

## SENATE BILL No. 369

By Committee on Assessment and Taxation

1-27

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AN ACT concerning mineral severance tax; relating to exemptions; amending K.S.A. 79-4216 and K.S.A. 2003 Supp. 79-4217 and repealing the existing sections.

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

Section 1. K.S.A. 79-4216 is hereby amended to read as follows: 79-4216. As used in this act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them herein:

(a) "Barrel" for oil measurement means a barrel of 42 U.S. gallons of 231 cubic inches per gallon, computed at a temperature of 60 degrees Fahrenheit.

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

(c) "Gas" means natural gas taken from below the surface of the earth or water in this state, regardless of whether from a gas well or from a well also productive of oil or any other product.

(d) "Gross value" means the sale price of oil or gas at the time of removal of the oil or gas from the lease or production unit and if oil or gas is exchanged for something other than cash, or if no sale occurs at the time of removal or if the director determines that the relationship between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the director shall determine the value of the oil or gas subject to tax based on the cash price paid to one or more producers for the oil or gas or based on the cash price paid to producers for like quality oil or gas in the vicinity of the lease or production unit at the time of the removal of the oil or gas from the lease or production unit.

(e) "*Lease number*" means the number assigned by the director of taxation to identify each well, lease or combination of wells within a lease.

(f) "Oil" means petroleum, or other crude oil, condensate, casinghead gasoline, or other mineral oil which is severed or withdrawn from below the surface of the soil or water in this state.

~~(f)~~ (g) "Operator" means the person primarily responsible for the management and operation of coal, oil or gas productions from a lease, production unit or mine.

1 ~~(g)~~ (h) “Person” means any natural person, firm, copartnership, joint  
2 venture, association, corporation, estate, trust or any other group or com-  
3 bination acting as a unit, and the plural as well as the singular number.

4 ~~(h)~~ (i) “Producer” means any person owning, controlling, managing  
5 or leasing any coal, oil or gas property or oil or gas well or coal or salt  
6 mine, and any person who serves in any manner any coal, oil or gas in  
7 this state, and shall include any person owning any direct and beneficial  
8 interest in any coal, oil or gas produced, whether severed by such person  
9 or some other person on their behalf, either by lease, contract or other-  
10 wise, including a royalty owner.

11 ~~(i)~~ (j) “Remove” or “removal” means the physical transportation of  
12 coal, oil or gas off of the lease or production unit or from the mine where  
13 severed; and if the manufacture or conversion of crude oil or natural gas  
14 into refined products occurs on the premises where severed, oil or gas  
15 shall be deemed to have been removed on the date such manufacture or  
16 conversion begins.

17 ~~(j)~~ (k) “Secretary” means the secretary of revenue.

18 ~~(k)~~ (l) “Severed” or “severing” means: (1) The production of oil  
19 through extraction or withdrawal of the same from below the surface of  
20 the soil or water, whether such extraction or withdrawal shall be by natural  
21 flow, mechanical flow, forced flow, pumping or any other means em-  
22 ployed to get the oil from below the surface of the soil or water and shall  
23 include the withdrawal by any means whatsoever of oil upon which the  
24 tax has not been paid, from any surface reservoir, natural or artificial, or  
25 from a water surface; (2) the production of gas through the extraction or  
26 withdrawal of the same by any means whatsoever, from below the surface  
27 of the earth or water; and (3) the physical removal of coal from the earth.

28 ~~(l)~~ (m) “Taxpayer” means any person liable for the taxes imposed by  
29 this act.

30 ~~(m)~~ (n) “Disruption of production” means, in the case of oil, a con-  
31 tinuous 24-hour period during which a well is not producing. Circulating  
32 and missed production days shall be considered production days if the  
33 operator can demonstrate that any lost production is subsequently recover-  
34 ed during a later production day. In the case of gas, a continuous one-  
35 hour period during which a well is not open to the pipeline shall be  
36 deemed to be a disruption of production. Missed production hours shall  
37 be considered production hours if the operator can demonstrate that any  
38 lost production is subsequently recovered during later production hours.

