

Approved 2/2/89
Date

Keith Roe

MINUTES OF THE House COMMITTEE ON Taxation

The meeting was called to order by Representative Keith Roe at
Chairperson

9:00 a.m. ~~p.m.~~ on February 1, 1989 in room 519-S of the Capitol.

All members were present except:

Committee staff present:
Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
Keith Farrar - Board of Tax Appeals
Terry Hamblin - Director of PVD

Tom Severn gave an overview on severance tax on oil, gas & coal and percentage of severance tax receipts on oil, gas and coal. (Attachment 1)

Keith Farrar testified on problems pertaining to valuing and taxing mineral interests across Kansas. He stated that uniformity regarding notification of tax bills is needed. (Attachments 2 & 3)

Terry Hamblin stated that he recognizes that this is a problem that needs answering and is very complex, and that the total tax bite on oil and gas is very high.

A motion was made by Representative Smith and seconded by Representative Aylward to recommend HB-2023 for passage. The motion passed.

The minutes of January 31, 1989, were approved.

The meeting adjourned.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SEVERANCE TAX

Enacted: 1957 tax on oil and gas held invalid by Kansas Supreme Court in January, 1958, on the grounds that the title of the enacted bill was defective (182 Kan. 437). Tax on oil, gas, coal, and salt enacted in 1983, effective May 1, 1983. Tax on salt repealed in 1987.

Statutory Citation: 1957 Session Laws, Ch. 516; 1983 Session Laws , Ch. 313. K.S.A., Ch. 79, Art. 42.

Administration and Collection: Department of Revenue, Division of Taxation.

Collection Period: Monthly; payment due by 20th day of second following month in which tax liability was incurred.

Tax Base: Gross value of oil and gas (sale price at time of removal from production unit); volume of production of coal.

Present Tax Rates: 8% on oil and gas, less property tax credits of 3.67% on oil properties and 1 percent on gas properties; \$1 per ton on coal.

History of Tax Rates: 1957 Law: 1 percent on oil and gas.

Salt: 4 cents per ton from May, 1983 to July, 1987.

Major Changes in Tax Base: The 1987 Legislature amended the severance tax to: (1) change, for oil, the qualifying amount for the low production exemption for a lease or production unit deeper than 2,000 feet from three barrels or less daily (four barrels from a water-flood process) to an amount based on the average price paid per barrel during July-December of the preceding year, effective on May 1, 1988 and each year thereafter (for May 1, 1988 to April 30, 1989 the amount was 5 barrels or less daily (six or less from a water-flood process)); the exemption ranges between three barrels (four for water-flood) at a \$30 price to seven barrels (eight for water-flood) at a \$10 price; (2) exempt salt from the tax effective July 1, 1987; and (3) change the coal exemption to the first 350,000 tons produced annually from each mine instead of exempting only mines that produce less than that amount, effective in 1988 and thereafter.

Exemptions: 1957 Law: No exemptions. Current Law: Oil -- wells less than 2,000 feet deep on a lease producing an average of two barrels or less per; the qualifying amount for the low production exemption for a lease or production unit deeper than 2,000 feet is based on the average price paid per barrel from July to December of the preceding year, effective on May 1, 1988 and each year thereafter:

<u>Price bbl.</u>	<u>Low Production</u>	<u>Water-Flood</u>
over \$30	3 bbl.	4 bbl.
\$30 or less	4	5
\$24 or less	5	6
\$16 or less	6	7
\$10 or less	7	8

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Attachment 1*

(this exemption had been three barrels per day (4 for water-flood) prior to May 1, 1988; all production from a tertiary recovery process; oil from any pool from which oil was first produced on or after April 1, 1983, for a period of two years.

Gas -- wells having an average daily production valued at \$81 or less; gas used for domestic or agricultural purposes on the production unit from which it is severed; gas from any pool from which gas was first produced on or after April 1, 1983, for a period of two years.

Coal -- first 350,000 tons of coal from each mine.

Disposition of Revenue: 1957 Law: To State General Fund; 1983 Law: 93% to State General Fund, 7% to Special County Mineral Production Fund for distribution to counties and unified school districts in producing areas.

Net Collections: 1957 Law: \$2,020,219 was collected during the six-month period of FY 1958 that the tax was operative. At that time, the annual revenue estimate was \$4,125,000.

	<u>Oil</u>	<u>Gas</u>	<u>Coal</u>	<u>Salt</u>	<u>Total</u>
FY 1984	\$70,768	\$42,926	\$ 306	\$99	\$114,099
FY 1985	66,490	41,912	427	86	108,915
FY 1986	56,457	41,713	680	87	98,937
FY 1987	28,273	32,018	1,044	81	61,376
FY 1988	34,336	43,319	1,025*	10*	78,690*

* Legislation enacted in 1987 repealed the tax on salt and changed the exemptions for oil and coal.

