days or less of production between January
20 1, 1993 and December 31, 1994, as approved and certified by the
21 oil conservation division of the energy, minerals and natural
22 resources department pursuant to the Natural Gas and Crude Oil
23 Production Incentive Act;

24 O. "well workover project" means any procedure
25 undertaken by the operator of a natural gas or crude oil well

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1 that is intended to increase the production from the well and
2 that has been approved and certified by the oil conservation
3 division of the energy, minerals and natural resources
4 department pursuant to the Natural Gas and Crude Oil Production
5 Incentive Act; [~~and~~]

6 P. "tax" means the oil and gas severance tax; and

7 Q. "wildcat well project" means the drilling of a
8 well in search of oil or natural gas accumulations located in a
9 nonproductive area or away from a known area of production, as
10 approved and certified by the oil conservation division of the
11 energy, minerals and natural resources department pursuant to
12 the Natural Gas and Crude Oil Production Incentive Act."

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

15 "7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED--
16 COLLECTION--INTEREST OWNER'S LIABILITY TO STATE--INDIAN
17 LIABILITY. --

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

22 (1) on natural gas severed and sold, except as
23 provided in Paragraph (4) of this subsection, three and
24 three-fourths percent of the taxable value determined under
25 Section 7-29-4.1 NMSA 1978;

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

6 (3) on oil and on other liquid hydrocarbons
7 removed from natural gas at or near the wellhead produced from a
8 qualified enhanced recovery project, one and seven-eighths
9 percent of the taxable value determined under Section 7-29-4.1
10 NMSA 1978, provided that the annual average price of west Texas
11 intermediate crude oil, determined by the department by
12 averaging the posted prices in effect on the last day of each
13 month of the twelve-month period ending on May 31 prior to the
14 fiscal year in which the tax rate is to be imposed, was less
15 than twenty-eight dollars (\$28.00) per barrel;

16 (4) on the natural gas from a well workover
17 project that is in excess of the production projection certified
18 by the oil conservation division of the energy, minerals and
19 natural resources department in its approval of the well
20 workover project, one and seven-eighths percent of the taxable
21 value determined under Section 7-29-4.1 NMSA 1978, provided that
22 the annual average price of west Texas intermediate crude oil,
23 determined by the department by averaging the posted prices in
24 effect on the last day of each month of the twelve-month period
25 ending on May 31 prior to the fiscal year in which the tax rate

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1 is to be imposed, was less than twenty-four dollars (\$24.00) per
2 barrel;

3 (5) on the oil and other liquid hydrocarbons
4 removed from natural gas at or near the wellhead from a well
5 workover project that is in excess of the production projection
6 certified by the oil conservation division of the energy,
7 minerals and natural resources department in its approval of the
8 well workover project, one and seven-eighths percent of the
9 taxable value determined under Section 7-29-4.1 NMSA 1978,
10 provided that the annual average price of west Texas
11 intermediate crude oil, determined by the department by
12 averaging the posted prices in effect on the last day of each
13 month of the twelve-month period ending on May 31 prior to the
14 fiscal year in which the tax rate is to be imposed, was less
15 than twenty-four dollars (\$24.00) per barrel; and

16 (6) on carbon dioxide, three and three-fourths
17 percent of the taxable value determined under Section 7-29-4.1
18 NMSA 1978.

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

21 (1) natural gas severed and sold from:

22 (a) a production restoration project
23 during the first ten years of production following the
24 restoration of production, provided that the annual average
25 price of west Texas intermediate crude oil, determined by the

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1 department by averaging the posted prices in effect on the last
2 day of each month of the twelve-month period ending on May 31
3 prior to each fiscal year in which the tax exemption is to be
4 effective, was less than twenty-four dollars (\$24.00) per
5 barrel; and

6 (b) a wildcat well project during the
7 first three years of production; and

8 (2) oil and other liquid hydrocarbons removed
9 from natural gas at or near the wellhead from:

10 (a) a production restoration project
11 during the first ten years of production following the
12 restoration of production, provided that the annual average
13 price of west Texas intermediate crude oil, determined by the
14 department by averaging the posted prices in effect on the last
15 day of each month of the twelve-month period ending on May 31
16 prior to each fiscal year in which the tax exemption is to be
17 effective, was less than twenty-four dollars (\$24.00) per
18 barrel; and

19 (b) a wildcat well project during the
20 first three years of production.

