

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATIONThe meeting was called to order by Chairman Paul "Bud" Burke at
Chairperson11:00 a.m./~~p.m.~~ on FEBRUARY 22, 1983 in room 313-S of the Capitol.All members were present ~~except~~Committee staff present: Wayne Morris, Research Dept.
Tom Severn, Research Dept.
Don Hayward, Revisor's Office

Conferees appearing before the committee:

Ben Neill, Governor's Office
Bryan Whitehead, BRAC
Charles Johns, KNEA
Ivan Wyatt, Kansas Farmers Union
Senator Steineger
Dick Smith, KIOGA
Dick Randall, Petroleum Inc.
Jim Cast, Peat, Marwick, Mitchell & Co.
Rob Dietterich
Pete McGill
Don Bowman, Bowman Oil Co.
Paul Fleener, KFB

The chairman recognized Ben Neill, special counsel to the Governor on severance tax. Mr. Neill presented a summary on the distribution of the severance tax burden for SB 67. He referred to a chart showing that most of the severance tax would be paid by non-Kansans. He said the price oil he used was the same as was used in the fiscal note for SB 67. (Attachment #1)

Attachment #2 was an analysis updating research on the constitutionality of exempting royalty owners from the tax.

Attachment #3 deals with credits against the severance tax, particularly with SB 171 and SB 267 provisions of allowing a credit against any potential severance tax liability.

Appearing as proponents of the severance tax bills were:

Bryan Whitehead, BRAC, said the thousands of taxpayers he represents are not going to support any tax increase until we have a severance tax in Kansas. (Attachment #4). Charles Johns, KNEA, said KNEA feels a severance tax is a way to assure equitable distribution of the tax burden with those individuals and industries who can best afford to pay, assuming their fair share. (Attachment #5)

Ivan Wyatt, Kansas Farmers Union, pointed out how much of the state's added revenue needs would be shifted to the farmer, the landowner and the homeowner - onto the state's working middle class - in order to establish a severance tax on the oil industry at the level they have presented in their bills. (Attachment #6)

The chairman recognized Senator Steineger, sponsor of SB 67, which imposes a 7% severance tax. He told the committee Kansas government faces its most severe financial crisis in memory and the state doesn't have the revenue needed to fix our roads, run our schools and operate state government. (Attachment #7) He said the severance tax was the No. 1 issue in the election and the people want a severance tax on oil and gas.

Appearing as opponents to the severance tax:

Dick Smith, President of KIOGA, told the committee the oil and gas industry is depressed and the industry could be irreparably harmed by over-taxation and they won't be able to replace or replenish it next year if we damage the industry this year. (Attachment #8)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

room 313-S, Statehouse, at 11:00 a.m./~~pm~~ on FEBRUARY 22, 1983.

Dick Randall, Petroleum, Inc., said if a severance tax bill passes, his company will shift its Kansas exploration budget money to other states and take their rigs to other states to explore for gas and oil. (Attachment #9)

Jim Cast, Managing Partner, Peat, Marwick, Mitchell & Co., expressed concern about the figures the proponents are using in the terms of the amount of cash that will flow to new producers - \$100 million to \$150 million are gross overstatements of the numbers that are going to be coming back. (Attachment #10)

Rob Dietterich, Ransom, a K-State graduate with a bachelor of science degree in geology in 1982, said he has not been able to find a job as no positions are available for an entry-level geologist. He said the general feeling of the oil companies and geologists was that they were waiting to see if the severance tax passed before making employment decisions. (Attachment #11)

Pete McGill, representing the Legislative Policy Group and appearing on behalf of county officials in 27 producing counties in Western Kansas, said they were concerned about the erosion of their tax base and opposed to a severance tax in any form.

Don Bowman, Oil Producer, Bowman Oil Co., said that while interest, business aircraft and farm machinery were being exempted from tax, he feels he's being treated unfairly at a time when rig activity is down and he is already paying high assessments. (Attachment #12)

Paul Fleener, KFB, said their organization is opposed to all three bills and had developed a brief statement of opposition. He said farmers and ranchers are large users of energy and believe the cost of this tax will be passed on. Also, they fear the erosion of the local tax base.

The chairman noted that we are out of time at this point and will make time available to Senator Steineger and an equal amount of time for the opponents.

The chairman recognized Senator Chaney who explained a request he made to the Director of Property Valuation asking for property tax statements of members of the committee. He said there is nothing malicious in his request - it is a matter of research and curiosity, and this is public information. This saves him the problem of going to the various counties and researching information. He said he wants the members to understand that he is not accusing anyone of anything and is surprised that not one of you has asked why he was requesting this information. He said his intention is to understand the motivation and background and self interest of the committee members. He said Phil Martin said he would give out this information and copies could be distributed to the committee members. He said that he was sorry his motives were misunderstood and that he could not help what the "news media" gave out.

The chairman adjourned the meeting at 12:20 p.m. The next meeting of the committee will be at 11:00 a.m., February 23.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
Feb. 22	BRYAN WHITEHEAD	Kc K	BRAC
"	Jack M. Glothlin	Pittsburg	UJU
"	Martin Fryberger	Curran	Farm Bureau
"	Lawrence E. Clark	Glenco	Farm Bureau
"	Lila M. Clark	Glenco	" "
"	Leta E. Ruder	Concordia Ks.	" "
"	Jaye Fryberger	Curran Ks	" "
"	Op Carl Campan	Pratt, Kansas	Page (Food Kow)
"	Susan Smith	" "	" "
"	Isabell Sibala	Pratt, Kansas	" "
	RON CALBERT	NEWTON	U. J. U.
	Robert J. Dietrich	Ransom, Ks	K. I. O. G. A.
	Melvin W. Frost	Concordia Kansas	Farm Bureau
	Robert W. Frost	Concordia Kc	Farm Bureau
	Celinda Ming	Lawton Ks.	Nursing Student
"	Julia Sedberry	Topeka Ks	Student Nurse
	Ruth R. Schrag	Ransom Ks	Legislative Advocates Seminar
	Don Bowman	Codell, Ks	Self
	Kase Carlton	Topeka Ks.	KSNA
	Maureen Wead	Halstead Ks	KSNA
	Verna Russell	Syracuse Ks	KSNA
	Kate Schukofsky	Topeka	KSNA
	Kim Shaddin	Topeka	Nursing Student
	Robert Thompson	Beloit	Farm Bureau
	Terry Campbell	Beloit	Farm Bureau
	Jaye Campbell	"	" "
	Beverly Williamson	Sylvan Grove	" "
	Michael T. Wellman	Sylvan Grove	" "
	Ron Battenhoff	Sims	" "
	Howard Wellman	Sylvan Grove Ks	" "

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2-22-83	Ted Spear	120 W ST, Lincoln	Farm Bureau
"	Douglas Rosebrook	Lincoln Kansas	" "
2-22-83	E. d. Glad	Sylvan Grove, Ks	" "
2-22-83	Mildred Glad	Sylvan Grove, Kansas	" "
	Wella Wray Blythe	Manhattan Ks	
	Nancy Hess	Pratt Ks	
	Karen Smith	Pratt Ks	
	Carol Allen	Ottawa, Ks	
	Nancy Montgomery	Sabetha, Ks.	
	Walter Dunn	Hugoton	Mobil
	Don Boyer	Topeka	EKOGA
	DAVID TURNER AS	Lola	✓
	O. C. Turner	Nichols -	CHAMBER
	Ken Palmer	Heat Best	Chowden
	Ken Fessler	Topeka	KLPGA
	Alvin Lehmann	Topeka	✓
	Martha Statler	Lincoln, Ks	Lincoln Co -
	Mildred Heinich	Topeka	Auditors Bankers
	George Burrows	Topeka	Ks. Good Roads
	B. E. Nordling	Hugoton	Co. Comm
	Samuel H. Ferguson	Hugoton	SWKROA
	Paul Kinter	Sabin	L.P.G.
	Donald A. Willoughby	Topeka	Lawson
	Ken J. Kirkpatrick	Topeka	InterNorth, Inc
	J. David Spaulding	Newton	
	Shirley Penner	N. Newton, Ks	newer. Seminars
	Patricia L. Wardlaw	Newton, Ks	"
	Leslie K. H.	Henston, Ks	Bethel College
		N. Newton, Ks.	Social Work Student

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/22	Cindy Lederman	Jbsston	Bethel College
2/22/83	David M. Peck	Doessel	Self
2-22-83	Jennifer Sievers	Newton, Kan	Bethel College
"	Horace Wren Eubank	Topeka	Wagon Freight
2-22-83	Scott Pottere	McPherson	Self
2-22-83	Patty Pottere	McPherson	Self
2-22-83	Phil Munt	Topeka	POD
2-22-83	Bill Edds	"	Reverend
2-22-83	George Jensen	Jamestown Kans	
	Tom Whitaker	Topeka	Ks Motor Carriers Assn
	Ken Wynneing	Marion Ks	KSU Ag Council
2-22-83	Tim Oalde	Lincoln KS	KSU Ag Council
2-22-83	Jay Behrendt	Riley, Ks	KSU Ag Council
2-22-83	Jeffery R. Williams	Manhattan KS	KSU Ag Council
	Sharon	Lawrence	GRMC
	Jim Edwards	Topeka	KACI
2/22/83	MARY ELLA SIMON	TOPEKA	LWVK
2/22/83	Elizabeth Wilson	Topeka	Self
	Mohita Ahmad	Topeka	Budget
	Donna Martin	Topeka	KPC
	Christy Gorman	Topeka	KPC
	Gene Bell	TULSA	MAPCO Invo.
	Robert C. Corder	Shawnee	WMA Out
	Donna Taylor	Emporia	self
	Gary C. Ben	Wichita	IFB
	D. Rupp	431 Hickman	1st Generalist
	Chris Walker	Mayetta	Kans NFO
	Brod Green	Topeka	Senators
	L. P. Pecher	Topeka	KAP

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/22/83	ALMEDA EDWARDS	R2, Ottawa	self
2-22-83	CAROL A ZARLEY	Kansas Geological Survey	
2-22-83	Willard A. Schrag	Rte 1, Ransom Ks.	self
2-22-83	Bob Clifton		Appt. - Shou.
2/24/83	John Parks		" "
" " "	Leola Dodge	Alsberg, Ks	United Farm Women
" " "	Harold Pugh	Dighton Kansas	J.P.A. W. Co.
2/22/83	Irvin W. Wypyt	McPherson	Ks Farmers Union
2-22-83	Charles W. Johnson	Topeka	KNEA
"	Ney Rugg	Paula	SGP
"	Ron Gaches	TOPEKA	KACT
"	Paul E. Fleener	Manhattan	Ks. Farm Bureau
"	John D. McNeal	Topeka	self
"	M. Hauer	"	Can. - Hauer
"	Ethel Rosenberger	Ransom	Legislative Seminar
"	Clara L. Dubbs	Ransom, Ks.	Women's Legislative Seminar
"	Jerry Jost	DPS Newton,	self
"	H. Harold B. Schmidt	Topeka, Ks	self
	Ron Fleming	TOPEKA Ks	Mennonite Leg Sem
2/22/83	Melvin D. Schmidt	WICHITA KANS	Menonite Seminar
2/22/83	Edith R. Stucky	McPherson Ks	Menonite Seminar
2/22/83	Elaine Miller	Wichita, Ks.	Menonite Seminar
2/22/83	Wendell Friesen	Hutchinson, Ks.	self
	Shirley Rodgers	Topeka, Ks.	CWA
	Garold Hayden	Concordia, Ks.	Farm Bureau
	Luane M. Henry	Clyde Ks.	Farm Bureau
2/23/83	William M. Martin	GLASCO Ks KS	Cloud Co FARM BUREAU
2/22/83	Richard Zupke	Lawrence KS	Law School World -
2/22/83	Lina Douglas	Topeka, Ks	KTOP - Radio

Ben Neill

Attachment

#1

SUMMARY

2/22/83

DISTRIBUTION OF SEVERANCE TAX BURDEN
FOR S.B. 67

- Index---Page 1 - Distribution of oil and gas to producers and explanation of income tax exportation.
- Page 2 - Distribution to Kansas Residents vs. Non-Kansas Residents on Gas.
- Page 3 - Summary of Distribution and Allocation between Kansas Producers and Consumers vs. Non-Kansas Consumers and Producers and income tax exportation.
- Page 4 - Footnotes.

Atch. 1

SENATE BILL 67

Oil: All Producers would pay \$96.9 million which is deductible on their federal and state income taxes. Assuming a federal rate of 35% and a state rate of 6.75%, the following shows federal and state income taxes.

Federal	- \$96.9 million x .35	= \$33.915 million
State	- \$96.9 million x .0675	= <u>6.651</u>
	Total income taxes	\$40.456 million

Of the \$96.9 million oil severance taxes paid by producers, \$40.5 million would be "exported" to taxes leaving \$56.4 million tax burden to be distributed.

It is estimated that 65% would be borne by Kansas producers, 35% by non-Kansas producers and none borne by consumers⁽¹⁾; or, \$36.7 million by Kansas producers, \$19.7 million by non-Kansas producers and nothing by consumers.

Gas: Of the total of \$26.0 million in natural gas severance taxes, it is assumed that 80% of that total or \$20.8 million is interstate, of which, 79% would be exported and 21% would be borne by Kansas consumers.

The remaining 20% or \$5.2 million which is assumed to be intrastate, would be split 50% or \$2.6 million to Kansas consumers and 50% or \$2.6 million to producers. (This producers' \$2.6 million would be further split, 23% to Kansas producers and 77% to out-of-state producers).

The \$2.6 million paid by all producers would be deductible on federal and state income tax returns. Assuming a federal rate of 35% and a state rate of 6.75%, the following shows federal and state income taxes.

