

HOUSE BILL No. 2269

By Committee on Utilities

2-1

AN ACT concerning natural gas; authorizing certain refunds and reimbursements of refunds of certain ad valorem tax reimbursements; authorizing the issuance of bonds and imposing a tax on certain transportation of natural gas.

WHEREAS, Since 1974, the Federal Energy Regulatory Commission (FERC) and its predecessor, the Federal Power Commission, had allowed natural gas producers and royalty owners of Kansas natural gas to include the cost of state ad valorem taxes in their rates regulated by the FERC; and

WHEREAS, In 1983, a petition challenging the inclusion of the costs of ad valorem taxes in rates was filed with FERC and FERC affirmed its prior rulings allowing recovery of those costs; and

WHEREAS, After the D.C. Circuit Court in 1988 ordered FERC to review its rulings, FERC reversed itself in 1993 and ordered the payment of refunds retroactive to the year 1988; and

WHEREAS, Kansas producers and royalty owners paid the refunds ordered, including interest, but in 1996 the D.C. Circuit Court reversed the FERC decision and required instead payment of refunds, including interest, retroactive to any recovery of the ad valorem tax after October 4, 1983, the time of filing of the initial petition in the case; and

WHEREAS, The tax policy of the State of Kansas has been based on the assumption that natural gas producers and royalty owners would be allowed to recover both ad valorem and severance tax as a cost of production; and

WHEREAS, To effectuate that longstanding state policy and to carry out the intent of the Kansas Legislature in adopting that policy: Now, therefore,

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Commission" means the state corporation commission.

(b) "Director" means the director of taxation of the department of revenue.

(c) "Natural gas" has the meaning provided by K.S.A. 55-1201, and amendments thereto.

1 (d) "Person" means any individual, corporation, limited liability com-
2 pany, partnership, association or other legal entity.

3 (e) "Pipeline" means a natural gas company transporting natural gas
4 in interstate commerce subject to the jurisdiction of the federal energy
5 regulatory commission (FERC) and a company transporting gas in intra-
6 state commerce subject to the jurisdiction of the state corporation com-
7 mission but shall not mean a person engaged in the local distribution of
8 natural gas or in the gathering or production or sale of natural gas.

9 (f) "Producer" means a person who made a "first sale" of natural gas,
10 as that term is defined in the federal natural gas policy act of 1978, from
11 one or more wells in Kansas, including any predecessors, successors and
12 royalty owners, and against whom a pipeline has claimed that refunds and
13 interest associated with the ad valorem tax is due and owing.

14 Sec. 2. (a) Any producer may file with the commission a claim for
15 payment to cover any claims of refunds, and any interest thereon, made
16 by pipelines, pursuant to FERC orders or proceedings, for reimburse-
17 ment for Kansas ad valorem taxes in connection with the first sale of
18 natural gas.

19 (b) Each claim filed pursuant to subsection (a) shall be verified and
20 submitted to the commission upon forms prescribed and furnished by
21 the commission and shall be accompanied by such additional document-
22 ation as required by the commission to determine eligibility for payment
23 of the claim. The commission shall review each claim and shall approve
24 payment to each eligible claimant.

25 (c) The commission may adopt rules and regulations as necessary to
26 administer the provisions of this section, including, but not limited to,
27 terms of eligibility. The commission, in its discretion, may approve pay-
28 ment only for claims for refunds, without interest. If, for any reason pay-
29 ments for only refunds do not operate to extinguish all liability of pro-
30 ducers the commission may approve payment to cover claims of interest
31 as well.

32 Sec. 3. (a) There is hereby established in the state treasury the nat-
33 ural gas tax refund fund. The fund shall consist of:

34 (1) Moneys credited to the fund from proceeds derived from the sale
35 of bonds issued by the Kansas development finance authority pursuant
36 to this act;

37 (2) interest credited to the fund pursuant to subsection (b) of this
38 section; and

39 (3) any amounts appropriated, contributed or otherwise made avail-
40 able for the purposes of the fund.

