

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Vice Chairman Les Donovan at 10:45 a.m. on February 2, 2004, in Room 519-S of the Capitol.

All members were present except:

Senator David Corbin- excused  
Senator David Haley- excused  
Senator Edward Pugh- excused  
Senator Greta Goodwin- excused

Committee staff present:

Chris Courtwright, Legislative Research Department  
Martha Dorsey, Legislative Research Department  
Gordon Self, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Richard Cram, Kansas Department of Revenue  
Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas  
Kathy Damron, Pixius Communications  
Ed Cross, Kansas Independent Oil and Gas Association

Others attending:

See Attached List.

**SB 368—Claims for refunds of motor vehicle fuel taxes**

Richard Cram, Kansas Department of Revenue, testified in support of **SB 368**. He explained that the bill would change the language in the motor fuel tax refund statute concerning the documentation required to support motor fuel tax refund claims. The bill would allow automated invoices and eliminate the requirement that only hard copy original invoices can be accepted as supporting documentation. Mr. Cram noted that, due to advancing technology and electronic purchasing systems now being used for motor fuel transactions, the statutory language is outdated. He further noted that a Performance Audit Report criticized the Department for paying two substantial motor fuel tax refund claims that were not fully supported by original invoices. **SB 368** responds to the Legislative Post Audit's recommendation. In conclusion, Mr. Cram called attention to a balloon amendment clarifying that listings generated by the claimant, if approved by the Director, can be used to document refund claims. (Attachment 1)

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas, testified in support of **SB 368** on behalf of Marvin Spees of Capitol city Oil. He discussed the difficulties that the original invoice requirement presents for the industry.

There being no others wishing to testify on **SB 368**, the hearing was closed.

Kathy Damron, representing Pixius Communications, requested the introduction of a bill which would clarify that wireless communication towers, antenna, and relay sites shall be classified for property tax purposes as personal property. Such language would be inserted as a new subsection in K.S.A. 79-1439(b)(2)(F). She noted that, beginning in 2003, one county determined the towers to be real property. (Attachment 2)

Senator Lee moved to introduce the bill, seconded by Senator Oleen. The motion carried.

**SB 369—Mineral severance tax exemptions**

Richard Cram, Kansas Department of Revenue, testified in support of **SB 369**. He explained that the bill would increase from one to two years the mineral tax minimum production exemption renewal period on oil wells and oil production leases. He noted that the bill would save staff administrative time in processing

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 2, 2004, in Room 519-S of the Capitol.

annual renewals year after year. He explained that Section 1 of the bill adds a definition for "lease number" to K.S.A. 79-4216, and Section 2 amends K.S.A. 79-4217(b)(3) by providing that the expiration period be staggered depending on whether the lease number is even or odd. He commented that changing the exemption period to two years will reduce the Department's burden in processing renewal applications by approximately 7,000 per year, and the paperwork for mineral taxpayers will also be reduced. (Attachment 3)

Ed Cross, Kansas Independent Oil and Gas Association, testified in support of **SB 369**. In addition, he informed the Committee that **HB 2651**, which was recently referred to the House Committee on Utilities, addresses severance tax exemptions. He proposed that **SB 369** be amended to reflect provisions in **HB 2651** regarding price reference points for severance tax exemptions for low-volume gas and oil wells. He also suggested that **SB 369** be amended with regard to coal bed methane production, utilization of more than one natural reservoir, the price reference points for production enhancement exemptions, and the definition of stripper wells. (Attachment 4)

Senator Oleen confirmed that Mr. Cram had not been presented with the proposed amendments prior to the meeting. Mr. Cram agreed to respond to the amendments at a future meeting.

Senator Donovan called the Committee's attention to the minutes of the January 29 meeting.

Senator Buhler moved to approve the minutes of the January 29, 2004, meeting, seconded by Senator Oleen. The motion carried.

Senator Buhler moved to amend **SB 368** as recommended by the Department of Revenue, seconded by Senator Taddiken. The motion carried.

Senator Buhler moved to recommend **SB 368** favorably for passage as amended, seconded by Senator Oleen. The motion carried.

The meeting was adjourned at 11:25 a.m.

The next meeting is scheduled for February 3, 2004.

SENATE ASSESSMENT AND TAXATION COMMITTEE  
GUEST LIST

DATE: February 2, 2004

NAME	REPRESENTING
Richard Cron	KDOR
<del>Ken Petersen</del>	KS Petroleum Council
E.R. Moses	Ks. Aggr. Producers Assn.
Don Schuacke	KILOGA
Ed Cross	KIOGA
Joseph Mustata	KDOR
Edumante	KDOR
Patricia A. Platt	KDOR
<u>TERRY HOLDREN</u>	<u>KS Farm Bureau</u>
Tom Bruno	EKOGA
Doug Smith	Prager, Smith & Associates
Kurt Jensen	Prixius Communications
Judy Shaw	PKCA of Ks
Tom Palace	PKCA of Ks.
Ron Seiber	Heis Law Firm



# K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE  
OFFICE OF POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Committee on Assessment and Taxation  
Richard Cram, Director of Policy & Research

February 3, 2004

**Senate Bill 368**

Chairman Corbin and Members of the Committee:

Senate Bill 368 proposes to change and update the language in the motor fuel tax refund statute, K.S.A. 79-3458, concerning the documentation required to support motor fuel tax refund claims to allow for automated invoices as approved by the Director of Taxation, and to eliminate the requirement that only hard copy original invoices can be accepted as supporting documentation.