39 Sec. 2. K.S.A. 2003 Supp. 79-4217 is hereby amended to read as  
40 follows: 79-4217. (a) There is hereby imposed an excise tax upon the  
41 severance and production of coal, oil or gas from the earth or water in  
42 this state for sale, transport, storage, profit or commercial use, subject to  
43 the following provisions of this section. Such tax shall be borne ratably by

1 all persons within the term “producer” as such term is defined in K.S.A.  
2 79-4216, and amendments thereto, in proportion to their respective ben-  
3 efiticial interest in the coal, oil or gas severed. Such tax shall be applied  
4 equally to all portions of the gross value of each barrel of oil severed and  
5 subject to such tax and to the gross value of the gas severed and subject  
6 to such tax. The rate of such tax shall be 8% of the gross value of all oil  
7 or gas severed from the earth or water in this state and subject to the tax  
8 imposed under this act. The rate of such tax with respect to coal shall be  
9 \$1 per ton. For the purposes of the tax imposed hereunder the amount  
10 of oil or gas produced shall be measured or determined: (1) In the case  
11 of oil, by tank tables compiled to show 100% of the full capacity of tanks  
12 without deduction for overage or losses in handling; allowance for any  
13 reasonable and bona fide deduction for basic sediment and water, and  
14 for correction of temperature to 60 degrees Fahrenheit will be allowed;  
15 and if the amount of oil severed has been measured or determined by  
16 tank tables compiled to show less than 100% of the full capacity of tanks,  
17 such amount shall be raised to a basis of 100% for the purpose of the tax  
18 imposed by this act; and (2) in the case of gas, by meter readings showing  
19 100% of the full volume expressed in cubic feet at a standard base and  
20 flowing temperature of 60 degrees Fahrenheit, and at the absolute pres-  
21 sure at which the gas is sold and purchased; correction to be made for  
22 pressure according to Boyle’s law, and used for specific gravity according  
23 to the gravity at which the gas is sold and purchased, or if not so specified,  
24 according to the test made by the balance method.

25 (b) The following shall be exempt from the tax imposed under this  
26 section:

27 (1) The severance and production of gas which is: (A) Injected into  
28 the earth for the purpose of lifting oil, recycling or repressuring; (B) used  
29 for fuel in connection with the operation and development for, or pro-  
30 duction of, oil or gas in the lease or production unit where severed; (C)  
31 lawfully vented or flared; (D) severed from a well having an average daily  
32 production during a calendar month having a gross value of not more  
33 than \$87 per day, which well has not been significantly curtailed by reason  
34 of mechanical failure or other disruption of production; in the event that  
35 the production of gas from more than one well is gauged by a common  
36 meter, eligibility for exemption hereunder shall be determined by com-  
37 puting the gross value of the average daily combined production from all  
38 such wells and dividing the same by the number of wells gauged by such  
39 meter; (E) inadvertently lost on the lease or production unit by reason of  
40 leaks, blowouts or other accidental losses; (F) used or consumed for do-  
41 mestic or agricultural purposes on the lease or production unit from which  
42 it is severed; or (G) placed in underground storage for recovery at a later  
43 date and which was either originally severed outside of the state of Kansas,

1 or as to which the tax levied pursuant to this act has been paid;