41 (b) On or before the 10th of each month, the director of accounts
42 and reports shall transfer from the state general fund to the natural gas
43 tax refund fund interest earnings based on:

1 (1) The average daily balance of moneys in the natural gas tax refund
2 fund for the preceding month; and

3 (2) the net earnings rate for the pooled money investment portfolio
4 for the preceding month.

5 (c) Moneys in the natural gas tax refund fund shall be used exclusively
6 to pay qualifying claims pursuant to section 2, and amendments thereto.

7 (d) All expenditures from the natural gas tax refund fund shall be
8 made in accordance with appropriation acts upon warrants of the director
9 of accounts and reports issued pursuant to vouchers approved by the
10 chairperson of the commission or the chairperson's designee for the pur-
11 poses set forth in this section.

12 Sec. 4. (a) There is hereby established in the state treasury the nat-
13 ural gas tax refund bond retirement fund. The fund shall consist of:

14 (1) Revenues collected from the tax imposed by this act;

15 (2) interest credited to the fund pursuant to subsection (b) of this
16 section; and

17 (3) any amounts appropriated, contributed or otherwise made avail-
18 able for the purposes of the fund.

19 (b) On or before the 10th of each month, the director of accounts
20 and reports shall transfer from the state general fund to the natural gas
21 tax refund bond retirement fund interest earnings based on:

22 (1) The average daily balance of moneys in the natural gas tax refund
23 bond retirement fund for the preceding month; and

24 (2) the net earnings rate for the pooled money investment portfolio
25 for the preceding month.

26 (c) Moneys in the natural gas tax refund bond retirement fund shall
27 be used exclusively as a source of revenue and security for the payment
28 of principal of and interest on bonds issued under the provisions of this
29 act.

30 (d) All expenditures from the natural gas tax refund bond retirement
31 fund shall be made in accordance with appropriation acts upon warrants
32 of the director of accounts and reports issued pursuant to vouchers ap-
33 proved by the chairperson of the commission or the chairperson's des-
34 ignee for the purposes set forth in this section.

35 Sec. 5. (a) For the purpose of paying debt service on any bonds is-
36 sued for the purpose of paying refunds on behalf of producers pursuant
37 to this act, the commission may enter into agreements with the Kansas
38 development finance authority to issue revenue bonds in one or more
39 series, in aggregate amounts not exceeding an amount equal to
40 \$180,000,000 plus all amounts required for costs of the bond issuance
41 and any required reserves on the bonds. The activities of the commission
42 in administering and performing the powers, duties and functions pre-
43 scribed by the provisions of this act from the proceeds of bonds issued

1 for such purpose by the Kansas development finance authority are hereby
2 approved for the purposes of subsection (b) of K.S.A. 74-8905, and
3 amendments thereto, and the authorization of the issuance of such bonds
4 by the Kansas development finance authority in accordance with that
5 statute. The provisions of subsection (a) of K.S.A. 74-8905, and amend-
6 ments thereto, shall not prohibit the issuance of bonds for such purposes
7 when so authorized and any such issuance of bonds is exempt from the
8 provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto.

9 (b) After providing for a bond reserve and the cost of the issuance of
10 the bonds, net proceeds derived from the sale of revenue bonds issued
11 pursuant to this section shall be deposited in the state treasury and cred-
12 ited to the natural gas tax refund fund.

13 (c) Revenue bonds, including refunding revenue bonds, issued here-
14 under shall not constitute an indebtedness of the state of Kansas, nor
15 shall they constitute indebtedness within the meaning of any constitu-
16 tional or statutory provision limiting the incurring of indebtedness.

17 (d) Revenue bonds, including refunding revenue bonds, issued here-
18 under and the income derived therefrom are and shall be exempt from
19 all state, county and municipal taxation in the state of Kansas, except
20 Kansas estate taxes.