21 C. Every interest owner shall be liable for the tax
22 to the extent of his interest in such products. Any Indian
23 tribe, Indian pueblo or Indian shall be liable for the tax to
24 the extent authorized or permitted by law.

25 D. The tax imposed by this section may be referred

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1 to as the "oil and gas severance tax". "

2 Section 3. Section 7-29B-2 NMSA 1978 (being Laws 1995,
3 Chapter 15, Section 2) is amended to read:

4 "7-29B-2. DEFINITIONS. --As used in the Natural Gas and
5 Crude Oil Production Incentive Act:

6 A. "department" means the taxation and revenue
7 department;

8 B. "division" means the oil conservation division of
9 the energy, minerals and natural resources department;

10 C. "natural gas" means any combustible vapor
11 composed chiefly of hydrocarbons occurring naturally;

12 D. "operator" means the person responsible for the
13 actual physical operation of a natural gas or oil well;

14 E. "person" means any individual or other legal
15 entity, including any group or combination of individuals or
16 other legal entities acting as a unit;

17 F. "production projection" means the estimate of the
18 productive capacity of a natural gas or oil well that is
19 certified by the division pursuant to the provisions of the
20 Natural Gas and Crude Oil Production Incentive Act as the future
21 rate of production from the well prior to the operator of the
22 well performing a well workover project on the well;

23 G. "production restoration incentive tax exemption"
24 means the tax exemption set forth in Subsection B of Section
25 7-29-4 NMSA 1978 for natural gas or oil produced from a

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1 production restoration project;

2 H. "production restoration project" means the use of
3 any process for returning to production a natural gas or oil
4 well that had thirty days or less of production between January
5 1, 1993 and December 31, 1994 as approved and certified by the
6 division;

7 I. "severance" means the taking from the soil of any
8 product in any manner whatsoever;

9 J. "well workover incentive tax rate" means the tax
10 rate set forth in Paragraphs (4) and (5) of Subsection A of
11 Section 7-29-4 NMSA 1978 on the natural gas or oil produced in
12 excess of the production projection from a well workover
13 project; [and]

14 K. "well workover project" means any procedure
15 undertaken by the operator of a natural gas or oil well that is
16 intended to increase the production from the well and that has
17 been approved and certified by the division;

18 L. "wildcat well incentive tax exemption" means the
19 tax exemption set forth in Subsection B of Section 7-29-4 NMSA
20 1978 for natural gas or oil produced from a wildcat well
21 project; and

22 M. "wildcat well project" means the drilling of a
23 well in search of oil or natural gas accumulations located in a
24 nonproductive area or away from a known area of production."

25 Section 4. Section 7-29B-3 NMSA 1978 (being Laws 1995,

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1 Chapter 15, Section 3) is amended to read:

2 "7-29B-3. APPROVAL OF PRODUCTION RESTORATION PROJECTS,
3 ~~[AND] WELL WORKOVER PROJECTS~~ AND WILDCAT WELL PROJECTS. --

4 A. A natural gas or oil well shall be approved by
5 the division as a production restoration project if:

6 (1) the operator of the well makes application
7 to the division in accordance with the provisions of the Natural
8 Gas and Crude Oil Production Incentive Act and rules and
9 regulations adopted pursuant to that act for approval of a
10 production restoration project; and

11 (2) the division records show that the well
12 had thirty days or less of production between January 1, 1993
13 and December 31, 1994.