2 (2) the severance and production of oil which is: (A) From a lease or  
3 production unit whose average daily production is five barrels or less per  
4 producing well, which well or wells have not been significantly curtailed  
5 by reason of mechanical failure or other disruption of production; (B)  
6 from a lease or production unit, the producing well or wells upon which  
7 have a completion depth of 2,000 feet or more, and whose average daily  
8 production is six barrels or less per producing well or, if the price of oil  
9 as determined pursuant to subsection (d) is \$16 or less, whose average  
10 daily production is seven barrels or less per producing well, or, if the price  
11 of oil as determined pursuant to subsection (d) is \$15 or less, whose  
12 average daily production is eight barrels or less per producing well, or, if  
13 the price of oil as determined pursuant to subsection (d) is \$14 or less,  
14 whose average daily production is nine barrels or less per producing well,  
15 or, if the price of oil as determined pursuant to subsection (d) is \$13 or  
16 less, whose average daily production is 10 barrels or less per producing  
17 well, which well or wells have not been significantly curtailed by reason  
18 of mechanical failure or other disruption of production; (C) from a lease  
19 or production unit, whose production results from a tertiary recovery  
20 process. "Tertiary recovery process" means the process or processes de-  
21 scribed in subparagraphs (1) through (9) of 10 C.F.R. 212.78(c) as in  
22 effect on June 1, 1979; (D) from a lease or production unit, the producing  
23 well or wells upon which have a completion depth of less than 2,000 feet  
24 and whose average daily production resulting from a water flood process,  
25 is six barrels or less per producing well, which well or wells have not been  
26 significantly curtailed by reason of mechanical failure or other disruption  
27 of production; (E) from a lease or production unit, the producing well or  
28 wells upon which have a completion depth of 2,000 feet or more, and  
29 whose average daily production resulting from a water flood process, is  
30 seven barrels or less per producing well or, if the price of oil as deter-  
31 mined pursuant to subsection (d) is \$16 or less, whose average daily pro-  
32 duction is eight barrels or less per producing well, or, if the price of oil  
33 as determined pursuant to subsection (d) is \$15 or less, whose average  
34 daily production is nine barrels or less per producing well, or, if the price  
35 of oil as determined pursuant to subsection (d) is \$14 or less, whose  
36 average daily production is 10 barrels or less per producing well, which  
37 well or wells have not been significantly curtailed by reason of mechanical  
38 failure or other disruption of production; (F) test, frac or swab oil which  
39 is sold or exchanged for value; or (G) inadvertently lost on the lease or  
40 production unit by reason of leaks or other accidental means;

41 (3) (A) any taxpayer applying for an exemption pursuant to subsec-  
42 tion (b)(2)(A) and (B) shall make application ~~annually~~ *biennially* to the  
43 director of taxation therefor. Exemptions granted pursuant to subsection

1 (b)(2)(A) and (B) shall be valid for a period of ~~one year~~ *two years* following  
2 the date of certification thereof by the director of taxation; (B) any tax-  
3 payer applying for an exemption pursuant to subsection (b)(2)(D) or (E)  
4 shall make application ~~annually~~ *biennially* to the director of taxation  
5 therefor. Such application shall be accompanied by proof of the approval  
6 of an application for the utilization of a water flood process therefor by  
7 the corporation commission pursuant to rules and regulations adopted  
8 under the authority of K.S.A. 55-152 and amendments thereto and proof  
9 that the oil produced therefrom is kept in a separate tank battery and that  
10 separate books and records are maintained therefor. Such exemption shall  
11 be valid for a period of ~~one year~~ *two years* following the date of certifi-  
12 cation thereof by the director of taxation; ~~and~~ (C) *any exemption granted*  
13 *pursuant to subsections (b)(2)(A), (B), (D) or (E) with an odd lease num-*  
14 *ber and an exemption termination date between June 1, 2004, and May*  
15 *31, 2005, inclusive, shall be valid for a period of one year following the*  
16 *date of certification; and* (D) notwithstanding the provisions of paragraph  
17 (A) or (B), any exemption in effect on the effective date of this act affected  
18 by the amendments to subsection (b)(2) by this act shall be redetermined  
19 in accordance with such amendments. Any such exemption, and any new  
20 exemption established by such amendments and applied for after the  
21 effective date of this shall be valid for a period commencing with May 1,  
22 1998, and ending on April 30, 1999.