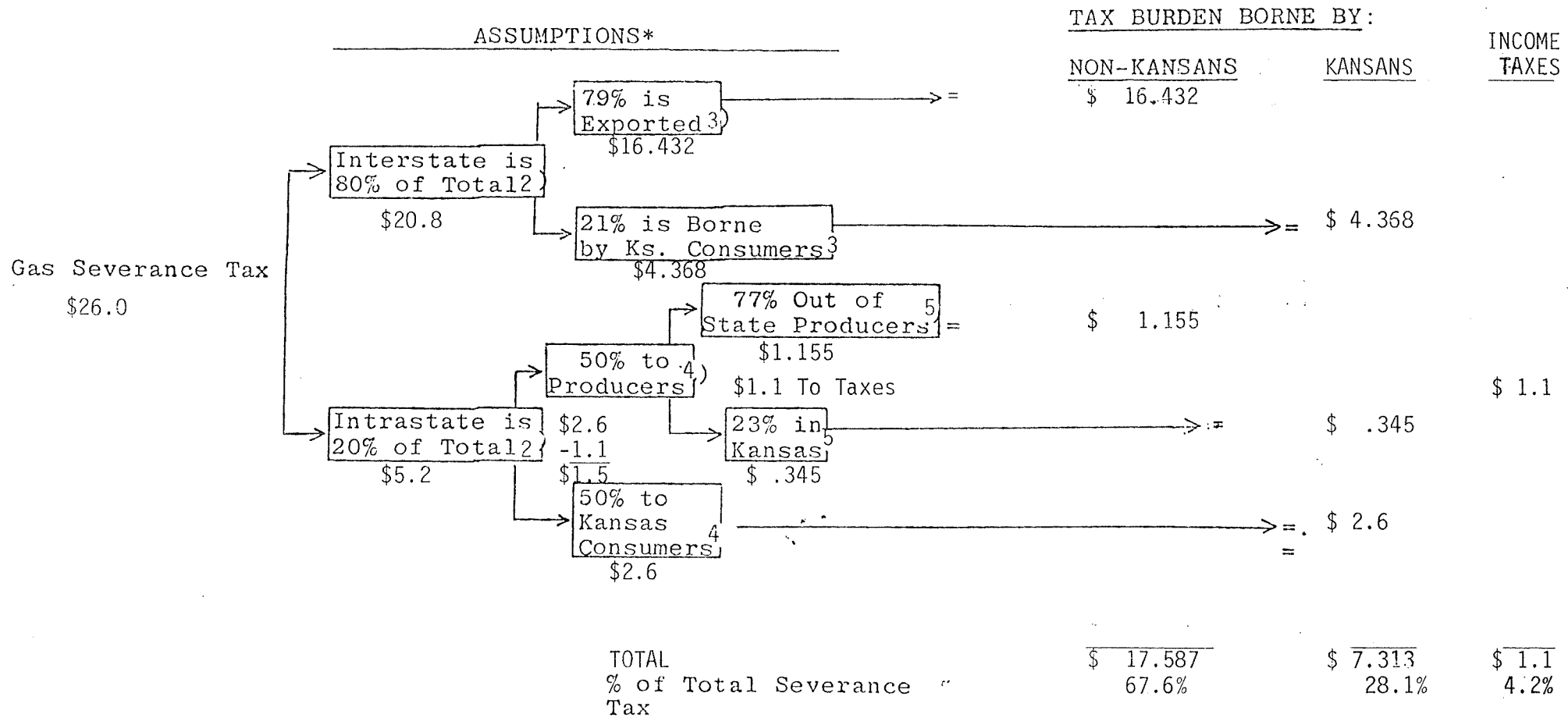
Federal	- \$2.6 million x .35	= \$.91 million
State	- \$2.6 million x .0675	= <u>.176</u>
	Total income taxes	= \$1.086 million

Subtracting the \$1.1 million ("exported" to income taxes) from the \$2.6 million paid by producers, leaves \$1.5 million to be borne by producers.

SENATE BILL 67

2-22-83

DISTRIBUTION OF TAX BURDEN
NATURAL GAS SEVERANCE TAX ONLY



* See Gerking Report, "Incidence of a Mineral Severance Tax: The Case of Kansas".

SUMMARY OF DISTRIBUTION OF TAX BURDEN FOR S. B. 67

DISTRIBUTION

(\$MILLIONS)

	PRODUCER			CONSUMER		TOTAL			
	Kansas	Non-Kansas	Exported to Inc. Tax	Kansas	Non-Kansas	Kansas	Non-Kansas	Exported to Inc. Tax	TOTAL
OIL	\$ 36.7	\$ 19.7	\$ 40.5	-	-	\$ 36.7	\$ 19.7	\$ 40.5	\$ 96.9
GAS	.3	1.2	1.1	\$ 7.0	\$ 16.4	7.3	17.6	1.1	\$ 26.0
TOTALS	\$ 37.0	\$ 20.9	\$ 41.6	\$ 7.0	\$ 16.4	\$ 44.0	\$ 37.3	\$41.6	\$122.9

SUMMARY

	AMT.	% OF TOTAL
Non-Kansas Producers	\$ 20.9	17.0 %
Consumers	16.4	13.3
Subtotal	\$ 37.3	30.3 %
Kansas Producers	\$ 37.0	30.1 %
Consumers	7.0*	5.7*
Subtotal	\$ 44.0	35.8 %
Income Tax Exported	\$ 41.6	33.9 %
TOTAL	\$ 122.9	100.0 %

*NOTE: Only 21.24% of this is residential consumption. See Natural Gas Production & Consumption, 1979, DOE, EIA, January 1981.

FOOTNOTES

- 1) See "Incidence of a Mineral Severance Tax: The Case of Kansas", by Shelby D. Gerking, William E. Morgan and John H. Mutti, page 45.
- 2) See Gerking Study, page 29.
- 3) See Gerking Study, page 30.
- 4) See Gerking Study, page 35.
- 5) See Gerking Study, page 35.

300
6—

CONSTITUTIONALITY OF THE MINERAL PRODUCTION
TAX ACT'S ROYALTY INTEREST EXEMPTION

This analysis will discuss the constitutional propriety of House Bill No. 2267's exemption of royalty owners from the mineral production tax. House Bill No. 2267 (hereinafter referred to as "Mineral Production Tax Act" or "the Proposed Act") imposes a mineral production tax upon the privilege of severing oil, gas or coal from the earth or water in the State of Kansas. The tax is to be borne ratably by all producers. The proposed Act specifically exempts a royalty owner's interest from the mineral production tax. House Bill No. 2267, Section 2, subsection (a).

Questions concerning the proposed Act's royalty interest exemption have focused upon both federal and state constitutional provisions. Article 11, Section 1 of the Kansas Constitution states, in part:

The Legislature shall provide for a uniform and equal rate of assessment...

The Kansas Supreme Court has construed this section to apply exclusively to property or ad valorem taxes. In City of Newton v. Atchinson, 31 Kan. 151 (1883), the Court states:

There is no inhibition, express or implied, in our constitution, on the power of the Legislature to levy and collect license taxes... It has been contended that Section 1, Article 11 creates an implied inhibition and this because it reads "the Legislature shall provide for a uniform and equal rate of assessment and taxation". But that section obviously refers to property, and not to license taxes. Id. at 154-55.

The Court cites an Ohio decision, Baker v. City of Cincinnati, 11 Ohio St. 540, for the proposition that "(a) license cannot be regarded as property...An express direction to impose a tax on all property by a uniform rule does not necessarily exclude taxation upon that which is not property, or cover the whole ground included within the limits of the taxing power." 31 Kan. at 155-56.

A privilege tax is an excise tax in the nature of a franchise tax. Pac. Mut. Life Inc. Co. v. Hobbs, 152 Kan. 230, 233, 103 P.2d 154 (1940). The Kansas Supreme Court in Callaway v. City of Overland Park, 211 Kan. 646, 508 P.2d (1973), discusses the broad conceptual framework of the term "excise tax":

The term "excise tax" has come to mean and include practically any tax which is not an ad valorem tax. An ad valorem tax is a tax imposed upon the basis of the value of the vehicle or thing taxed. An excise tax is a tax imposed on the performance of an act, the engaging in an occupation or the enjoyment of a privilege. In our own case the term "excise tax" has been used in referring to occupation taxes (Produce Co. v. City of Wichita, 112 Kan. 28, 209 Pac. 667), franchise of privilege taxes (Pacific Mutual Life Ins. Co. v. Hobbs, 152 Kan. 230, 103 P.2d 854) and license fees (Duff v. Garden City, 122 Kan. 390, 251 Pac. 1091). 211 Kan. at 651.

An overwhelming number of state courts have held a mineral production or privilege tax is an excise tax, as opposed to an ad valorem or property tax. Floyd v. Miller Lumber Co., 160 Ark. 17, 254 S.W. 450 (1923); Calif. Comp. v. State, 141 Colo. 288, 348 P.2d 382 (1959); Idaho Gold Dredging Co. v. Balderston, 78 P.2d 105 (Ida. 1938); Gulf Refining Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945); Norum v. Ohio Oil Co., 83 Mont. 353, 272 Pac. 534 (1928); Mid-Northern Oil Co. v. Walker, 65 Mont. 414, 211 Pac. 353 (1922); Flynn, Welch & Yates, Inc. v. State Tax Comm., 38 N.M. 131, 28 P.2d 889 (1934); Apache Gas Products Corp. v. Okla. Tax Comm., 509 P.2d 109 (Okla. 1973); Texas Co. v. Stephens, 100 Tex. 628, 163 S.W. 481 (1907).

Since mineral production or privilege taxes impose a tax upon the privilege or act of severing minerals from the earth or water, the tax is not within the purview of a state constitutional requirement of uniformity of taxation. Apache Gas Products Corp. v. Okla. Tax Comm., *supra*; Norum v. Ohio Oil Co., *supra*; Floyd v. Miller Lumber Co., *supra*; Texas Co. v. Stephens, *supra*.

The Kansas Supreme Court has long recognized the Legislature's inherent power to levy excise, license and privilege taxes. In Pacific Mutual Life Insurance Company v. Hobbs, 152 Kan. 230, 103 P.2d 845 (1940), the Court stated:

The legislature has power to levy and collect an excise or license tax on any business or occupation. (City of Newton v. Atchison, 31 Kan. 151, 1 Pac. 288).

The tax is on the privilege of doing business in the state; the tax is fixed at a percentage of premiums received during the preceding year. The payment of the tax follows the exercise of the privilege. The method selected appears to be both equitable and convenient. *Id.* at 236.

Similarly, the Court has recognized that excise, license and privilege taxes are not within the purview of Article 11, Section 1 of the Kansas Constitution. In City of Chanute v. The State Commission of Revenue and Taxation, 156 Kan. 538, 134 P.2d 672 (1943), the Court stated:

The sales tax and the compensating use tax are not taxes imposed by assessment and taxation of property within the purview of Article 11, Section 1, of the constitution nor under the general property taxation statutes. They are declared by the pertinent statute to be an excise tax (G.S. 1941 Supp. 79-3703), to which the constitutional and statutory exemptions from taxation in favor of cities do not apply. *Id.* at 534.

In State v. State Comm. of Revenue, 163 Kan. 240, 181 P.2d 532 (1947), the Court discussed the legislature's sovereign capacity to levy such taxes:

It is argued that the statutes in question create an illegal, unjust and unequal burden on various classes of taxpayers in certain enumerated particulars, in violation of that portion of Section 1, Article 11, of our constitution.... This point was considered and decided adversely to the contention of plaintiff in State, ex rel. v. Barton County Comm'rs., 142 Kan. 624, 51 P.2d 33, where it was said:

"This provision of our Constitution applies exclusively to taxation of property. (City of Newton v. Atchison, 31 Kan. 151, 1 Pac. 188.) The motor-vehicle fuel tax is not a tax on property. The act providing for it 'creates no property tax, but is a personal liability upon dealers.' (State, ex rel. v. Snell, 127 Kan. 859, 860, 275 Pac. 209.) The same question has been considered by other courts where the constitutional provisions were similar to our own, and the same conclusion reached in the following cases: (Citing cases.)"

Persons who use gasoline as a motor fuel for nonhighway uses are required to pay the tax, while others who use coal, diesel oil, alcohol, or other motor fuels for such purpose do not pay the tax. It may be a sufficient answer to this contention that the constitution (Art. 11, Sec. 10) specifically authorizes the legislature to tax gasoline. We point out, however, that this constitutional provision was not necessary in order to give the legislature that authority. The state, in its sovereign capacity, has power, through its legislature, to levy excise taxes for revenue purposes, and in fact our legislature had done so before this constitutional amendment was adopted. One may inquire if this is true, why the amendment was submitted to and adopted by the people.

Perhaps the reason was that many of our citizens had questioned previous legislative acts levying such a tax, and that it was done to quiet any feeling of that kind. But, irrespective of the reason for it, it must be interpreted in harmony with not only other provisions of the constitution, but with the fundamental, inherent power of the state. This legislative power arises from the fact that our government is one of the people, who act through their legislatures in enacting laws, the only restriction being that the people so acting cannot exercise powers which have been granted to the federal government by the adoption of the federal constitution or limited by our state constitution. Section 10, Article 11, is a recognition of an existing power. The legislature needed no grant of such power it had previously exercised, and it is not a limitation of legislative power. The only limitation placed upon the legislature with respect to taxes to raise money for highway purposes is in Section 9, Article 11, where it is specifically provided that no property tax shall be levied nor bonds issued for that purpose. 163 Kan. at 248-49.

In view of the foregoing authorities, it does not appear that it should make any difference whether a tax is called an excise, license, privilege, occupation, gross production, or severance tax so long as it is not a property tax within the limitations of Article 11, Section 1 of the Kansas Constitution. The Kansas Supreme Court has held that the legislature has the inherent power to levy such taxes in the absence of a constitutional limitation.

The undeniable conclusion is that the Mineral Production Tax Act and any exemptions thereunder are not subject to Article 11, Section 1 of the Kansas Constitution.

The sole constitutional limitation upon the State's power to levy excise or privilege taxes, or to make exemptions thereunder, arises from the equal protection clause of the Fourteenth Amendment to the United States Constitution. The United States Supreme Court, in Barwise v. Sheppard, 299 U.S. 33 (1936), impliedly recognizes the State's power under the equal protection clause of the Fourteenth Amendment to modify or alter tax classifications in a reasonable manner. The Court, addressing a challenge by royalty interest holders to an amended Texas production tax statute which extended the tax to royalty interests, stated:

Without question the State has power to lay an excise on the production of oil. Here it is laid...on those having a direct and beneficial interest in the oil produced and is apportioned between them according to their interests...