14 B. A natural gas or oil well shall be approved by
15 the division as a well workover project if:

16 (1) the operator of the well makes application
17 to the division in accordance with the provisions of the Natural
18 Gas and Crude Oil Production Incentive Act and rules and
19 regulations adopted pursuant to that act for approval of a well
20 workover project;

21 (2) the division determines that the procedure
22 proposed to be undertaken by the operator of the well is a
23 procedure intended to increase the production from the well, but
24 is not routine maintenance that would be performed by a prudent
25 operator to maintain the well in operation. Such procedures may

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1 include, but are not limited to:

2 (a) re-entry into the well to drill
3 deeper, to sidetrack to a different location or to recomplete
4 for production;

5 (b) recompletion by reperforation of a
6 zone from which natural gas or oil has been produced or by
7 perforation of a different zone;

8 (c) repair or replacement of faulty or
9 damaged casing or related downhole equipment;

10 (d) fracturing, acidizing or installing
11 compression equipment; or

12 (e) squeezing, cementing or installing
13 equipment necessary for removal of excessive water, brine or
14 condensate from the well bore in order to establish, continue or
15 increase production from the well; and

16 (3) the operator of the well submits to the
17 division an estimate of the productive capacity of the well
18 based on at least twelve months of established production, and
19 the division, based on its verification of that estimate,
20 determines the future rate of production from the well prior to
21 the operator of the well performing the well workover project on
22 the well and certifies that as the production projection for the
23 project.

24 C. A natural gas or oil well shall be approved by
25 the division as a wildcat well project if:

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1 (1) the operator of the well makes application
2 to the division in accordance with the provisions of the Natural
3 Gas and Crude Oil Production Incentive Act and rules and
4 regulations adopted pursuant to that act for approval of a
5 wildcat well project; and

6 (2) the division determines that the well has
7 been drilled outside a known field or is producing oil or
8 natural gas from an area not previously proven productive."

9 Section 5. Section 7-29B-4 NMSA 1978 (being Laws 1995,
10 Chapter 15, Section 4) is amended to read:

11 "7-29B-4. APPLICATION PROCEDURES--CERTIFICATION OF
12 APPROVAL--RULES AND REGULATIONS--ADMINISTRATION.--

13 A. The operator of a proposed production restoration
14 project, ~~[or]~~ well workover project or wildcat well project
15 shall apply to the division for approval of a production
16 restoration project, ~~[or]~~ a well workover project or wildcat
17 well project in the form and manner prescribed by the division
18 and shall provide any relevant material and information the
19 division requires for that approval.

20 B. Upon a determination that the project complies
21 with the provisions of the Natural Gas and Crude Oil Production
22 Incentive Act and rules and regulations adopted pursuant to that
23 act, the division shall approve the application and shall issue
24 a certification of approval to the operator and designate the
25 natural gas or oil well as a production restoration project,

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1 [or] well workover project or wildcat well project, as
2 applicable.

3 C. At the time of issuing a certification of
4 approval to an operator of a natural gas or oil well for a well
5 workover project, the division shall also certify the production
6 projection for that project.

7 D. In addition to the powers enumerated in Section
8 70-2-12 NMSA 1978, the division shall adopt, promulgate and
9 enforce rules and regulations to carry out the provisions of
10 [~~Sections 1 through 5 of~~] the Natural Gas and Crude Oil
11 Production Incentive Act.

12 E. The division shall consider and approve
13 applications for approval of a production restoration project,
14 [or] well workover project or wildcat well project without
15 holding hearings on the applications. If the division denies
16 approval of an application pursuant to such a process, the
17 division, upon the request of the applicant, shall set a hearing
18 of the application before an examiner appointed by the division
19 to conduct the hearing. The hearing shall be conducted in
20 accordance with the provisions of the Oil and Gas Act for such
21 hearings. "

22 Section 6. Section 7-29B-6 NMSA 1978 (being Laws 1995,
23 Chapter 15, Section 6) is amended to read:

24 "7-29B-6. QUALIFICATION FOR PRODUCTION RESTORATION
25 INCENTIVE TAX EXEMPTION, WILDCAT WELL INCENTIVE TAX EXEMPTION

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1 AND WELL WORKOVER INCENTIVE TAX RATE--SECRETARY OF TAXATION AND
2 REVENUE APPROVAL--REFUND. --