23 (4) the severance and production of gas or oil from any pool from  
24 which oil or gas was first produced on or after April 1, 1983, as determined  
25 by the state corporation commission and certified to the director of tax-  
26 ation, and continuing for a period of 24 months from the month in which  
27 oil or gas was first produced from such pool as evidenced by an affidavit  
28 of completion of a well, filed with the state corporation commission and  
29 certified to the director of taxation. Exemptions granted for production  
30 from any well pursuant to this paragraph shall be valid for a period of 24  
31 months following the month in which oil or gas was first produced from  
32 such pool. The term "pool" means an underground accumulation of oil  
33 or gas in a single and separate natural reservoir characterized by a single  
34 pressure system so that production from one part of the pool affects the  
35 reservoir pressure throughout its extent;

36 (5) the severance and production of oil or gas from a three-year in-  
37 active well, as determined by the state corporation commission and certi-  
38 fied to the director of taxation, for a period of 10 years after the date of  
39 receipt of such certification. As used in this paragraph, "three-year in-  
40 active well" means any well that has not produced oil or gas in more than  
41 one month in the three years prior to the date of application to the state  
42 corporation commission for certification as a three-year inactive well. An  
43 application for certification as a three-year inactive well shall be in such

1 form and contain such information as required by the state corporation  
2 commission, and shall be made prior to July 1, 1996. The commission  
3 may revoke a certification if information indicates that a certified well was  
4 not a three-year inactive well or if other lease production is credited to  
5 the certified well. Upon notice to the operator that the certification for a  
6 well has been revoked, the exemption shall not be applied to the pro-  
7 duction from that well from the date of revocation;

8 (6) (A) The incremental severance and production of oil or gas which  
9 results from a production enhancement project begun on or after July 1,  
10 1998, shall be exempt for a period of seven years from the startup date  
11 of such project. As used in this paragraph (6):

12 (1) "Incremental severance and production" means the amount of oil  
13 or natural gas which is produced as the result of a production enhance-  
14 ment project which is in excess of the base production of oil or natural  
15 gas, and is determined by subtracting the base production from the total  
16 monthly production after the production enhancement ~~projects~~ *project*  
17 is completed.

18 (2) "Base production" means the average monthly amount of pro-  
19 duction for the twelve-month period immediately prior to the production  
20 enhancement project beginning date, minus the monthly rate of produc-  
21 tion decline for the well or project for each month beginning 180 days  
22 prior to the project beginning date. The monthly rate of production de-  
23 cline shall be equal to the average extrapolated monthly decline rate for  
24 the well or project for the twelve-month period immediately prior to the  
25 production enhancement project beginning date, except that the monthly  
26 rate of production decline shall be equal to zero in the case where the  
27 well or project has experienced no monthly decline during the twelve-  
28 month period immediately prior to the production enhancement project  
29 beginning date. Such monthly rate of production decline shall be contin-  
30 ued as the decline that would have occurred except for the enhancement  
31 project. Any well or project which may have produced during the twelve-  
32 month period immediately prior to the production enhancement project  
33 beginning date but is not capable of production on the project beginning  
34 date shall have a base production equal to zero. The calculation of the  
35 base production amount shall be evidenced by an affidavit and supporting  
36 documentation filed by the applying taxpayer with the state corporation  
37 commission.

38 (3) "Workover" means any downhole operation in an existing oil or  
39 gas well that is designed to sustain, restore or increase the production  
40 rate or ultimate recovery of oil or gas, including but not limited to aci-  
41 dizing, reperforation, fracture treatment, sand/paraffin/scale removal or  
42 other wellbore cleanouts, casing repair, squeeze cementing, initial instal-  
43 lation, or enhancement of artificial lifts including plunger lifts, rods,

1 pumps, submersible pumps and coiled tubing velocity strings, downsizing  
2 existing tubing to reduce well loading, downhole commingling, bacteria  
3 treatments, polymer treatments, upgrading the size of pumping unit  
4 equipment, setting bridge plugs to isolate water production zones, or any  
5 combination of the aforementioned operations; “workover” shall not  
6 mean the routine maintenance, routine repair, or like for-like replace-  
7 ment of downhole equipment such as rods, pumps, tubing packers or  
8 other mechanical device.