It is true that the law in force when the lease was made and for some years thereafter laid a production tax on the lessee alone...(b)ut the State's power in the matter was in no way circumscribed by the earlier law. That law was subject to change at any time through a further exertion of the taxing power. Id. at 40-41.

In this discussion, the Court is addressing due process clause ramifications in relation to the lessor-lessee contract. However, the Court necessarily recognizes the Legislature's right to "further exert" its taxing power.

The issue of whether the lessor's royalty interest can be exempted from a mineral production tax was specifically addressed by the Montana Supreme Court in Norum v. Ohio Oil Co., 83 Mont. 353, 272 Pac. 534 (1928). The Court upheld the Montana mineral production tax statute which exempted royalty interest holders from production tax liability. The Court pointed to the Legislature's broad and discretionary taxing power to support its decision:

The Legislature has seen fit to exact the tax from the operator, producing oil from the lands, rather than the owner of the land...although the owner is benefited by the production. This was entirely within its province. In the imposition of a license tax, the lawmakers are not required to tax all occupations equally or uniformly under ...our Constitution, they may tax all, or select for taxation certain classes, and leave others untaxed. And in the Act under consideration, the Legislature has seen fit to impose the tax solely upon the operator. Id. at 536.

Although Norum precedes the United States Supreme Court decision in Barwise v. Shepard, supra, the two cases are not inconsistent. Barwise recognizes the legislative prerogative to tax royalty interest holders "at any time through a further extension of the taxing power." 299 U.S. at 40-41. Barwise does not mandate such an extension. Norum recognizes the legislative right to limit such an extension, and to enact the tax from operators alone.

States are given wide constitutional leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. In Lehnhausen v. Lake Shore Auto Parts, 410 U.S. 356 (1973), the United States Supreme Court upheld the right of the State of Illinois to exempt taxation of individual personal property while taxing corporate personal property, stating:

The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns...the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality...The State may impose different specific

taxes upon different trades and professions and may vary the rate of excise upon various products, It is not required to report to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. *Id.* at 360. (Citing Allied Stores of Ohio v. Bowers, 358 U.S. 522.)

Mining, like manufacturing, is a local business, subject to local regulation and taxation. Oliver Iron Mining Co. v. Lore, 262 U.S. 172 (1923).

The Kansas Supreme Court has stated that if the tax is an excise, "the legislature may make a classification if it be natural and not arbitrary or capricious and treats all persons in the same class in the same way." Stevens Enterprises, Inc. v. State Comm., 179 Kan. 696, 704, 298 P.2d 326 (1956). (construing the state sales tax act) The same constitutional standard will be applied to the royalty interest exemption under the Mineral Production Tax Act.

Conclusion

Based upon the aforementioned authority the royalty interest holder exemption from the Mineral Production Tax Act is a valid and constitutional exercise of the Legislature's taxing power.



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

KENT FRIZZELL
Attorney General

June 5, 1969

Mr. Richard W. Ryan
Assistant Director
Legislative Council
State House


Dear Mr. Ryan:

This is in reply to your request that we review the 1954 opinion of Attorney General Harold R. Fatzer relative to the constitutionality of a severance tax on oil and gas products.

We have studied the opinion and agree with his conclusion stated therein. We are unable to find any recent case which would alter that conclusion.

However, we would again emphasize that a severance tax act could not exempt the equipment and other property used in the production of oil and gas from ad valorem taxes. A copy of our opinion to that effect dated February 12, 1969, is enclosed.

Very truly yours,


KENT FRIZZELL
Attorney General

LC:rh
Enc.

Subject

Legislature
1969

Copy to

Legislation - Minerals ✓
Severance

February 12, 1969

The Honorable F. D. Gaines
House of Representatives
State Capitol Building
Topeka, Kansas

Dear Representative Gaines:

You have asked whether the legislature may enact an oil and gas severance tax in lieu of the ad valorem taxes presently assessed against oil and gas production companies - primarily, we assume, on wellhead equipment and other related personal property.

In order to accomplish the above result it would be necessary to first exempt the affected property from ad valorem taxation, and then formally enact a severance tax law.

The initial problem encountered in the proposition concerns the exemption of selected personal property from ad valorem taxes, Article 11, Section 1, of the State Constitution provides:

"The legislature shall provide for a uniform and equal rate of assessment and taxation, except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from taxation."

Clearly, the foregoing provision provides no constitutional basis for exempting personal property of oil and gas production companies. The question therefore becomes whether or not the legislature may itself provide for such exemption.

It is generally recognized in Kansas that the legislature may exempt property from taxation in addition to what is exempted by the Constitution. Alpha Tau Omega v. Douglas County Commissioners, 136 Kan. 675. However, the rule running through the cases on this subject is that attempts of the legislature to extend an exemption beyond that provided in the Constitution must be intended to accomplish a public purpose or have a beneficial aim or be intended to promote the public welfare in some substantial manner. Francis v. AT&SF Railroad Company, 19 Kan. 303; Sumner County v. Wellington, 66 Kan. 590; Wheeler v. Weightman, 96 Kan. 50; Gunkle v. Killingsworth, 118 Kan. 154.

In the Wheeler case, supra, which dealt with a statute providing for a registration fee on real estate mortgages in lieu of other taxation, the following language was used, which is deemed pertinent to the present question:

"No one could successfully contend that all personal property in the state may be exempted from taxation or that all property belonging to corporations or to a class of corporations may be exempted from taxation. To do so would manifest and violate the rule of uniformity and equality."

It was the general application and effect of the foregoing principles that necessitated both the 1924 amendment to Article 11, Section 1, to allow classification of mineral products, money notes and other intangibles; and the 1964 amendment, to exempt household goods and personal effects not used for the production of income.

By virtue of the foregoing authorities, I seriously doubt whether a statute exempting certain specified personal property belonging to certain specified corporations, i. e. the well-head equipment and other personal property of oil and gas production companies, would meet the "public purpose" tests outlined above; consequently, it is my opinion that a constitutional amendment would be required.

If such an amendment were adopted, however, it appears that there would be no appreciable difficulty in eventually achieving the results you desire. A severance tax is not

necessarily unconstitutional per se. A 1957 law providing for such a tax was struck down due to a defect in the title and drafting of the bill, but the basic constitutional question underlying the tax was never actually decided. It would seem, however, that given a properly and carefully drawn law, such a tax would be permissible.

Very truly yours,

KENT FRIZZELL
Attorney General

By:

G. L. ROHRER
Assistant Attorney General

GLR:rh

K. 10/1/54

STATE OF KANSAS
OFFICE OF ATTORNEY GENERAL
TOPEKA

September 13, 1954.

Mr. Camden Strain,
Assistant Director,
Research Department,
Legislative Council,
B U I L D I N G

Dear Mr. Strain:

This will acknowledge the request of your office, acting for the Kansas Legislative Council's committee on education, for an opinion as to the constitutionality of a severance or gross production tax. The three questions posed in your letter are as follows:

- "1. Could a severance tax be imposed on the production of minerals, such as gas and oil, exempting such production and leaseholds, from ad valorem taxation (as, for example, in Alabama and Michigan)
2. Could the exemption from ad valorem taxation be extended to the equipment and other personal property used in production (like Mississippi and Oklahoma)?
3. Is there any constitutional objection to imposing a gross production tax in addition to all other existing taxes or fees (similar to Arkansas and Texas)?"

The pertinent Kansas constitutional provision is Article 11, Section 1, the first sentence thereof:

"The legislature shall provide for a uniform and equal rate of assessment and taxation, except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide."

The words "except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide" were added in 1924. Apparently there can be little question that the term "mineral products" is broad enough to include oil and gas. (Roth v. Huser, 147 Kan. 433, 76 P. 2d 871)

In Voran v. Wright, 129 Kan. 501, 284 P. 807, the Supreme Court, in discussing the 1924 amendment, said:

"The only classification authorized or tolerated by this constitutional provision is that of property, and it makes no difference by whom it may be owned, whether by individual, merchant, manufacturer, banking institution or other corporation. Every classification is now limited to property, and only four kinds of property, viz., mineral products, money, mortgages, notes and other evidence of debt."

In Citizens Bank of Galena v. The Tax Commission of the State of Kansas, 132 Kan. 5, 294 P. 940, the Supreme Court held that the mortgage registration act was constitutional. During the course of the opinion it was stated:

"The contention is that the law violates the constitutional requirement of uniform taxation of classes, in that the law discriminates against unrecorded real-estate mortgages, mortgages on personal property, and mortgages on land and personal property in other states held by residents of this state. The contention is unsound.

"The plain reading of the amended statute is that mineral products may be classified by placing oil in one class, coal in another, and lead and zinc in another; and so on with other classifiable things, including mortgages.

Article 11, Section 1, has been held by the Kansas Supreme Court to apply exclusively to property taxes. (City of Newton v. Atchison, 31 Kan. 151, 1 P. 288) The old mortgage registration tax was deemed a tax on property. (Wheeler v. Weightman, 96 Kan. 50, 149 P. 977.) Certain language in Voran v. Wright, supra, indicates that the constitutional amendment was also intended to apply only to property taxes. Most similar constitutional provisions in other states have been construed to apply only to property taxes. As will be noted from the decisions from other states, the severance or gross production tax has, with few exceptions, been interpreted to be a license or occupation tax and not a property tax.

In Idaho Gold Dredging Co. v. Balderston (Idaho) 78 P. 2d 105, it was said:

"'According to the weight of authority a tax imposed on persons engaged in severing from the soil natural resources, such as timber, oil, natural gas, ore, or the like, based on the quantity or the value of the product thus severed, is valid. Such a tax is deemed a privilege or occupation tax, a proper exercise of the power to impose such taxes, and not within constitutional requirements relating to the imposition of property taxes.'" (p. 112)

See also Group No. 1 Oil Corporation v. Sheppard (Texas) 89 S. W. 2d 1021, and Floyd v. Miller Lumber Co., (Ark) 254 S. W. 450.

May the Kansas Legislature levy a license or occupation tax on a production of mineral products including oil and gas? The Kansas Supreme Court has apparently drawn a distinction between a license and an occupation tax. In Duff v. The City of Garden City, 122 Kan. 390, 251 P. 1091, the Court said:

"A regulation charge is one exacted for a privilege or as a condition precedent to the carrying on of the business and is an exercise of the police power, while an occupation tax is imposed under the power of taxation." (p. 393)

In City of Newton v. Atchison, 31 Kan. 151, 1 P. 288, the court said:

"In the absence of any inhibition, express or implied, in the constitution, the legislature has power, either directly to levy and collect license taxes on any business or occupation, or to delegate like authority to a municipal corporation.

"Section 1 of Article 11 applies exclusively to taxation of property, and does not refer to license taxes; neither does it impliedly prohibit the collection of such taxes." (Syl. 1 and 2.)

Insofar as a distinction between a property and a license tax is concerned, the Court held:

"That a tax which is in its terms a license tax upon merchants is graduated by the average amount of stock, and is thus proportioned in the same manner as the ordinary property tax, does not change its character, or transform it from a license to a property tax, or make it in any illegal sense double taxation." (Syl. 6)

In Pacific Mutual Life Insurance Company v. Hobbs, 152 Kan. 230, 103 P. 2d 854, the Court stated:

"The legislature has power to levy and collect an excise or license tax on any business or occupation. (City of Newton v. Atchison, 31 Kan. 151, 1 Pac. 288)

"The tax is on the privilege of doing business in the state; the tax is fixed at a percentage of premiums received during the preceding year. The payment of the tax follows the exercise of the privilege. The method selected appears to be both equitable and convenient." (p. 236)

In City of Chanute v. The State Commission of Revenue and Taxation, 150 Kan. 538, 134 P. 2d 672, the Court concluded:

"The sales tax and the compensating use tax are not taxes imposed by assessment and taxation of property within the purview of article 11, section 1, of the constitution nor under the general property taxation statutes. They are declared by the pertinent statute to be an excise tax (G. S. 1941 Supp. 79-3703), to which the constitutional and statutory exemptions from taxation in favor of cities do not apply. (p. 543)

In State, ex rel. v. State Commission of Revenue and Taxation, 163 Kan. 240, 181 P. 2d 532, the Court stated:

"It is argued that the statutes in question create an illegal, unjust and unequal burden on various classes of taxpayers in certain enumerated particulars, in violation of that portion of section 1, article 11, of our constitution, which reads: 'The legislature shall provide for a uniform and equal rate of assessment and taxation, . . .'" This point was considered and decided adversely to the contention of plaintiff in State, ex rel. v. Barton County Comm'rs, 142 Kan. 624, 51 P. 2d 33, where it was said:

"This provision of our Constitution applies exclusively to taxation of property. (City of Newton v. Atchison, 31 Kan. 151, 1 Pac. 288.) The motor-vehicle fuel tax is not a tax on property. The act providing for it 'creates no property tax, but is a personal liability upon dealers.' (State, ex rel. v. Snell, 127 Kan. 859, 860, 275 Pac. 209.) The same question has been considered by other courts where the constitutional provisions were similar to our own, and the same conclusion reached in the following cases: ' (Citing cases.)" (p. 248)

"(a) Persons who use gasoline as a motor fuel for non-highway uses are required to pay the tax, while others who use coal, diesel oil, alcohol, or other motor fuels for such purpose do not pay the tax. It may be a sufficient answer to this contention that the constitution (art. 11, sec. 10) specifically authorizes the legislature to tax gasoline. We point out, however, that this constitutional provision was not necessary in order to give the legislature that authority. The state, in its sovereign capacity, has power, through its legislature, to levy excise taxes for revenue purposes, and in fact our legislature had done so before this constitutional amendment was adopted. One may inquire if this is true, why the amendment was submitted to and adopted by the people.