21 Sec. 6. (a) For the privilege of transporting natural gas from, within
22 and through this state by pipeline and for the purpose of raising revenue
23 for payment of principal and interest due upon revenue bonds issued
24 pursuant to this act, there is imposed a tax at the rate of \$.08 per thousand
25 cubic feet of natural gas so transported by pipeline. Such tax shall not
26 apply to the local distribution of natural gas or to the production and
27 gathering of natural gas. Such tax shall be paid by the pipelines, provided,
28 however, that where natural gas is transported through interconnections
29 between two pipelines, the tax will be paid by the last transporting pipe-
30 line prior to either leaving the state or being delivered to a local distri-
31 bution company or direct sale customer. The tax shall be remitted to the
32 director by the pipeline on or before the last day of each month. Such
33 remittance shall be accompanied by a return upon forms prescribed and
34 furnished by the director.

35 (b) The director may grant a reasonable extension of time for filing
36 any return and remittance of taxes due under this act upon good cause
37 shown. Interest shall be charged at the rate prescribed by subsection (a)
38 of K.S.A. 79-2968, and amendments thereto, for the period of such ex-
39 tension for the remittance of taxes.

40 (c) All revenue collected or received by the director from the tax
41 imposed by this act shall be remitted daily to the state treasurer. Upon
42 receipt of each such remittance, the state treasurer shall deposit the entire
43 amount in the state treasury. The state treasurer shall credit 50% of the

1 amount to the natural gas tax refund bond retirement fund established
2 by section 4, and amendments thereto, and 50% to the natural gas pipe-
3 line privilege tax refund fund established by section 11, and amendments
4 thereto.

5 Sec. 7. When requested by the director, any pipeline transporting
6 natural gas from, within or through the state of Kansas shall be required
7 to furnish the director such information relative to the transportation of
8 such gas as the director may require. The director shall have authority to:

9 (a) Inspect bills of lading, waybills, meter or other charts, documents,
10 books and records relating to the transportation of natural gas by the
11 transporter; and

12 (b) demand the production of such bills of lading, waybills, charts,
13 documents, books and records relating to the transportation of natural
14 gas at any point in the state of Kansas designated by the director.

15 Sec. 8. (a) If any taxes imposed under this act and determined and
16 assessed by the director are unpaid: (1) Not due to negligence or to in-
17 tentional disregard of this act or rules and regulations of the secretary,
18 interest on such taxes shall be added at the rate per month prescribed by
19 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
20 the tax was due until paid; (2) due to negligence or to intentional disregard
21 of this act or rules and regulations of the secretary, but without intent to
22 defraud, a penalty of 10% of the amount of such taxes shall be added,
23 together with interest at the rate per month prescribed by subsection (a)
24 of K.S.A. 79-2968, and amendments thereto, from the date the tax was
25 due until paid; or (3) due to fraud with intent to evade the tax imposed
26 by this act, there shall be added thereto a penalty of 50% of the amount
27 of such tax, together with interest at the rate per month prescribed by
28 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
29 the tax was due until paid.

30 (b) If any person fails or refuses to make any return when required
31 to do so under the provisions of this act, such person shall be subject to
32 a penalty of \$25 per day for each return which such person fails or refuses
33 to file.

34 (c) The director, in the exercise of discretion and upon making a
35 record of the reason therefor, may waive or reduce any of the penalties
36 provided by subsection (a)(1), (a)(2) or (b) if, in the judgment of the
37 director, there is due and reasonable cause that the taxes are unpaid or
38 that the return is not filed.

39 (d) In addition to any other penalty provided by this section, it is a
40 class C misdemeanor for any person to: (1) Fail to make a return or pay
41 any tax as required by this act; (2) make a false or fraudulent return or
42 fail to keep any books or records required pursuant to this act; (3) willfully
43 violate any rules and regulations adopted by the secretary for the enforce-

1 ment and administration of this act; (4) aid and abet another in attempting
2 to evade the payment of any tax imposed by this act; or (5) violate any
3 other provision of this act.

4 (e) The director shall examine all returns filed under the provisions
5 of this act and shall issue notices and final determinations of tax liability
6 hereunder in the manner prescribed by K.S.A. 79-3226, and amendments
7 thereto.