Kansas Legislative Research Department
September 22, 1988

tax.cwc/sls

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Percentage Distribution of Severance Tax Receipts

	ACTUAL FY1988		CONSEN FY1989		CONSEN FY1990	
OIL						
GROSS PRODUCTION	59,629		56,000		53,000	
EXEMPT PRODUCTION	11,957		17,360		19,345	
EXEMPT AS PCT	20.05%		31.00%		36.50%	
TAXABLE PRODUCTION	47,672		38,640		33,655	
PRICE PER BBL	\$17.06		\$13.50		\$14.50	
TAXABLE VALUE	\$813,131		\$521,640		\$487,998	
RATE	4.33%		4.33%		4.33%	
NET REVENUE	\$34,336	43.6%	\$22,587	29.6%	\$21,130	25.2%
SGF (93 %)	\$31,933		\$21,006		\$19,651	
CMPTF (7 %)	\$2,404		\$1,581		\$1,479	
GAS						
GROSS PRODUCTION	514,055		610,000		660,000	
PRICE	\$1.23		\$1.35		\$1.45	
GROSS VALUE	633,772		823,500		957,000	
EXEMPT VALUE	7.50%		7.00%		6.50%	
TAXABLE VALUE	586,164		765,855		894,795	
RATE	7.00%		7.00%		7.00%	
NET REVENUE	\$43,319	55.1%	\$53,610	70.4%	\$62,636	74.8%
SGF (93 %)	\$40,287		\$49,857		\$58,251	
CMPTF (7 %)	\$3,032		\$3,753		\$4,384	
COAL						
TAXABLE PRODUCTION	1,025		0		0	
RATE PER TON	\$1.00		\$1.00		\$1.00	
SGF (93 %)	\$953		\$0		\$0	
CMPTF (7 %)	\$72		\$0		\$0	
TOTAL	\$1,025	1.3%	\$0	0.0%	\$0	0.0%
SGF						
OIL	\$31,933		\$21,006		\$19,651	
GAS	\$40,287		\$49,857		\$58,251	
COAL	\$953		\$0		\$0	
SALT	\$9		\$0		\$0	
	\$73,182	93.0%	\$70,863	93.0%	\$77,902	93.0%
ROUNDED						
			\$70,900		\$77,900	
CMPTF						
OIL	\$2,404		\$1,581		\$1,479	
GAS	\$3,032		\$3,753		\$4,384	
COAL	\$72		\$0		\$0	
SALT	\$1		\$0		\$0	
	\$5,508	7.0%	\$5,334	7.0%	\$5,864	7.0%
GRAND TOTAL	\$78,690	100.0%	\$76,197	100.0%	\$83,766	100.0%

THE STATE OF KANSAS



BOARD OF TAX APPEALS

Keith Farrar, Chairman

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 Topeka, Kansas 66612-1582
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MEMO: Senator Bud Burke, President of the Senate
 Senator Dan Thiessen, Chairman of the Senate Assessment and
 Taxation Committee
 Representative James Braden, Speaker of the House
 Representative Keith Roe, Chairman of the House Taxation
 Committee

DATE: January 25, 1989

FROM: Keith Farrar *KF*

RE: Exemption of Property Leased by Government Lendees

The Board has recently considered several cases, on both real and personal property, where an exemption has been granted on property that is leased by a governmental entity, be it state or local, even though the property was owned by a non-governmental or non-exempt entity and leased to the governmental entity for a profit. These decisions are premised upon District Court decisions which hold in a similar fashion. In most cases, there would be simultaneous use of the leased property, one use being that of the owner of the property for rental purposes and the second being the use made by the governmental entity. Property utilized exclusively for governmental or proprietary purposes by a governmental entity qualifies for exemption; however, the property used for the production of income is normally taxable. In this instance, because the property is being used exclusively by a governmental entity, it qualifies for exemption because the language in the statute says, "Used or operated" by a governmental entity and thus since the property is being exclusively operated for governmental or proprietary purposes, it must be exempted. This situation has occurred with respect to computer software and hardware as well as other types of personal property as well as real estate.

The Board has also had similar situations occur with respect to K.S.A. 79-201 Ninth. Since this provision no longer requires an exclusive use in order to qualify for exemption, and the property is being used or operated by a 501(c)(3) entity, it qualifies for exemption even though it may be leased from a third party who holds the property for purposes of making a profit. Without an exclusive use standard, the non-exempt leasing use of the property does not disqualify it for exemption because the

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 Attachment 2*

January 25, 1989

Memo

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Board can only look at the use by the 501(c)(3) entity who is using or operating the property. This provision would also apply to any personal property or real property.

I am not sure that this type of situation was contemplated as it allows for profit entities to acquire exemptions on their property when they lease this property to state, county or local governmental entities or entities qualifying for exemption under K.S.A. 79-201 Ninth. If you have any questions, I will be happy to visit with you about this at your convenience.