Perhaps the reason was that many of our citizens had questioned previous legislative acts levying such a tax, and that it was done to quiet any feeling of that kind. But, irrespective of the reason for it, it must be interpreted in harmony with not only other provisions of the constitution, but with the fundamental, inherent power of the state. This legislative power arises from the fact that our government is one of the people, who act through their legislatures in enacting laws, the only restriction being that the people so acting cannot exercise powers which have been granted to the federal government by the adoption of the federal constitution or limited by our state constitution. Section 10, article 11, is a recognition of an existing power. The legislature needed no grant of such power it had previously exercised, and it is not a limitation of legislative power. The only limitation placed upon the legislature with respect to taxes to raise money for highway purposes is in section 9, article 11, where it is specifically provided that no property tax shall be levied nor bonds issued for that purpose. (p. 249) (Emphasis supplied)

Actually, in view of the foregoing authorities, it does not appear that it should make any difference whether a tax is called an excise, license, privilege, occupation, gross production, or severance tax so long as it is not a property tax within the limitations of Article 11, Section 1 of the Kansas Constitution. The Kansas Supreme Court has held that the legislature has the inherent power to levy a license tax in the absence of a constitutional limitation. In other states there is often express constitutional authority granted to levy excise or license taxes, but, as pointed out in *State ex rel. v. State Commission of Revenue and Taxation, supra*, such provisions, at least in Kansas, merely recognize an existing power.

Turning specifically to the three questions raised in your letter, you mention Alabama and Michigan as having exempted the minerals subjected to the gross production tax from other taxes. The Alabama tax is termed a privilege tax on oil and gas production. However, the Alabama Supreme Court has construed the constitutional provisions (Sections 211 and 217) providing for taxation "in exact proportion to the value of such property" and for taxation "at the same rate" as permitting the creation of classes, the only limitation being that the tax be uniform within the class. The constitutional provisions have been further construed not to prohibit the exemption of property from ad valorem taxation. (In *Re Opinions of the Justices*, 175 So. 690. In *State v. Alabama Power Co.*, 48 So. 2d 445.) The Michigan severance tax is called a specific tax which is authorized by Art. 10, Sec. 4 of the Michigan Constitution,

Art. 10, Sec. 3 authorizes the exemption of property which is subject to a specific tax.

It is our opinion that a severance or gross production tax could be imposed as it has been in Alabama and Michigan with an exemption from ad valorem taxation. (Citizens Bank of Galena v. Tax Commission, supra.) There is a possibility that if the amendment to Art. 11, Sec. 1, was construed to apply only to property taxes and the severance or gross production tax was deemed a privilege or license tax, an argument could be made that Art. 11, Sec. 1, permits only a higher or lower ad valorem property tax rate and does not permit the complete exemption of mineral products from property taxation and the substitution of a license or privilege tax. However, it would appear that the power to classify would include the power to exempt completely from a property tax and to substitute a license or privilege tax so long as the tax was uniform within the class.

Can the exemption from ad valorem taxation be extended to the equipment and other personal property used in production similar to the plan followed in Mississippi and Oklahoma. The Mississippi constitution, Article 4, Section 112, contains a provision which is similar to that found in the Kansas Constitution, Article 11, Section 1, to-wit:

"Taxation shall be uniform and equal throughout the state."

The Mississippi privilege tax which exempts all producing oil equipment from ad valorem taxes was construed by the Mississippi Supreme Court in Gulf Refining Co. v. Stone, 21 So. 2d 19. One of the contentions was that the above mentioned exemption of producing oil equipment violated the aforementioned provision of the Mississippi Constitution. The Court concluded:

"There is no present statute by which an ad valorem tax could be enforced against oil as separate property until it has reached a resting place of appreciable permanency in a storage tank, and we can think of no practicable plan by which it could be reached by the ad valorem process prior to that time; and, as already mentioned, only a part of the product of the well ever comes to a permanent rest in a storage tank, and none has been so stored in this State. Constitutional and statutory provisions do not require to be done that which is impossible or thoroughly impracticable, Boyd v. Coleman, 145 Miss. 449, 453, 111 So. 600, which is another way of saying that what is impossible or thoroughly impracticable is not within a constitutional or statutory requirement."

"And for the same reason it follows that questions of ad valorem exemptions and several others of the interesting matters discussed in the argument, are not here material."
(p. 21)

It is somewhat doubtful if the reasoning of the Mississippi Court as to the exemption of the producing oil equipment in the face of the constitutional provision would be followed in Kansas.

Oklahoma has a gross production tax which has been construed by the Supreme Court of Oklahoma as a property tax. Wolverine Oil Co. Gross Production Tax, 154 P. 362. Under the Oklahoma law, the State Board of Equalization has the power to adjust the gross production tax so that it is equal to what the ad valorem tax rate would have been in lieu thereof. (58 Ok. Stat. Ann. Sec. 821) The gross production tax can never exceed the equivalent ad valorem tax rate on the leases, the operating equipment and oil and gas produced.

Apparently, the peculiar provisions of the Oklahoma statute and the construction thereof as a property tax by the Oklahoma Supreme Court was designed to circumvent certain United States Supreme Court decisions holding that a privilege or occupational tax on a lessee of Indian oil lands would be an unconstitutional burden on an instrumentality of the federal government. It is also worthy of note that the United States Supreme Court did not go along with the Oklahoma Supreme Court's construction of the gross production tax. (Gillespie v. Okla., 257 U. S. 501, 42 S. Ct. 171, 66 L. Ed. 338) The Oklahoma Supreme Court gave up in Atchison, Topeka and Santa Fe Railroad Co. v. McCurdy, 207 Pac. 321. The history of the Oklahoma gross production tax from 1908 until 1948 is reviewed in Oklahoma Tax Commission v. Texas Co., 336 U. S. 342, 69 S. Ct. 561, 93 L. Ed. 721, in which case the United States Supreme Court reversed several previous opinions and held that lessees of Indian lands were liable for a state privilege or occupation tax and were not exempt therefrom by reason of being a federal instrumentality.

If the reasoning of the Oklahoma Supreme Court in Wolverine Oil Co., supra, or of the Mississippi Supreme Court in Gulf Refining Co. v. Stone, supra, were followed, it would be possible to extend the exemption from ad valorem taxation to the equipment and other personal property used in production, even in the face of Art. 11, Sec. 1 of the Kansas Constitution. However, in view of the way that the Mississippi Supreme Court passed over the question and the special situation in relation to Indian lands which existed in Oklahoma, and which the United States Supreme Court refused to approve, it is our opinion that the Kansas Supreme Court would be likely to strike down any

such exemption as unconstitutional and in violation of Art. 11, Sec. 1.

Can a gross production tax be imposed in addition to other existing taxes or fees similar to the system followed in Arkansas and Texas? The Arkansas severance tax is deemed a privilege or license tax. As pointed out by the Arkansas Supreme Court in Floyd v. Miller Lumber Co., supra, there is a specific provision in the Arkansas Constitution which permits the imposition of special taxes upon privileges.

Article 8, Section 1 of the Texas Constitution, provides in part:

"Taxation shall be equal and uniform . . . The legislature . . . may also impose occupation taxes."

As previously noted, the Texas Supreme Court has held that the gross production tax is in effect an occupation tax. (Group No. 1 Oil Corporation v. Sheppard, supra.)

In Idaho Gold Dredging Co. v. Balderston, supra, the Court quoted with approval as follows:

"Under and subject to rules elsewhere discussed, license, occupation, or privilege taxes may be imposed on the business of mining. Statutes imposing occupation or privilege taxes based upon the amount of the product mined are valid notwithstanding they are additional to ad valorem taxes on oil leases, or on the land, or are in addition to other license taxes paid by the same person in a related occupation . . . The fact that such a tax is based on tonnage does not make it a direct tax." (40 C. J. 114, §791) p. 113.

There is apparently little doubt that if the gross production or severance tax is construed to be a privilege or occupation tax and not a property tax that its imposition in addition to existing ad valorem taxes would not be in violation of Article 11, Section 1, which only applies to property. In Appeal of Certain Taxpayers of Dunkard Twp. (Pa.) 60 Atl. 2d 39, Court said:

"There is no merit in the contention that the imposition of the tax is invalid because the coal had already been taxed in place. Not only is double taxation constitutionally permissible (See Puntureru v. School District of Pittsburgh, 359 Pa. 596, 60 A. 2d 42, opinion this day handed down) but here there is no double taxation. The tax on the coal in place is a property tax; the tax imposed by the resolution under consideration is an excise tax on the privilege or occupation of strip mining coal. Nor is there involved any violation of the constitutional requirement of uniformity; a classification

for tax purposes between anthracite and bituminous coal has long since been held unobjectionable (Heisler v. Thomas Colliery Co., 274 Pa. 448, 118 A. 394, 24 A.L.R. 1215), the difference between the strip mining of coal and the similar mining or quarrying of other substances as justifying tax classification has also been judicially approved (DuFour v. Maize, 358 Pa. 309, 319, 56 A. 2d 675, 680), and obviously there are proper grounds also for tax classification between operators engaged in deep mining and those engaged in strip mining of coal." (p. 41)

Also, in McAdams Oil Co. (Calif.) 89 P. 2d 729, the Court held that an occupation tax, in addition to an ad valorem tax, was not double taxation.

In Oliver Iron Mining Company v. Lord, 262 U. S. 172, 43 St. Ct. 526, 67 L. Ed. 929, decided by the U. S. Supreme Court, it was held that there is no due process or equal protection objection to an occupation tax because of any federal constitutional provision.

"A tax upon the business of mining ore is an occupation tax, although it is measured by the value of the ore produced. (Syl. 1)

"The state may, without violating the constitutional provisions for equal protection of the laws or uniformity of taxation, select for taxation those engaged in one class of business, and exclude others, if all similarly situated are brought within the class, and all members of the class are dealt with according to uniform rules." (p. 930) (Syl. 4)

In Swiss Oil Corporation v. Shanks, 273 U. S. 407, 47 S. Ct. 393, 71 L. Ed. 709, it was held:

"A tax upon the production of crude oil is a license and not a property tax, and therefore its exaction, in addition to the ad valorem tax upon the property, is not double taxation which unconstitutionally deprives those from whom it is exacted of the equal protection of the laws. (Syl. 2)

"Double taxation upon all crude oil produced within the state, which is not imposed upon other classes of property, is not such an arbitrary and unreasonable classification as to render it invalid." (Syl. 3)

If the gross production or several tax were construed to be a property tax, the 1924 amendment to Article 11, Section 1 permits the classification of mineral products so long as that classification is uniform within the class. Apparently this permits the legislature to tax mineral products at a higher or lower rate than other property.

What is a permissible classification? While this question is not specifically raised in your letter, it might be well to cite a few authorities. In *In re Wolverine Oil Co.*, supra, the Oklahoma Supreme Court, in regard to the right of the legislature to classify objects of taxation, said:

"Is the present act, levying one rate of tax on oil and gas, and a lesser rate on ores bearing lead, zinc, jack, gold, silver, copper, or asphalt, and which omits a gross production tax on coal, in conflict with this rule? Clearly it is not. That mining property or the business of mining may be placed in a class by itself, and taxed by some method peculiarly appropriate to that class, is a valid exercise of a constitutional right on the part of the legislature, and needs the citation of no authorities in its support. Equally well settled is the rule that it is competent for the legislature to arrange and divide the various subjects of taxation into distinct classes, provided the tax is uniform upon all those belonging to the same class, and upon which it operates."

* * * * *

"There are, in fact, many good reasons for making the classification adopted by the legislature. The nature and character of oil and gas, their relation one to the other in the natural state, means of discovery, kind of labor employed, and cost of production and marketing, furnish good and sufficient reasons for the levy of a tax greater in amount than a tax of a like character placed on lead, zinc, and the other mineral ores named in the act. Nor does the omission of coal from the imposition of a production tax affect the statute. It should be kept in mind that the tax is not on the property, but, instead, upon the business or occupation. Producers of oil and gas in the state are not therefore arbitrarily discriminated against, contrary to the uniformity clause of the Constitution, by the tax imposed upon the value of their gross production because it does not include the production of all minerals, or because those which it does include are not taxed at the same rate." (p. 149)

The United States Supreme Court in Ohio Oil Co. v. Conway, 281 U. S. 146, 50 S. Ct. 310, 74 L. Ed. 775, held:

"5. A classification of subjects of taxation must not be arbitrary, but must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstances shall be treated alike."

"6. No unreasonable classification is made by a statute imposing a severance tax upon the production of petroleum at rates varying according to the gravity of the oil, where the gravity is generally indicative of the gasoline content, which is the chief element of value, and the factor of gravity is resorted to in fixing prices, although there are various gravity schedules of prices, and oils broadly of the same sort may be sold at flat prices, and in the case of oils especially suited to the manufacture of lubricating oil gravity is not the criterion, but rather viscosity and sulphur content, where such oils are of relatively low gravity, the severance tax upon which is uniform, and although producers of like oils in different localities may obtain different prices for their product."
(Syl. 4, 5, and 6, p. 776)

See also Davis Welcome Mortgage Co. v. Haynes and Citizens Bank of Galena v. The Tax Commission of the State of Kansas, supra.

A final point was that involved in Ohio Oil Co. v. Wright, supra, where the Court said:

"In view of the limitation imposed by section 1 of Article IX of the state constitution, and our determination that income is property, it is clear the act in question has attempted to levy an occupation or excise tax upon property which may only be taxed by valuation under the constitution. We are of the opinion, therefore, that the production tax is invalid as against the royalty interests retained by the lessor in an oil lease, or acquired by assignment or other means." (p. 218)

However, in Barwise v. Sheppard, 299 U. S. 33, 57 S. Ct. 70, 81 Law Ed. 23, the United States Supreme Court held:

"1. A state statute imposing on the production of oil a tax measured by the extent of the production, to be borne ratably by all interested parties, including royalty interests, is, though denominated an occupation tax, in effect an excise

tax, and therefore not an arbitrary fiat violating the due process clause of the Fourteenth Amendment as applied to lessors having a royalty interest, not actively engaged in the production of oil." (Syl. 1)

"While operations under the lease are carried on by the lessee and not by the lessors, they nevertheless are carried on in virtue of the lease, that is to say, under stipulations made between the lessors and the lessee. The lease shows that the parties to it are, in a very practical sense, committed to and engaged in a common venture for their mutual benefit. The lessors have put into the venture their right to explore for and to extract the oil under their lands, and the lessee has put into it various drilling and pumping appliances and much expense, labor, and time. All that has been put in is devoted to the common purpose of producing oil in which the lessors and the lessee are to have stated interests. It is this production that is taxed against the lessors and the lessee according to their respective interests." (p. 26)

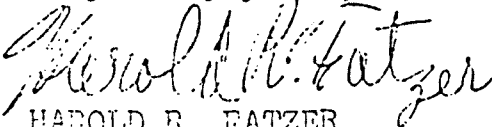
In Flynn v. State Tax Commission (N. Mex.) 28 P. 2d 889, the Supreme Court said:

"Our minds do not reject the idea that the lessee and the royalty owner, considered as participating in a joint enterprise, are both engaged in the business of producing or severing oil, and that the tax is therefore essentially occupational. Such a view, however, is not indispensable to sustaining the tax. For it may be considered occupational as to the lessee, and another kind of tax as to the royalty owner. Unless found as to one or the other to be a tax upon tangible property, it need not be levied ad valorem, and is an excise." (p. 892)

In conclusion, it is our opinion that a gross production or severance tax would probably be constitutional if levied to the exclusion of property taxes or if levied in addition to property taxes on mineral products. We do not believe that a provision exempting the equipment and other property used in production would be constitutional.