8 Sec. 9. Each pipeline shall make and keep a complete and accurate
9 record in the form required by the director showing the gross quantity
10 of natural gas transported, and such other information as required by the
11 director for the purposes of administering and enforcing the tax imposed
12 by this act. Such records shall at all times during business hours of the
13 day be available for and subject to inspection by the director, or the
14 director's duly authorized agents and employees, for a period of three
15 years from the last day of the calendar year to which the records pertain.
16 Such records shall be preserved during the entire period during which
17 they are subject to inspection by the director, unless the director in writ-
18 ing previously authorized their disposal.

19 The amount of taxes imposed by this act shall be assessed within three
20 years after the return is filed. In the case of a false or fraudulent return
21 with intent to evade tax, the tax may be assessed or a proceeding in court
22 for collection of such tax may be begun at any time, within two years from
23 the discovery of such fraud. The provisions of K.S.A. 79-3226, and amend-
24 ments thereto, relating to procedures for contesting a proposed assess-
25 ment of additional tax or the denial of a refund shall apply as if set forth
26 in this section. No refund shall be allowed by the director after a period
27 of three years from the date the return was filed or after one year from
28 the date the assessment is made, whichever is later, unless before the
29 expiration of such period a claim therefor is filed by the taxpayer. No suit
30 or action to recover on any claim for refund shall be commenced earlier
31 than six months after the date such claim is filed with the director.

32 At any time before the expiration of time prescribed in this section for
33 the assessment of additional tax or the filing of a claim for refund, the
34 director may enter into a written agreement with the taxpayer consenting
35 to the extension of the periods of limitations for the assessment of tax or
36 for the filing of a claim for refund. The extended periods agreed upon
37 may be extended by subsequent written agreements made before the
38 expiration of the extended periods previously agreed upon. In consider-
39 ation of such agreement or agreements, interest due in excess of 48
40 months on any additional tax shall be waived.

41 Sec. 10. (a) The commission shall certify to the director whenever
42 the commission determines that a pipeline subject to the tax imposed by
43 this act has entered into one or more final, unappealable settlements

1 which release all producers and associated royalty owners from all liability
2 for any claims by such pipeline for payment of refunds and interest
3 thereon pursuant to orders of proceedings of FERC, for reimbursement
4 for Kansas ad valorem taxes. Upon receipt of such certification, the di-
5 rector shall cause all revenue collected or received by the director from
6 such pipeline from the tax imposed by this act, together with interest
7 thereon at the rate provided by subsection (b) of section 11, and amend-
8 ments thereto, to be refunded to such pipeline.

9 (b) The commission may adopt rules and regulations as necessary to
10 administer the provisions of this section.

11 Sec. 11. (a) There is hereby established in the state treasury the nat-
12 ural gas pipeline privilege tax refund fund. The fund shall consist of:

13 (1) Moneys credited to the fund pursuant to section 6, and amend-
14 ments thereto;

15 (2) interest credited to the fund pursuant to subsection (b) of this
16 section; and

17 (3) any amounts appropriated, contributed or otherwise made avail-
18 able for the purposes of the fund.

19 (b) On or before the 10th of each month, the director of accounts
20 and reports shall transfer from the state general fund to the natural gas
21 pipeline privilege tax refund fund interest earnings based on:

22 (1) The average daily balance of moneys in the natural gas pipeline
23 privilege tax refund fund for the preceding month; and

24 (2) the net earnings rate for the pooled money investment portfolio
25 for the preceding month.

26 (c) Moneys in the natural gas pipeline privilege tax refund fund shall
27 be used exclusively for the prompt payment of refunds of the tax imposed
28 by this act, including refunds pursuant to section 10, and amendments
29 thereto.

30 (d) All expenditures from the natural gas pipeline privilege tax refund
31 fund shall be made in accordance with appropriation acts upon warrants
32 of the director of accounts and reports issued pursuant to vouchers ap-
33 proved by the director or the director's designee for the purposes set
34 forth in this section.

35 Sec. 12. The secretary of revenue shall administer the provisions of
36 sections 5 through 11, and amendments thereto, and may adopt rules and
37 regulations to administer and enforce the provisions of such sections.

38 Sec. 13. This act shall take effect and be in force from and after its
39 publication in the Kansas register.

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