9 (4) “Production enhancement project” means performing or causing  
10 to be performed the following:

- 11 (i) Workover;
- 12 (ii) recompletion to a different producing zone in the same well bore,  
13 except recompletions in formations and zones subject to a state corpo-  
14 ration commission proration order;
- 15 (iii) secondary recovery projects;
- 16 (iv) addition of mechanical devices to dewater a gas or oil well;
- 17 (v) replacement or enhancement of surface equipment;
- 18 (vi) installation or enhancement of compression equipment, line  
19 looping or other techniques or equipment which increases production  
20 from a well or a group of wells in a project;
- 21 (vii) new discoveries of oil or gas which are discovered as a result of  
22 the use of new technology, including, but not limited to, three dimen-  
23 sional seismic studies.

24 (B) The state corporation commission shall adopt rules and regula-  
25 tions necessary to efficiently and properly administer the provisions of  
26 this paragraph (6) including rules and regulations for the qualification of  
27 production enhancement projects, the procedures for determining the  
28 monthly rate of production decline, criteria for determining the share of  
29 incremental production attributable to each well when a production en-  
30 hancement project includes a group of wells, criteria for determining the  
31 start up date for any project for which an exemption is claimed, and  
32 determining new qualifying technologies for the purposes of paragraph  
33 (6)(A)(4)(vii).

34 (C) Any taxpayer applying for an exemption pursuant to this para-  
35 graph (6) shall make application to the director of taxation. Such appli-  
36 cation shall be accompanied by a state corporation commission certifi-  
37 cation that the production for which an exemption is sought results from  
38 a qualified production enhancement project and certification of the base  
39 production for the enhanced wells or group of wells, and the rate of  
40 decline to be applied to that base production. The secretary of revenue  
41 shall provide credit for any taxes paid between the project startup date  
42 and the certification of qualifications by the commission.

43 (D) The exemptions provided for in this paragraph (6) shall not apply

1 for 12 months beginning July 1 of the year subsequent to any calendar  
2 year during which: (1) In the case of oil, the secretary of revenue deter-  
3 mines that the weighted average price of Kansas oil at the wellhead has  
4 exceeded \$20.00 per barrel; or (2) in the case of natural gas the secretary  
5 of revenue determines that the weighted average price of Kansas gas at  
6 the wellhead has exceeded \$2.50 per Mcf.

7 (E) The provisions of this paragraph (6) shall not affect any other  
8 exemption allowable pursuant to this section; and

9 (7) for the calendar year 1988, and any year thereafter, the severance  
10 or production of the first 350,000 tons of coal from any mine as certified  
11 by the state geological survey.

12 (c) No exemption shall be granted pursuant to subsection (b)(3) or  
13 (4) to any person who does not have a valid operator's license issued by  
14 the state corporation commission, and no refund of tax shall be made to  
15 any taxpayer attributable to any production in a period when such tax-  
16 payer did not hold a valid operator's license issued by the state corporation  
17 commission.

18 (d) On April 15, 1988, and on April 15 of each year thereafter, the  
19 secretary of revenue shall determine from statistics compiled and pro-  
20 vided by the United States department of energy, the average price per  
21 barrel paid by the first purchaser of crude oil in this state for the six-  
22 month period ending on December 31 of the preceding year. Such price  
23 shall be used for the purpose of determining exemptions allowed by sub-  
24 section (b)(2)(B) or (E) for the twelve-month period commencing on May  
25 1 of such year and ending on April 30 of the next succeeding year.

26 Sec. 3. K.S.A. 79-4216 and K.S.A. 2003 Supp. 79-4217 are hereby  
27 repealed.

28 Sec. 4. This act shall take effect and be in force from and after its  
29 publication in the statute book.

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