If we can be of any further assistance, please advise.

Very truly yours,


HAROLD R. FATZER
Attorney General

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S. B. 171 and 267 allow a credit against any potential severance tax liability. S. B. 171 allows "an amount equal to 1/12 of 80% of all ad valorem taxes paid during the preceding calendar year"... S. B. 267 allows "an amount equal to the full amount of all ad valorem taxes actually paid by such taxpayer..."

S. B. 267 further provides that the producer shall notify the purchaser (who is the party ordinarily withholding and remitting the tax to the state) of "the full amount of ad valorem taxes paid." The purchaser is then to reduce the monthly amount of severance tax withheld by 1/12 of the producers total ad valorem tax previously paid.

Observations-----

1. What if a producer sells to more than one purchaser? How is the ad valorem set off to be calculated? How can multiple claims for the same ad valorem tax paid be prevented?
2. How are ad valorem taxes paid on wells that are exempt from the severance tax to be treated? As the bill is currently written, the producer would have an ad valorem tax set off against severance tax liability on non-exempt production.
3. Is it proper to permit a credit for ad valorem taxes paid on oil and gas equipment? The bill now provides such a credit. Not providing the credit however, would necessitate a major change in the way ad valorem tax values are currently computed.
4. Calculating and accounting for the credit on a per well or per lease basis will be a massive bookkeeping problem for purchasers. The law does not now require it. However, in order to tie the credit to the severance tax liability and avoid the use of multiple credits for the same ad valorem tax paid and to eliminate credits allowed for severance-tax-exempt production as well as to rebate properly to counties their proportionate share of the mineral production refund fund, such per well or per lease accounting will be necessary.
5. The bill contemplates a credit for ad valorem taxes actually paid during the preceding year. Though in itself this is not a particularly difficult problem it is worth noting that it will ordinarily result in mixing a portion of two years' tax liability in the credit (2nd half taxes paid in June and 1st half taxes paid in December). There is also potential for a producer on a one shot basis to get, in effect, a credit for 1½ years ad valorem tax liability if he were to pay all ad valorem taxes in December after having paid second half taxes in June.



BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

AFL-CIO — CLC

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Kansas City, Kansas, February 20, 1983

TESTIMONY OF

BRYAN K. WHITEHEAD

KANSAS LEGISLATIVE DIRECTOR

FOR THE

BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS

IN SUPPORT OF

SENATE BILL NO. 67

AN ACT IMPOSING A MINERALS SEVERANCE TAX

PRESENTED AT PROPONENT HEARING

BEFORE THE

SENATE ASSESSMENT AND TAXATION COMMITTEE

STATEHOUSE

TOPEKA, KANSAS

FEBRUARY 22, 1983

Attch. 4

Thank you, Mr. Chairman, and Senators, my name is Bryan Whitehead and I am the Kansas Legislative Director and a regional representative for the Brotherhood of Railway and Airline Clerks union representing over eight thousand active and retired employees of the transportation industry in Kansas.

I am also representing the Kansas Legislative Department of the United Transportation Union which has over seven thousand members residing in Kansas. And, I am also authorized to represent the Kansas Legislative Committee of the National Association of Retired and Veteran Railroad Employees which has over three thousand members residing in the major railroad terminal cities of Kansas.

Today, I will also testify on behalf of the Kansas State Federation of Labor, AFL-CIO, whose affiliate members total over seventy thousand wage-earner taxpayers residing in Kansas.

We rise, Mr. Chairman, in support of enactment of an oil and gas severance tax in Kansas.

There are some alarming warning signs in the Kansas economy and as a "child of the depression" I am running scared! When I testified in support of the severance tax before the Senate Ways and Means Committee last year, the President of the Senate criticized me severely for "using scare tactics". But, I must submit again, Mr. Chairman, that it's time to get scared when a depression level of 73,000 Kansans are unemployed! Our general revenue deficits are a direct result of these unfortunate citizens paying no income taxes and very little retail sales tax. Moreover, payment of their property taxes will ultimately become impossible if this depression continues.

Every member of the Legislature knows that, effective July 1st, the Kansas taxpayer is going to have to pay a five cent increase in the federal gasoline tax. It is also common knowledge that the amended federal tax code has repealed the total annual gasoline tax as a deduction for tax purposes. Given these facts, it's difficult to understand why an increase in the Kansas gasoline tax would even be considered at such an inappropriate time.

In my view, Kansas should have enacted a severance tax twenty years ago. Gov. John Anderson and the 1963 Session of the Legislature knew that Kansas general revenue was declining and all the experts were projecting deficits.

1964 was a Budget Session year and it was also an election year. Congressman Bill Avery made a momentous decision to give up his seat in Congress and to run in an eight-man Republican primary for governor which he won.

The 1964 General Election produced some very unusual results in Kansas. Lyndon Johnson carried our state defeating Barry Goldwater by 77,449 votes (464,028 to 386,579). And, Bill Avery defeated Harry Wiles by 32,403 votes (432,667 to 400,264) in a victory which was viewed by many as an upset but there was a tax omen present. Late in the campaign, Mr. Wiles received statewide publicity for a reported failure to pay his Stafford county property taxes and many believed it cost him the election.

In the Legislature, the Republicans lost eight seats but retained an 81 to 44 majority in the House. In the Senate, the Republicans lost five seats retaining a 27 to 13 majority.

Governor Avery knew the die was cast and that he must increase Kansas general revenue. To do so, he presented a tax "mix" package of increases to the 1965 Session of the Legislature which was enacted and included: a one per cent increase in all state income tax brackets; a one per cent increase in the retail sales tax (to 3%); a one-and-one-half per cent increase in the retail liquor sales tax (to 4%); a two cent increase in the cigarette tax (to 8¢); and, effective Jan. 1, 1966, employers were required to withhold Kansas income tax from wages of Kansas employes computed at 15% of the federal income tax withheld.

Although I had been active in Kansas politics for almost twenty years, in 1965 I had only three Session's experience as a Lobbyist. But, I can remember wondering if Gov. Avery's advisors were committing him to political suicide and the question was often raised: "Why not a severance tax?"

Eighteen years ago, in my annual report to members of my union, I summed up the events of the 1965 Session of the Legislature as follows:

"We were all impressed with Governor Avery's power to influence the enactment of his tax program. While it is true that the Governor will have to live with his tax increases politically in 1966, the effects of this will remain to be seen."

And, indeed it was seen. In the 1966 General Election, almost 700,000 Kansans voted in an unusually high turnout for a non-presidential year, and Robert Docking defeated Gov. Avery by 75,705 votes (380,030 to 304,325). And, the Republicans lost four more seats in the House of Representatives.

They say "history repeats itself" and it is obvious that much of the legislative scenario today is strikingly similar to that of 1965. Of course, there are some differences; but, add the severance tax and gasoline tax issues and remove the tax withholding issue and the plot is about the same.

Most importantly, in my view, many tax incidence studies have been made and published to establish the impact in Kansas. And, the impact is squarely on the middle-income, wage-earner, taxpayer who bears the highest ratio of taxation to income in our state!

Mr. Chairman, and Senators, can you imagine the number of fiscal crisis that would have been averted if the Legislature had enacted a severance tax twenty years ago?

One philosophical comment, Mr. Chairman, if Oil & Gas logically belongs to Kansas counties for taxation then it also as logically belongs to the state, to the nation, and, as in Canada, to the people.

I recently heard an elderly widow testify at a public utility hearing that her Social Security check would not cover her utility costs, food and medicine. She was afraid she was going to have to risk giving up her medication or to choose between freezing to death or starving to death!

Gentlemen, I submit that society will simply not continue to tolerate the increasing number of such indictments against our system. Ultimately, by whatever means necessary, utility services are going to belong to the people of our nation and the profit-takers are going to be removed from the market place!

I will close, Mr. Chairman, by assuring the Committee that the thousands of taxpayers I represent here today are not going to support any tax increase until we have a severance tax in Kansas.

And, I want to particularly emphasize, that until retail grocery sales of food for human consumption is exempted from the retail sales tax we will never support an increase in the tax!

You have been saturated with testimony by proponents and opponents of the severance tax. The evidence is in, the facts are known, and the jury is your constituency. We respectfully urge you to recommend enactment of a severance tax in Kansas.

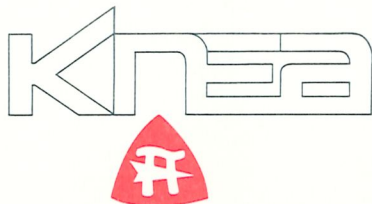
The opportunity to present our testimony on this most controversial and important subject is appreciated. If I have failed to make our position clear, Mr. Chairman, or raised any questions, I will certainly try to respond.

Thank you.



BRYAN K. WHITEHEAD,
Kansas Legislative Director,
Bro. of Railway & Airline Clerks.

#5



Testimony

Senate Assessment and Taxation Committee

Senate Bills 67, 171, 267

February 21, 1983

Mr. Chairman and Members of the Committee:

My name is Charles W. Johns, representing the Kansas-National Education Association. We have long had as one of our Continuing Resolutions on Tax Reform a position supporting fairness in taxation for revenue to finance quality public education and other services. There must be a method that would prevent excessive reliance on property or any other single tax source.

There must be a way to assure equitable distribution of the tax burden with those individuals and industries who can best afford to pay, assuming their fair share.

We feel that a severance tax meets these criteria.

We are not in favor of a tax that places an inequitable burden on one industry and puts it in a disadvantageous position. We do not feel the severance tax does that.

It is more important now than ever before to have a broad tax base to adequately provide quality education in Kansas. Schools have recently experienced a 4% cut in their budgets which had been promised by the state. The farm machinery exemption will cause some property tax levies in the state to increase 15 mills plus, thereby discouraging local school districts from levying their maximum budget authority. There is no current provision to fully fund special education classes which are mandated programs. The bill passed out of the House Education Committee last week would result in a 40 million dollar plus property tax increase, and it doesn't even begin to address the needs of schools or teachers' salaries. And, finally, federal cutbacks are creating an additional state and local strain on needed educational funding.

We, as a proponent of the severance tax, state that we do definitely require additional revenue and that now is the time for the people of the state of Kansas to receive some benefit from these oil and gas deposits.

Noted educator Ernest Boyer speaking at Yale University a year ago stated, "The teaching profession is caught in a vicious cycle, spiraling downward, rewards are few, morale is low,

(continued)

The best teachers are bailing out and the supply of good recruits is drying up." This has just recently been confirmed in Kansas by an Emporia State University study. Boyer goes on to say, "Today's crisis is greater than the one confronted 25 years ago yet the response today is to reduce support for education."

In closing, let me say we have not attempted to elaborate on all the perceived and real technicalities inherent in a subject such as this. Statistics as you know can represent various viewpoints. What we have attempted to accomplish in this presentation is a real need to look at current and future educational funding.

I would like to express my appreciation to you for listening to our feelings on this issue.

6

STATEMENT
BY
IVAN W. WYATT, PRESIDENT
BEFORE THE
SENATE ASSESSMENT AND TAXATION COMMITTEE
ON THE
SEVERANCE TAX
(SB-67, SB-171, SB-267)

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM IVAN WYATT, PRESIDENT OF THE KANSAS FARMERS UNION.

LAST YEAR THE SEVERANCE TAX DEBATE CENTERED AROUND WHETHER OR NOT THE STATE NEEDED AN ADDED TAX SOURCE OR NOT.

APPARENTLY, THIS YEAR IT HAS BEEN RESOLVED; THERE IS A NEED FOR A SEVERANCE TAX.

LAST YEAR THE MOTTO WAS "NO NEW TAX."

THIS YEAR WE ARE HEARING OF MANY "NEW TAX" PROPOSALS, NO DOUBT AIMED AT KEEPING THE SEVERANCE TAX ON OIL AND GAS AT A VERY MINIMUM.

HISTORY HAS SPOKEN LOUD AND CLEAR. NEW FEDERALISM HAS CAUSED A MAJOR SHIFT OF GOVERNMENTAL RESPONSIBILITY AND COST FROM THE FEDERAL LEVEL TO THE STATE LEVEL.

DURING THIS SAME PERIOD OF TIME, WE HAVE SEEN MAJOR CUTS IN THE LEVEL OF FEDERAL TAXATION OF THE HIGHER INCOME TAX BRACKETS, CORPORATIONS, BUSINESSSES AND THE OIL INDUSTRY.

IT NOW REMAINS TO BE RESOLVED; WITH THE SHIFT OF THE ADDED TAX BURDEN FROM THE FEDERAL LEVEL TO THE STATE LEVEL, COUPLED WITH HIGH UNEMPLOYMENT, AND DISASTERLY LOW FARM INCOME CAUSING A MAJOR SHORTFALL IN STATE REVENUES. THE QUESTION HAS TO BE, WILL WE NOW TURN TO THE SEVERANCE TAX, A TAX BASED ON THE VALUE OF PRODUCTION, TO AN INDUSTRY THAT HAS BENEFITTED FROM RECENT FAVORABLE FEDERAL TAX LEGISLATION, OR WILL WE CONTINUE TO ADD MORE AND MORE OF THE TAX

Atch. 6

BURDEN ONTO THOSE SOURCES THAT ARE SUFFERING MOST GRIEVOUSLY FROM THE RECESSION? WILL WE CONTINUE TO ADD MORE AND MORE OF THE TAX BURDEN ONTO THOSE SOURCES, TAXES THAT MUST BE PAID REGARDLESS OF GENERATED INCOME, OR ABILITY TO PAY? SHALL WE INCREASE THE SALES TAX, OR YET ANOTHER 2¢ OR 3¢ INCREASE IN THE ROAD FUELS TAX, OR INCREASE THE PROPERTY TAX ON THE HOMES OF THE UNEMPLOYED, OR THE ELDERLY AND POOR ALIKE?