MEMO

TO: House Assessment and Taxation Committee
Keith Roe, Chairman

FROM: Keith Farrar, Chairman, Board of Tax Appeals

RE: February 1, 1989, hearing

I have two problems pertaining to valuing and taxing mineral interests across the state. The Board, pursuant to K.S.A. 79-1409, is required to ensure that there is uniformity in the values and assessment of all property throughout the state.

The Board of Tax Appeals has been aware of many differences in how counties may or may not place a value on mineral interests and that there are differences in how mineral tax statements are issued to the owners of those minerals. I have made the Board's concerns known to the Director of Property Valuation and understand PVD has been reviewing the problem. The reason I am before this committee is that the Board has a case brought by a taxpayer asking for relief and in the hearing process the inequities I have referred to are officially before us to make a decision. Our decision would result in requiring uniformity between counties under present law as we interpret it to be; however, that same decision could also result in many counties having to expend more tax dollars than they would receive by following our directive. This does not seem to be a good solution and obviously your county officials would ask you for relief which might not come before you until next year's Legislative session. By making you aware of the problems now the Legislature can make a policy decision before some counties would be adversely affected.

First, a few definitions are needed when we talk about mineral interests:

*2/1/89
attachment 3*

M I N E R A L I N T E R E S T S

<u>Producing</u>	<u>Non Producing</u>
Fee Simple (surface and mineral rights in same owner)	Fee Simple
Undivided (one owner)	Undivided
Severed (from surface deed)	Severed
Separated (minerals owned by more than one person) (could be 200 or more)	Separated

1. There is no question that there is inequity across the state, especially in counties with mineral production.
2. There is no question that some counties have value that they are not taxing.
3. There is no question that it will cost more to update the mineral owners' list than most counties will receive in taxes.
4. PVD sent out a questionnaire to all the 105 counties. 86 of the 105 counties responded, of the 19 that did not respond 17 have some mineral production. Example: (Butler County Oil Production). At least 2 of the 24 counties responding that they do not appraise, assess, or tax mineral rights, have substantial mineral production from the Hugoton Natural Gas Field.
5. At least 47 counties do not reduce the value of the surface real estate by the amount of value of separated minerals. At least 14 do. The Kansas Supreme Court said in Hitch Land and Cattle Co. vs. Seward County that when minerals are separated from the land the surface owner was entitled to a lesser tax valuation than before it was separated.

6. Some counties remove mineral rights from tax rolls if there is production.
7. Mineral rights inventory is not kept up to date in most counties.
8. At least 45 counties send each undivided interest owner a tax statement.
9. Some counties send statements to first on list of separated minerals making that person responsible for collecting from all the other owners.
10. Some counties send statements to majority royalty interest owners making that person responsible for collecting from all the other owners.
11. Some counties send statements to those that request, making that person responsible for collecting from all the other owners.
12. Some counties send statements determined by the county clerk making that person responsible for collecting from all the other owners.
13. I think K.S.A. 79-420 controls. Under 79-420 the appraiser apparently has the authority to decide if there is a market value. If he or she decides the fractional share is too small to allow the county to recover more in taxes than it would cost the county to bill the taxpayer for their mineral interests then he or she would decide there is no market value. Since there is no directive from PVD to the appraisers as to procedures to be used in establishing value, a great deal of difference in value of mineral interests occurs even between adjoining

counties which are removing natural gas or oil from a common source of supply.

I read 79-420 as saying, if a value has been determined on the separated mineral interest, it shall be taxed to the owners respectively. Mineral interests are to be assessed as real estate under 79-420.

79-420. Surface and mineral rights taxed separately, when; duties of register of deeds, county clerk and county appraiser. Whenever the fee to the surface of any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right or title to any minerals therein is in another or in others, such mineral interest shall be listed and the market value, if any, determined separately from the fee of such land, in separate entries and descriptions. Such land and such mineral interest shall be separately taxed to the owners thereof respectively. In determining the market value, if any, of any such mineral interest, the appraiser shall consider every proper factor, including but not limited to, the size of the particular mineral interest, the fractional share of such interest and the number of fractional shares in existence for such interest. The register of deeds shall furnish to the county clerk where such mineral interest exists and are a matter of record, a certified description of all such interest. When such reserves or leases are not recorded within 90 days after execution, they shall become void if not listed for taxation.

History: L. 1911, ch. 316, § 20; R.S. 1923, 79-420; L. 1959, ch. 365, § 10; L. 1982, ch. 391, § 29; July 1.

79-1409. Board of equalization; powers; appeals; meetings; changes in valuation; effect; certifications of equalized values; apportionment of state taxes. The state board of tax appeals shall constitute a state board of equalization, and shall equalize the valuation and assessment of property throughout the state; and shall have power to equalize the assessment of all property in this state between persons, firms or corporations of the same assessment district, between cities and townships of the same county, and between the different counties of the state, and the property assessed by the director of property valuation in the first instance. And any person feeling aggrieved by the action of the county board of equalization may, within forty-five (45) days after the decision of said board, appeal to the state board of equalization for a determination of such grievance.