3 A. The person responsible for paying the oil and gas
4 severance tax on natural gas or oil produced from a production
5 restoration project shall qualify to receive a ten-year
6 production restoration incentive tax exemption upon:

7 (1) application to the department in the form
8 and manner prescribed by the department for approval for the
9 ten-year production restoration incentive tax exemption;

10 (2) submission of the certification of approval
11 from the division and designation of the natural gas or oil well
12 as a production restoration project; and

13 (3) submission of any other relevant material
14 that the secretary of taxation and revenue deems necessary to
15 administer the applicable provisions of the Natural Gas and
16 Crude Oil Production Incentive Act.

17 B. The person responsible for payment of the oil and
18 gas severance tax on natural gas or oil produced from a well
19 workover project shall qualify for the well workover incentive
20 tax rate on the natural gas or oil produced in excess of the
21 production projection for that project upon:

22 (1) application to the department in the form
23 and manner prescribed by the department for approval to apply
24 the well workover incentive tax rate to the natural gas or oil
25 produced in excess of the production projection from a well

1 workover project;

2 (2) submission of the certification from the
3 division of approval and designation of the natural gas or oil
4 well as a well workover project and of the production projection
5 for the well workover project; and

6 (3) any other relevant material that the
7 department considers necessary to administer the applicable
8 provisions of the Natural Gas and Crude Oil Production Incentive
9 Act.

10 C. The person responsible for paying the oil and gas
11 severance tax on natural gas or oil produced from a wildcat well
12 project shall qualify to receive a three-year wildcat well
13 incentive tax exemption upon:

14 (1) application to the department in the form
15 and manner prescribed by the department for approval for the
16 three-year wildcat well incentive tax exemption;

17 (2) submission of the certification of approval
18 from the division and designation of the natural gas or oil well
19 as a wildcat well project; and

20 (3) submission of any other relevant material
21 that the secretary of taxation and revenue deems necessary to
22 administer the applicable provision of the Natural Gas and Crude
23 Oil Production Incentive Act.

24 [~~C.~~] D. The production restoration incentive tax
25 exemption shall apply to natural gas or oil produced from a

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1 production restoration project beginning the first day of the
2 month following the date the division certifies that production
3 has been restored and ending the last day of the tenth year of
4 production following that date. The well workover incentive tax
5 rate applies to the natural gas or oil produced in excess of the
6 production projection from a well workover project beginning the
7 first day of the month following the date the division certifies
8 that the well workover project has been completed. The wildcat
9 well incentive tax exemption shall apply to natural gas or oil
10 produced from a wildcat well project beginning the first day of
11 the month following the date the division certifies that the
12 production has begun and ending the last day of the third year
13 of production following that date.

14 ~~[D.]~~ E. The person responsible for payment of the
15 oil and gas severance tax on natural gas or oil production from
16 an approved well workover project may file a claim for refund in
17 accordance with Section 7-1-26 NMSA 1978 for taxes paid in
18 excess of the amount due using the well workover incentive tax
19 rate. Notwithstanding the provisions of Subsection E of Section
20 7-1-26 NMSA 1978, any such refund granted shall be made in the
21 form of a credit against any future oil and gas severance tax
22 liabilities incurred by the taxpayer.

23 ~~[E.]~~ F. The secretary of taxation and revenue may
24 adopt and promulgate rules and regulations to enforce the
25 provisions of this section. "

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Section 7. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1997.

- 18 -

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
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5 March 4, 1997
6

7 Mr. President:
8

9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
10 whom has been referred
11

12 SENATE BILL 974
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 FINANCE COMMITTEE.
17

18 Respectfully submitted,
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22 _____
23 Roman M. Maes, III, Chairman
24
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Fidel, Robinson

Absent: None

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