ARE WE TO DO ALL THIS TO PROTECT THE OIL INDUSTRY FROM SHARING IN THE NEW ADDED RESPONSIBILITIES OF THE STATE, BROUGHT ON BY THE "NEW FEDERALISM AND RECESSION?"

LAST YEAR THE MOTTO WAS "NO NEW TAX." THIS YEAR WE ARE HEARING OF MANY NEW TAX PROPOSALS, MOST AIMED AT KEEPING THE SEVERANCE TAX ON KANSAS MINERALS AT A VERY MINIMUM.

LAST YEAR THE ARGUMENT AGAINST THE SEVERANCE TAX WAS MADE THAT A SEVERANCE TAX WOULD INCREASE THE COST OF FUELS, FERTILIZERS, ETC. TO FARMERS. FIGURES THEN INDICATED THAT A 5% SEVERANCE TAX MIGHT HAVE RAISED FERTILIZER PRICES LESS THAN 8/10 OF A PERCENT, YET THIS YEAR A NEW ADD-ON TAX HAS BEEN SUGGESTED FOR NOT ONLY FERTILIZERS, BUT HERBICIDES, SEED, PESTICIDES, AND OTHER AGRICULTURAL INPUTS THAT COULD ADD SOME \$300 MILLION OR MORE TO THE FARMERS COST OF OPERATION.

A ROAD FUELS TAX INCREASE HAS BEEN SUGGESTED TO STAVE OFF A SEVERANCE TAX. A TAX INCREASE TO BE ADDED ONTO THE ALREADY INCREASED FEDERAL ROAD FUEL AND USE TAX. A TAX FARMERS PAY DOUBLE; AS THE OLD SAYING GOES, FARMERS BUY RETAIL AND SELL WHOLESALE AND PAY THE FREIGHT BOTH WAYS.

OTHERS HAVE SUGGESTED CUTS IN EDUCATION TO STAVE OFF A SEVERANCE TAX, OR TO SHIFT AN EVEN GREATER BURDEN OF THE COST ONTO THE HOMEOWNER AND FARMER.

TO SACRIFICE QUALITY EDUCATION FOR OUR YOUNG PEOPLE FOR EVEN A SHORT TIME IS TOO MUCH TO ASK. BECAUSE ONCE A CHILD IS SHORT CHANGED DURING THEIR EDUCATIONAL PROCESS THERE IS NO WAY THAT LOSS CAN BE RECLAIMED. EDUCATION IS NOT LIKE A BRIDGE OR HIGHWAY PROJECT THAT CAN BE DELAYED A YEAR OR TWO.

I RECALL HOW THIS NATION WENT INTO A CRASH PROGRAM OF CATCH-UP IN EDUCATION AFTER THE RUSSIANS LAUNCHED THEIR "SPUTNIK," BUT NOW WE APPEAR TO BE RELAPSING INTO THAT SAME PRE-SPUTNIK SITUATION OF A LACK OF CONCERN OF THE EDUCATION OF OUR YOUTH AS A VALUABLE ASSET TO BE DEVELOPED FOR THIS NATION'S FUTURE AND SECURITY.

I RECALL LAST YEAR HOW IT WAS POINTED OUT BY SOME AGRICULTURAL GROUPS; THEY OPPOSED THE SEVERANCE TAX BECAUSE AS THEY CLAIMED IT WOULD CAUSE A SIGNIFICANT INCREASE IN FERTILIZER COSTS. HOWEVER, AT ABOUT THE SAME TIME THEIR SISTER ORGANIZATION IN OKLAHOMA WAS SUPPORTING THE DEREGULATION OF NATURAL GAS PRICES BECAUSE, AS THEY CLAIMED, IT WOULD BE GOOD FOR FARMERS BECAUSE, AS THEY RATIONALIZED, NATURAL GAS PRICES WOULD GO UP, FERTILIZER PRICES WOULD GO UP, FARMERS WOULD THEN USE LESS FERTILIZER; CONSEQUENTLY, THEY WOULD RAISE LESS GRAIN. THEREBY, CAUSING THE PRICE OF GRAIN TO GO UP AND FARMERS WOULD MAKE MORE MONEY.

I THINK THERE ARE PROBABLY BETTER AND MORE EFFECTIVE WAYS TO CONTROL EXCESS PRODUCTION OF GRAIN.

THE POINT IS, THERE ARE MANY INCONSISTENCIES IN THE ARGUMENTS IN OPPOSITION TO AN ADEQUATE SEVERANCE TAX TO OFFSET THE SHORTFALL OF STATE REVENUES CAUSED BY HIGH UNEMPLOYMENT, LOW FARM PRICES AND THE ADDED RESPONSIBILITIES OF STATE AND LOCAL GOVERNMENT.

WE CONTINUALLY HEAR THE LEADERSHIP IN BOTH HOUSES, WHO HAVE OPPOSED THE SEVERANCE TAX, SAY THEY ARE GOING TO MAKE MAJOR TAX CUTS, BUT MOST OF THESE CUTS WOULD SIMPLY BE A SHIFT OF RESPONSIBILITY FOR THE COLLECTION OF TAXES FROM THE STATE TO LOCAL UNITS OF GOVERNMENT, MUCH LIKE THE SHIFT OF FEDERAL RESPONSIBILITIES TO THE STATE GOVERNMENTS.

IN CONCLUSION, THE QUESTION I ASK OF THE OPPONENTS OF THE SEVERANCE TAX: HOW MUCH OF THE STATE'S ADDED REVENUE NEEDS SHOULD BE SHIFTED TO THE FARMER, THE LANDOWNER, THE HOMEOWNER? IN OTHER WORDS, HOW MUCH OF THE SHIFT SHOULD BE MADE ONTO THE STATE'S WORKING MIDDLE CLASS IN ORDER TO ESTABLISH A SEVERANCE TAX ON THE OIL INDUSTRY AT THE LEVEL THEY HAVE PRESENTED IN THEIR BILLS?

#1
REMARKS BY SENATE MINORITY LEADER JACK STEINEGER
SENATE ASSESSMENT AND TAXATION COMMITTEE
FEBRUARY 22, 1983

AGAIN THIS YEAR, I APPRECIATE THE OPPORTUNITY TO APPEAR IN SUPPORT OF THE LONG-OVERDUE SEVERANCE TAX FOR KANSAS. BY NOW, I'M SURE THAT EACH OF YOU HAS BECOME VERY KNOWLEDGABLE ON SEVERANCE TAXES---AND THERE'S NO NEED TO RECITE EVERY FACT IN THE LONG LIST OF FACTS WHICH SUPPORT THE TAX. WE ALL KNOW THE FACTS, AND THEY HAVEN'T CHANGED APPRECIABLY SINCE LAST YEAR.

IT'S STILL TRUE THAT FEWER THAN THREE THOUSAND OIL AND GAS PRODUCERS CONTINUE TO ENJOY REVENUES EXCEEDING TWO AND A HALF BILLION DOLLARS.

THE PRICE OF OIL, WHILE DOWN FROM ALL-TIME RECORD LEVELS, CONTINUES TO BE GOOD. (CURRENT PRICE: \$29/BARREL)

1982 WAS A RECORD YEAR FOR DRILLING IN KANSAS, WITH MORE THAN EIGHT THOUSAND FOUR HUNDRED WELLS COMPLETED. IT'S ALSO INTERESTING TO NOTE THAT THE AVERAGE INITIAL PRODUCTION IN 1982 WAS THIRTY BARRELS A DAY, UP FROM TWENTY-THREE BARRELS IN 1981 AND TWENTY-ONE BARRELS IN 1980.

I SHOULD NOTE, ALSO, THAT ALTHOUGH PRODUCTION OF KANSAS GAS FELL IN 1982, THE AVERAGE PRICE OF GAS INCREASED FROM FROM NINETY-SIX CENTS PER MCF TO A DOLLAR EIGHTEEN.

STEINEGER/2

2/22/83

ALTHOUGH TOTAL REVENUES FOR KANSAS OIL AND GAS FELL LAST YEAR, I THINK WE SHOULD BE MINDFUL THAT MOST OF THE DECLINE FLOWED DIRECTLY FROM REDUCED PRODUCTION OF NATURAL GAS. IN FACT, IF PRODUCTION HAD HELD STEADY LAST YEAR AND NOT BEEN CURTAILED BY THE "TAKE OR PAY" BUSINESS PRACTICES OF GAS PIPELINE COMPANIES, OIL AND GAS REVENUES FOR 1982 WOULD BE WITHIN A FEW MILLION DOLLARS OF THE 1981 TOTAL.

SO HERE WE STAND ON FEBRUARY 22, 1983, HOLDING HEARINGS FOR THE THIRD CONSECUTIVE YEAR ON THE SEVERANCE TAX. OIL AND GAS LOBBYISTS HAVE AGAIN FLOCKED TO THE STATEHOUSE TO SING THEIR SONGS OF WOE.

LET'S LOOK AT THE OIL LOBBY'S 1983 LITANY OF COMPLAINTS.

*** PREMATURE PLUGGING OF WELLS.

*** DIMINISHED DRILLING PROGRAMS.

*** LESS PRODUCTION AND LESS INCOME TO COUNTIES.

*** FEWER JOBS.

*** LESS INCOME AND SALES TAXES.

*** INCREASED MIGRATION TO OTHER STATES.

I WAS A LITTLE PUZZLED BY THE LAST COMPLAINT UNTIL I READ THE TOPEKA CAPITAL-JOURNAL TWO WEEKS AGO. AS THE LOBBYIST PUT IT THERE, AND I QUOTE, "WELL, THE OIL AND GAS INDUSTRY IS AN INDUSTRY ON WHEELS.." I GUESS THEY MUST JUST BE PLANNING TO LEAVE THE STATE.

STEINEGER3

2/22/83 .

LET ME GIVE YOU ANOTHER EXAMPLE OF A TYPICAL OIL INDUSTRY POSITION. AGAIN, I QUOTE: "ANY INCREASE IN TAXATION ON OIL AND GAS WILL PLACE (THE STATE) AT A DISADVANTAGE AND IN THE LONG TERM GENERATE LESS TAX DOLLARS. SUCH A REDUCTION WOULD BE ACCOMPANIED BY LOWERED INCOME FOR ROYALTY OWNERS, LESS JOBS. . .AND A SAG IN THE ECONOMY."

DON'T MISUNDERSTAND ME. I THINK THIS KIND OF TALK HAS BEEN VERY SUCCESSFUL STRATEGY FOR OIL AND GAS PRODUCERS IN KANSAS AND ELSEWHERE. IN FACT, IN THE LAST TWO YEARS IN KANSAS, OIL AND GAS INTERESTS HAVE AVOIDED MORE THAN FOUR HUNDRED MILLION DOLLARS IN PROPOSED SEVERANCE TAXES. THE PROBLEM--AND WE ALL KNOW IT--IS THAT EVERY DOLLAR THAT ISN'T PAID BY ONE TAXPAYER IS A DOLLAR THAT MUST BE MADE UP BY SOME OTHER TAXPAYER. AND THAT'S USUALLY THE TAXPAYER WHO DOESN'T HAVE A BATTALION OF WELL-PAID LOBBYISTS IN THIS STATEHOUSE.

AND THIS ISN'T THE FULL STORY. I HAVEN'T MENTIONED THE NINETY TO ONE HUNDRED MILLION DOLLARS HANDED BACK TO KANSAS INDEPENDENT OIL PRODUCERS BY THE REAGAN ADMINISTRATION IN THE FORM OF REDUCED FEDERAL WINDFALL PROFITS TAXES. ALL IN ALL, IT'S CRYSTAL CLEAR THAT OIL AND GAS PRODUCERS HAVE DONE A FIRST-RATE JOB OF MAKING SURE THEIR TAXES AREN'T RAISED. IN FACT, THEY'VE EVEN GOTTEN THEM LOWERED.

STEINEGER/4

2/22/83

AS I MENTIONED EARLIER, MOST THINGS HAVEN'T CHANGED APPRECIABLY SINCE LAST YEAR. TWO THINGS HAVE CHANGED, HOWEVER.

FIRST, KANSAS GOVERNMENT NOW FACES IT'S MOST SEVERE FINANCIAL CRISIS IN MEMORY. WE SIMPLY DON'T HAVE THE REVENUE NEEDED TO FIX OUR ROADS, RUN OUR SCHOOLS AND OPERATE STATE GOVERNMENT.

SECOND, A GOVERNOR'S ELECTION WAS HELD LAST NOVEMBER. AND, AS WE ALL KNOW, THE SEVERANCE TAX WAS THE NUMBER ONE ISSUE IN THAT CAMPAIGN. ONE CANDIDATE STRONGLY FAVORED A SEVERANCE TAX. THE OTHER STRONGLY OPPOSED A SEVERANCE TAX AND PROPOSED, INSTEAD, THAT WE INCREASE KANSAS GASOLINE TAXES.

THE ISSUE WAS CLEARLY DRAWN, AND WHEN THE VOTES WERE COUNTED, THE PEOPLE OF KANSAS HAD SPOKEN LOUD AND CLEAR BY A CLEAR MAJORITY. THE PEOPLE WANT A SEVERANCE TAX ON OIL AND GAS--- NOT A GASOLINE TAX.

FRANKLY, EVEN KANSAS OIL AND GAS PRODUCERS ARE NOW CONCEDING--- PRIVATELY---WHAT EVERY MEMBER OF THIS LEGISLATURE ALREADY KNOWS: THE 1983 LEGISLATURE WILL PASS A SEVERANCE TAX. THE ONLY REAL QUESTION REMAINING---AND IT'S A QUESTION THIS COMMITTEE MUST ANSWER---IS WHAT KIND OF SEVERANCE TAX WILL BE PASSED.

STEINEGER/5

2/22/83

ON ONE SIDE STANDS THE OIL AND GAS LOBBY. THEY WANT TO RAISE ABSOLUTELY THE FEWEST DOLLARS POSSIBLE AND SHIFT THE TAX TO OTHER TAXPAYERS. HOW MANY SPECIAL INTEREST PROVISIONS CAN THEY STICK IN THE BILL? HOW LOW CAN THEY HOLD THE TAX RATE? THOSE ARE THE TARGETS OF THEIR CAMPAIGN.

ON THE OTHER SIDE STANDS THE GOVERNOR, A NUMBER OF LEGISLATORS-- BOTH REPUBLICAN AND DEMOCRAT---WHO FAVOR A SEVERANCE TAX, AND A MAJORITY OF THE PEOPLE. WE'RE TRYING, FIRST, TO MAKE SURE ANY SEVERANCE TAX PASSED IS CONSTITUTIONAL. WE DON'T WANT A REPEAT PERFORMANCE OF THE 1957 SEVERANCE TAX WHICH WAS HELD UNCONSTITUTIONAL ON A TECHNICALITY.

SECOND, WE WANT A TAX WHICH WILL RAISE A FAIR AND ADEQUATE AMOUNT OF MONEY.

AND, THIRD, WE WANT A TAX WHICH PROTECTS THE PEOPLE OF KANSAS FROM BEING USED AS SACRIFICIAL LAMBS AT THE ALTAR OF THE OIL AND GAS INDUSTRY.

THE CHOICES FOR THIS COMMITTEE ARE CLEAR, AND YOUR RESPONSIBILITIES ARE GREAT. THE TIME FOR LISTENING TO ANTI-SEVERANCE TAX RHETORIC IS PAST. I'M SURE WE ALL REMEMBER THE STATEMENTS LAST YEAR THAT KANSAS WASN'T FACING A FINANCIAL SQUEEZE AND NO NEW TAXES WERE NEEDED. THE TRUTH OF THOSE STATEMENTS IS NOW SELF EVIDENT.

STEINEGER/6

2/22/83

MOST EVERYONE NOW AGREES THAT THE STATE NEEDS SOMEWHERE IN THE NEIGHBORHOOD OF A HUNDRED AND FORTY TO A HUNDRED AND FIFTY MILLION NEW DOLLARS THIS YEAR.

WHAT DOES THAT MEAN FOR THIS COMMITTEE?

FIRST, IT MEANS THAT IF THE COMMITTEE CHOOSES NOT TO TAX NATURAL GAS LIQUIDS--AS PROPOSED BY THE GOVERNOR--EITHER THE SEVERANCE TAX RATE MUST BE INCREASED OR THE EXEMPTIONS REDUCED.

THE ONLY ALTERNATIVE IS TO RAISE SOME OTHER NON-OIL OR NON-GAS GENERAL TAX---AND A GENERAL TAX INCREASE IS SIMPLY UNACCEPTABLE TO THE PUBLIC AND A MAJORITY OF THE LEGISLATORS WHO ARE REPRESENTING THE PEOPLE IN THIS LEGISLATURE.

I, ALONG WITH MANY OTHER LEGISLATORS, WILL NOT BE WILLING TO TALK ABOUT RAISING THE PEOPLE'S SALES TAXES---OR THE PEOPLE'S GASOLINE TAXES---OR THE PEOPLE'S PROPERTY TAXES.

THERE'S ONE OTHER FACTOR YOU MUST CONSIDER, TOO. IF THIS LEGISLATURE IS UNWILLING TO FOLLOW THE GOVERNOR'S PROPOSAL TO USE FIFTY MILLION DOLLARS IN FREEWAY FUNDS RESTING UNUSED IN KANSAS BANKS, EVEN FURTHER REVENUES MUST BE FOUND.

STEINEGER/7

2/22/83

AS THIS COMMITTEE DELIBERATES ON THE MOST IMPORTANT ISSUE OF THIS SESSION, THE SEVERANCE TAX, I BELIEVE YOU SHOULD BE EVER MINDFUL OF WHAT THE PEOPLE OF KANSAS EXPECT.

THEY EXPECT US TO PROVIDE ADEQUATE FUNDING FOR LOCAL SCHOOLS TO MAINTAIN QUALITY EDUCATION WITHOUT PROPERTY TAXES SHOOTING THROUGH THE ROOF.

THEY EXPECT US TO PROVIDE ADEQUATE FUNDING TO FIX OUR ROADS AND HIGHWAYS WITHOUT ADDING ANOTHER TWO OR THREE CENTS IN GASOLINE TAXES ON TOP OF THE NICKEL ALREADY IMPOSED BY THE REAGAN ADMINISTRATION.

THEY EXPECT US TO PASS THE SEVERANCE TAX, AT AN ADEQUATE RATE, AND PLUG THE BIGGEST LOOPHOLE IN THE KANSAS TAX SYSTEM.

ONE THING IS ABSOLUTELY CERTAIN. THE PEOPLE OF KANSAS WON'T SIT STILL FOR A GENERAL TAX INCREASE DESIGNED TO PROTECT THE OIL AND GAS INDUSTRY. LIKewise, MANY OF US IN THE LEGISLATURE WILL FIGHT TO THE BITTER END TO MAKE SURE THE PEOPLE'S TAXES ARE NOT RAISED SO THAT OIL AND GAS TAXES CAN BE HELD DOWN.

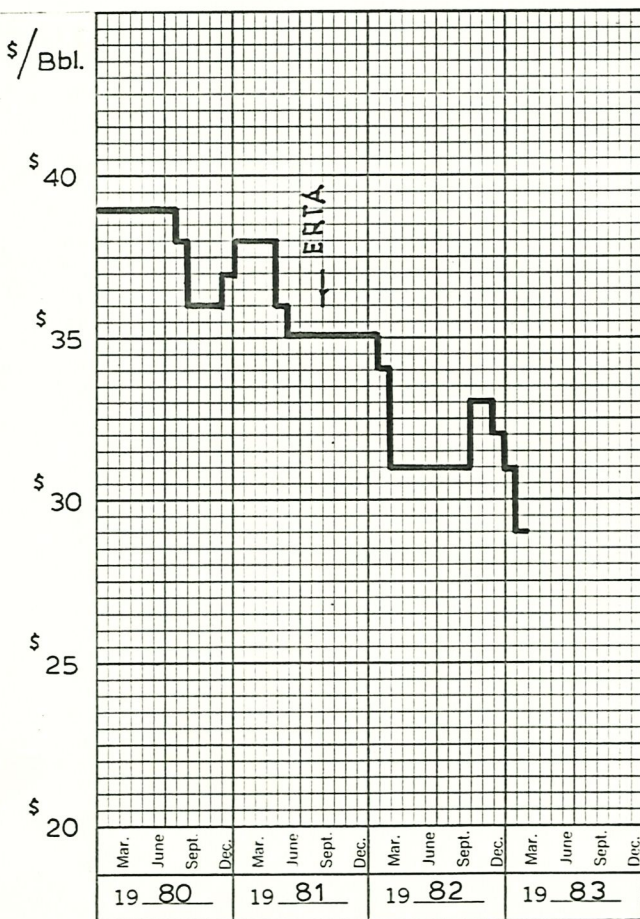
THE VOTERS IN 1982 SPOKE, AND THOSE SAME VOTERS WILL SPEAK AGAIN IN 1984 IF THIS LEGISLATURE FAILS OR NEGLECTS TO REPRESENT THE WILL OF THE PEOPLE. AND THE WILL OF THE PEOPLE IS A FAIR AND ADEQUATE SEVERANCE TAX.

THANK YOU VERY MUCH.

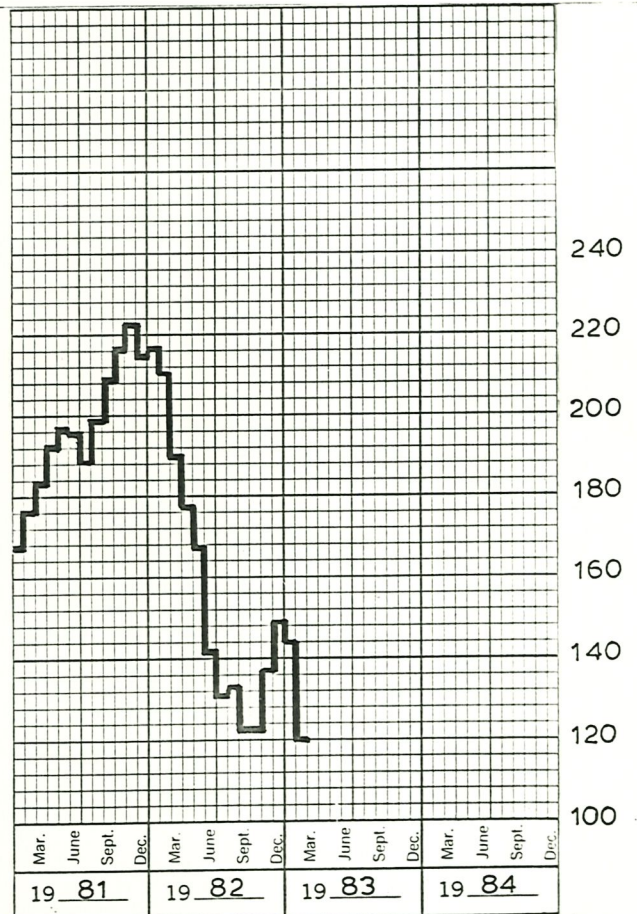
Richard D. Smith
President of the Kansas Independent Oil and Gas Association

My name is Dick Smith, and I am president of the Kansas Independent Oil and Gas Association. Thank you for this opportunity to testify. I will try to cover several points very quickly.

First, the oil and gas industry is falling deeper into recession. The two graphs on the first page of the handout will illustrate the situation. The one on the left shows the decline in the price of oil since 1980. That was the year that recent legislatures first seriously considered a severance tax. The price was \$39.00 then, and it has since fallen to \$29.00, with the latest dollar down posting being made last week. Also, last Sunday there was a \$5.50 drop in the price of Nigerian oil which is of a similar quality to Kansas crudes, and that will add downward pressure on our price. Further, at this time, there is more oil available in the world than ever before, and the market for it is weak. Therefore, the continuation of the downward trend in prices seems to be inevitable.



HIGHEST POSTED PRICES FOR KANSAS CRUDE OIL



ACTIVE ROTARY RIGS IN KANSAS

The graph on the right shows the number of active rotary rigs operating in Kansas. These are our large drilling machines, and this does not count the small truck mounted rotaries in southeastern Kansas. About a year ago we had 224 rigs running in Kansas. Today there are 105 of those rigs down and out of work. That is a full 47% of our drilling fleet, and it means that at least 1300 men who were

Attch. 8

actively working on those rigs are unemployed. That does not count the numerous cat drivers, truck drivers, bookkeepers and others who have also been laid off because they are associated with the drilling business. By the way, one of those rigs is mine. It has been down for 8 months. We bought it two years ago, and we still pay principal and interest on it each month.

Kansas production is declining too. Gas production has dropped by 33% in one year, and oil production, which was our one bright spot because it had increased following the active drilling pace during the past few years, is now also on the decline. Kansas oil production was 199,000 barrels a day in November, and it has now dropped to 196,000 bbls/day. Continued decline is inevitable because we are drilling fewer and fewer wells.

In short, our industry is in a serious recession, certainly one of the hardest hit industries in the state, with high unemployment, numerous bankruptcies and drilling and production revenues down.

This is hardly the time to be adding to the tax burden of an industry that is already, more than adequately taxed. Last year, the oil and gas industry paid \$118 million in property taxes alone. That is more than 11% of all of the ad valorem taxes paid in the state. Further, we paid another \$100 million in sales, income and other taxes. Our ad valorem taxes alone amount to 4% of gross revenues on an average, and that percentage will rise as we assume our share of the shift in taxes from exempted farm machinery.

I understand that testimony was given yesterday to the effect that the exemption from the windfall profits taxes for stripper oil would partially offset the severance tax. If you will look back to the oil price graph you will see that the Economic Recovery Tax Act (ERTA) (which included the stripper exemption) was passed in August of 1981. At that time, the exemption would have equalled about a \$3.00/bbl. benefit for less than 1/2 of Kansas oil production. Since that time, the price of oil has fallen twice that much, so any benefit has long since disappeared. If in fact there was any windfall, then why are half of our rotary rigs lying idle?

It is difficult for us to understand the punitive tax rates which are proposed by the various bills before the committee. Total tax on oil and gas in the governor's bill would be at least 11% ~~when the ad valorem tax~~ we already pay is considered. 7½% is also high when you consider that we are a state that produces marginal oil. More than 90% of our wells are stripper wells, those that produce less than 10 barrels per day. Stripper production is taxed very carefully in many other producing states because they recognize the marginal character of the production and the economic loss that would occur should these wells be overtaxed and cause abandonment. For instance, Louisiana, the third largest producing state in the country, taxes stripper at only

3 1/8%, Nebraska a 2% severance tax and Colorado has no severance tax at all on stripper.

Further, we recognize that the state needs money, but we wonder why we are being called on to fund all, or virtually all, of the deficit. Surely we aren't responsible for the shortfall. What has happened to the plan to spread the burden with sales, income and gasoline taxes? The needs of education and highways are the responsibility of all Kansans, not just the oil and gas industry.

I wonder if the proponents have considered where we might be at this time next year if our industry is damaged with a tax. Oil production could easily drop another 10,000 barrels daily. It did just that on the average for 12 years running in the 1960's and early 70's because we did then, just what we are doing now. We drastically cut our drilling. What about our gas production which dropped 33% last year, and if you think that was just an odd year, you're wrong. The 3 previous years it dropped an average of 10% per year. What about drilling? Certainly we can't expect a resurgence in drilling when higher taxes have put us at a disadvantage with other states where there are better opportunities to find good wells, far better than our marginal production. Where will we be politically? No one ever mentions, anymore, the myth of property tax relief provided by a severance tax. Income from a severance tax will only help to cover the deficit, much less add to the funds for schools and highways like Kansans have been promised.

Finally, we have been hearing a lot about a mandate for a severance tax. But, I don't think any governor, senator or state representative was ever sent to Topeka with a mandate to permanently damage an industry, put good people out of work and lay waste to the future of the economy of our state. Kansas needs the oil and gas industry, it's our second largest. We won't be able to repair it or replace it next year if we cripple it with taxes. For the good of our state, I hope you will oppose all of the severance tax bills before you now.

February 22, 1983

STATEMENT

Mr. Chairman and members of the Committee, I am Dick Randall, General Counsel for Petroleum, Inc., and Chairman of the KIOGA Legislative Committee. I am opposed to all pending severance tax bills.

All owners of Kansas oil and gas leases now pay a "severance type" ad valorem tax to the counties. This is a fair tax based on price, production volumes, and operating costs. All oil and gas leases are reassessed each year by those counties. Total ad valorem taxes paid by our industry soared seven fold from \$17.3 million in 1973 to \$117.5 million in 1982.

The Kansas "severance type" ad valorem tax is more scientific and less regressive than a straight percentage severance tax. California and Kansas tax oil and gas properties by similar ad valorem tax formulas. It is no accident that they are the only two states in the nation which have actually increased daily crude oil production in the past ten years.

The Kansas crude oil price has declined from \$39 to \$29 in less than two years, for a price drop of over 25%. The price of North Sea, Nigerian and Saudia Arabian oil has dropped from \$5 to \$7 per barrel in the past week. It is inevitable that the price of Kansas crude oil ~~price~~ will decline further within a matter of days or weeks.

The Kansas oil industry is in a severe cash flow crunch at current prices. Rigs are down, drilling budgets are being slashed and numbers of employees are being reduced. Some Kansas operators are already insolvent and are facing possible bankruptcy. Kansas is a stripper well state and cannot be realistically compared to larger well states for taxation.

Kansas natural gas production and reserves continue to decline and profits are shrinking. Kansas gas prices are the lowest in the nation, but long term markets are being lost to competitive fuels, which may never be regained. Many recent gas discoveries are small wells and will be short lived.

Most Kansas gas wells are already paying more than 6% of gross revenues in property taxes. Some are paying more than 10% and cannot absorb higher taxes. A severance tax will automatically increase consumer gas prices where contracts allow full or partial tax reimbursement.

My company, Petroleum, Inc., operates in 13 states and in Canada. If a severance tax bill passes, Petroleum, Inc. will shift its Kansas exploration budget money to other states, and will not explore here. We shifted our drilling budget out of this state in the early sixties, and our Kansas oil production declined from 4600 BOPD in 1962 to 1400 BOPD in 1980. We are back up to 1700 BOPD now by increased drilling.

In 1982 Petroleum Inc. participated in drilling 52 wells in Kansas. However, our annual drilling budget is flexible and can be shifted quickly to other states in which we operate. If a severance tax bill is passed, our decision is that Petroleum, Inc. will not drill any more exploratory oil or gas wells in Kansas.

Any fair severance tax bill must give credit for current taxes paid by the oil and gas industry. Any fair severance tax must also include royalty owners who do not pay costs of operation. To exclude royalty owners and to call the tax a "severance" tax or a "gross production" tax, would ensure a legal attack on its constitutionality in the courts.

Kansas cannot afford to penalize its oil and gas industry with an "additional" severance tax. I urge you to vote "No" on the severance tax bills pending before this Committee.

Thank you.

Atch. 9

#10



Peat, Marwick, Mitchell & Co.

Certified Public Accountants

600 Fourth Financial Center
Wichita, Kansas 67202
316-267-8341

February 22, 1983

Senate Assessment Taxation Committee
State Capitol Building
Topeka, Kansas 66601

Gentlemen:

I am appearing today in opposition to the proposed Kansas severance tax on oil and gas. I have previously spoken before this committee regarding numerous technical complications in such legislation as well as my estimates as to the potential impact of such a tax. Today I would like to speak only to one issue. My concern is that the proponents of this legislation have continually overstated what they feel to be the economic impact of the windfall profit tax exemption for stripper oil which began as of January 1, 1983. In my opinion, the \$100 million figure being used by the proponents is more accurately calculated as follows:

Estimated stripper production subject to exemption	\$ <u>1.09</u> billion
1982 windfall tax on above (1)	95.0 million
Less: estimated current refunds due to application of 90% net income limitation - 25%	(<u>24.0</u>) million
Total amount subject to exemption	71.00 million
Less: federal and state tax on reduced withholding - estimated at 50%	<u>35.5</u> million
Net cash flow to Kansas oil industry	\$ <u><u>35.5</u></u> million

(1) Assumes \$29.00 sales price and \$20.50 adjusted base price.

The sales, adjusted base prices and net income limitation figures used in the above calculations are representative of the typical oil and gas producers which I represent. It is particularly important to recognize that the reduced windfall profit tax withholding will not automatically flow to the bottom line for Kansas producers. It is totally unrealistic to

Atch. 10

Senate Assessment Taxation Committee

February 22, 1983

2

assume that the \$71,000,000 refund will not increase the total federal and state tax liability of Kansas producers.

I would also like to make one further illustration to emphasize my belief that Kansas oil and gas producers cannot afford this tax. Specifically, the following calculation indicates that Kansas producers are now receiving \$3.40 per barrel less than they were receiving in December 1980. My calculations are as follows:

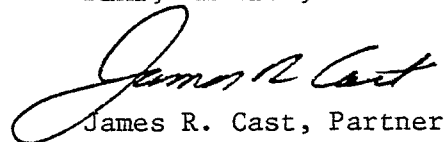
	<u>12/31/80</u>	<u>2/21/83</u>
Sales price per barrel	\$ 39.00	\$ 29.00
Windfall tax	(6.60)	<u>None</u>
Net cash to producer	\$ <u>32.40</u>	\$ <u>29.00</u>
Reduced cash to 1983 producer		\$ <u>3.40</u>

In summary, I believe the proponents have grossly overstated the industry's ability to pay this tax, specifically with respect to their estimate of the cash that will be available to Kansas producers because of the removal of the windfall profit tax on stripper oil beginning in 1983. Secondly, if you do not feel that the tax was appropriate based on a net \$32.40 per barrel to the producer in 1980, how can you justify an increased tax burden in 1983 when their actual cash flow is lower than it was in 1980?

Thank you for this opportunity to present my views in opposition to the proposed severance tax.

Very truly yours,

PEAT, MARWICK, MITCHELL & CO.


James R. Cast, Partner

JRC:MLW

Members of the Senate Assessment and Taxation Committee:

I am Rob Dietterich and I am from Ransom, Kansas. I graduated from Kansas State University in December, 1982 with a bachelor of science degree in geology. While still in my last semester of college I began sending out resumes to companies both in and out of Kansas. These resumes were sent to most of the major oil companies and to many smaller independent companies. Approximately 100 letters and resumes were sent to companies at this time. About 95% of the companies responded, and all of these with rejection letters.

After graduation I moved home to Ransom where I am employed by my father on his farm. In mid-January I began calling on geologists and oil companies in person, mainly in the Wichita area. I personally contacted 80 companies. Most of the companies were very willing to help, but none had any positions available for an entry-level geologist. I also contacted geologists and oil companies in Great Bend, Kansas and received the same response there. The general feeling of the oil companies and geologists was that they were waiting to see whether the severance tax would be passed or not, before making any employment decisions. They felt that if the severance tax was passed, the petroleum industry in Kansas would be depressed even more than it is presently.

From my experience, I feel that geologists now and future geologists graduating from universities in Kansas will have to go outside the state to find employment. Passing the severance tax would mean that employment opportunities in Kansas, for geologists such as myself, would deteriorate even more.

Robert J. Dietterich
R.R. #1
Ransom, Kansas 67572
(913) 731-2220

Atch. 11

KANSAS OIL COMPANIES CONTACTED

Griggs Oil Inc.
Frontier Oil Company
Edmiston Oil Company
George R. Jones
Bankoff Oil Company
Falcon Exploration Company
Lario Oil and Gas Co.
Ram Petroleum Corp.
Koch Industries Inc.
Midco Drilling
Murfin Drilling Co.
Pickrell Drilling Co.
Gear Petroleum Company
F&M Oil Company
Mustang Drilling & Exploration Inc.
Associated Petroleum Inc.
Slawson Oil Company
Petroleum Inc.
Mid-Continent Energy Corp.
Abercrombie Drilling Inc.
K&E Drilling Inc.
Texas Oil and Gas Corp.
Woolsey Petroleum Corp.
Dunne-Gardner Petroleum Inc.
Texas Energies
Vincent Oil Corp.
Beren Corp.
American Energies Corp.
McCoy Petroleum Corp.
A&J Oil Company
Zenith Drilling Corp.
Penguin Petroleum
Stelbar Oil Corp.
Sage Drilling Co.
Pate-Dombaugh Petroleum
Viking Services
Banks Oil Co.
B&B Drilling Inc.
Bradley & Bradley
Sunburst Exploration Co.

Hummon Oil Company
Parrish Corp.
D.R. Lauck Oil Company
Aladdin Petroleum Corp.
Hellar Drilling Company
David P. Williams
Graham-Michaelis Corp.
Foxfire Exploration Inc.
Galloway Drilling Inc.
Landmark Energy Corp.
Leben Drilling Co.
A. Scott Ritchie
George Reed
Energy Exploration
Mid-Continent Energy Corp.
Imperial Oil Company
Rains & Williamson Oil Company
Range Oil Co.
Brandt Oil Company
Rockwood Petroleum Co.
Zorger Petroleum Co.
Palomino Petroleum
Cities Service Company
Aylward Drilling Co.
Petroleum Energy Inc.
Maurice L. Brown Co.
Sanders Oil Co.
Bergman Oil Co.
Landes Exploration Co.
Geosearch
Hinkle Oil Co.
Martin Oil Company
Mull Drilling Co.
Robert D. Dougherty
Strata Drilling Co.
Roxana Corp.
Lewis O. Chubb
Petro-Log Inc.
Brougner Oil Inc.
Energy Three Inc.

ROBERT J. DIETTERICH

Rural Route 1
Ransom, Kansas 67572
(913) 731-2220

OBJECTIVE

A position in the field of Exploration Geology.

EDUCATION

Bachelor of Science in Geology, Kansas State University, December 1982.
GPA: 3.75/4.0.

Attended Bethel College majoring in Geology, August 1978 to May 1980.
GPA: 3.75/4.0.

HONORS/ACTIVITIES

Sigma Gamma Epsilon, Geology Honorary
American Association of Petroleum Geologists
Kansas Honor Student
Semester Honors (4.0 GPA)
Music Achievement Scholarship
Class Valedictorian
Mid-Kansas Symphony Orchestra
Bethel Jazz 7 & 8
Williston Geology Club
Intramural Sports

WORK EXPERIENCE

August 1981-December 1981: Lab Assistant
Kansas State University - Manhattan, Kansas

Summers 1973-1982: Farm Laborer
John L. Dietterich Farm - Ransom, Kansas

PERSONAL DATA

Birthdate: 9/30/60
Marital Status: Single
Health: Excellent
Languages: German (3 years)
Available for Employment: January 1983

REFERENCES

Dr. Claude W. Shenkel, Professor of Geology, 105 Thompson Hall,
Kansas State University, Manhattan, Kansas 66506 (913) 532-6724.

Dr. Henry V. Beck, Professor of Geology, 104 Thompson Hall, Kansas
State University, Manhattan, Kansas 66506 (913) 532-6724.

Mr. Les Wurm, Senior Engineer, Panhandle Eastern Pipeline Company,
3444 Broadway, Kansas City, Missouri 64111 (913) 888-3428.

#12

Mr. Chairman, Committee members:

I assume you saw that little Oklahoma well that Governor Carlin rode to victory. That average well in Oklahoma produced almost twice as much oil as the average Kansas well. I'm quite sure that I would look at this tax differently if you will double my income.

Having been in Kansas oil for the past 30 years, I watched a number of leases plugged out in the 60's, my Mother, brother & myself now produces around 300 barrels a day from these leases given up by Texaco, Skelly and others. Most of these wells make around 98% salt water, which is not unusual in Western Kansas - Nearly all oil in Kas has some water with it - it just makes it much more expensive to produce.

(2)
One well we have makes 9 barrel of oil and 2900 barrel of water, it cost \$150.00 per day for electricity to produce, ~~this~~ oil is 27 gravity oil which means I get \$27.15 per barrel, or did when I left home, from what I read in the paper this may be in error. This seem quite different than the figures the Governor used for price per barrel. The landowner (Royalty) who contributed nothing to the development or continuing operation of this lease is receiving over \$1,000 per month from this lease - which the Governor is against taxing - I cannot believe such a biased bill was introduced.

A big thing was made that we no longer have a WPT on stripper, with the base where it is now, and the declining price - it isn't too far from ceasing to exist.

26)
a 1 or 2 barrel exemption? even
the Federal government saw fit to
let a lease make 10% on refund
the windfall tax - this saved
many small leases.

I bought a workover rig in 1972
for \$10,000, as I understand it, oil
assessment figures come from here
in Topeka - last year this rig was
assessed at \$60,000, a 600% increase.
Every barrel of oil was assessed and
some of my pumping units purchased
for \$1500 were assessed as high as
\$40,000 - while this was going on,
Interest, business aircraft & farm
machinery were being exempted
from tax - if you think I get
the feeling I'm being treated unfairly -
you're right!

Rig activity is down, Senators this
is no short term glut, we must sell
to the refiners (majors), they are not
drilling in Kansas as one well over
there flows as much as I can
produce from 45 wells in a
year. This is some competition.

A 7% tax on the gross sales of

Alco, Skess, or Kroegers while exempting Gateway & Rexall is a comparison of what is going to happen between Kansas oil and the Foreign oil the Majors will sell here.

The \$39.00 top price for oil caused the biggest oil boom in Kansas history - also in the world - Unfortunately for the Kansas producers they were much more successful. If Kansas is going to stay in the market, we are going to have to operate very economically, the glut is here for quite a while.

My 14 employees, many of whom have been with me a number of years, I know their families, their house payments, I feel a responsibility toward them. The last thing I want to tell them is to look somewhere else for work, - in western Kansas there is very little else.

Senators, what you decide can have a great deal to do with whether the Kansas Oil Industry survives, or whether my employees must look elsewhere while many wells cease to produce.

Thank You,

Den Bowman