K.S.A. 79-3458 currently requires that a motor fuel tax refund claim be accompanied by the original invoices for the fuel purchases, showing that the motor fuel tax sought to be refunded has been paid by the claimant. Due to advancing technology and the electronic purchasing systems now being used for motor fuel transactions, the language in K.S.A. 79-3458 is outdated. Many of these electronic purchasing systems do not generate original hard copy invoices or receipts. The language in K.S.A. 79-3458 needs to be updated to allow for automated or electronic invoices, as approved by the Director, to be used as supporting documentation for a motor fuel tax refund claim. This change would align the statute to reflect today's technologies and improve the efficiency of refund claim processing by allowing automated invoices or computer generated listings, as approved by the director, in place of original fuel invoices or receipts. With some current electronic fuel purchasing systems, such as card-trol systems, or pay at the pump systems, original hard-copy invoices or receipts are generally not produced. Attached is a balloon amendment needed to clarify that listings generated by the claimant, if approved by the director, can be used to document refund claims.

In its Performance Audit Report dated June 2003 on the Department's administration of motor fuel tax refund claims, Legislative Post Audit criticized the Department for paying two substantial motor fuel tax refund claims that were not fully supported by original invoices. This proposal responds to the LPA's recommendation.

We have asked Mr. Marvin Spees of Capitol City Oil, a local petroleum marketer, to address the Committee concerning the difficulties for the industry that the original invoice requirement in K.S.A. 79-3458 presents.

SENATE BILL No. 368

By Committee on Assessment and Taxation

1-27

AN ACT concerning motor vehicle fuel taxes; relating to claims for refunds; amending K.S.A. 79-3458 and repealing the existing section.

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

Section 1. K.S.A. 79-3458 is hereby amended to read as follows: 79-3458. After purchasing or acquiring for use motor-vehicle fuel or special fuel upon which refund of the tax may be due, a purchaser and claimant may file with the director a claim on a form furnished by the director. Such claim for refund must be filed within one year after the date of purchase of the motor-vehicle fuels or special fuels on which a tax refund is claimed. The claim shall show or include the following:

(1) The name, post office address and the refund permit number of the claimant;

(2) the total number of gallons of motor-vehicle fuel or special fuel purchased as ~~represented~~ supported by original ~~or automated~~ invoices ~~which shall be attached, and which invoices shall approved by the director that show that the claimant has paid the distributor or retailer delivering price of such motor-vehicle fuel or special fuel in full, including the motor-vehicle fuel or special fuel tax. If an original invoice shall be is lost or destroyed, a statement to that effect shall accompany the claim for refund and such statement shall also set forth the date of delivery, the serial number of the invoice, number of gallons of motor-vehicle fuel or special fuel purchased and the name of the distributor or retailer from whom purchased; and if the director finds that the invoice was originally properly issued and that the claim is otherwise regular, the director shall allow such claim for refund;~~

invoices

or self-generated lists

(3) the amount of the claim; and

(4) if motor-vehicle fuel or special fuel for motor vehicles using the public highways is generally purchased for delivery directly to the fuel tank of such vehicles, the name of the dealer from whom the greater portion of such purchases are made.

All applications for refunds furnished by the director shall contain a printed warning clause. Every such application for refund if made by an individual shall be signed by the claimant and if the claimant is a corporation or association it shall be signed by one of the principal officers of the corporation or association and in the case of a partnership, by one of the partners.

Sec. 2. K.S.A. 79-3458 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.



# Kathy Damron

(785) 235-2525  
(785) 354-8092 FAX  
E-MAIL: MKDTopeka@aol.com

800 SW JACKSON STREET, SUITE 1100

Topeka, Kansas 66612-2205

The Honorable David Corbin  
Chairman, Senate Tax Committee  
Statehouse  
Topeka, Kansas 66612

February 2, 2004

Mr. Chairman and member of the Tax Committee:

Thank you for the opportunity to appear before you briefly this morning. I am seeking your assistance on behalf of Pixius Communications, of Wichita, Kansas. Pixius is a small, fixed wireless high speed internet provider. They are rolling out broadband service in small towns in our state in an effort to satisfy growing market interest in this new technology. They have been selected by the USDA to receive low interest loan monies to reach Kansans with their broadband product in more than 30 counties south and east of Wichita.

To enable their product to reach the customer, radios are placed on towers usually already sited by a cellular company or other tower operator. In 104 out of 105 counties in the state these towers are considered to be personal property. In one county, starting last year (2003), these towers were determined to be real property and that brings us to our request this morning.

I am requesting committee introduction of legislation clarifying that wireless communication towers, antenna and relay sites shall be classified for property tax purposes as personal property. Such language could be inserted as an amendment to K>S>A> 79-1439 (b)(2)(F) adding this language as a new sub-section.

I appreciate your consideration of this request.

## **Valuation and Taxation of Wireless Communication Tower, Antenna or Relay Sites - Towers**

### *What happened to property taxes in Sedgwick County?*

Sedgwick County landowners who have cell towers located on their property have seen their tax values and tax bills increase from a modest two to three times to more than twenty times last year's amount. Examples: valuation increase from \$14,269 to \$151,100; valuation increase from \$7,000 to \$75,000; valuation increase from \$15,025 to \$302,200.

### *Why the increase?*

The increase is due to the fact that the Sedgwick County Appraiser's office reclassified cell towers from personal property to commercial real property for 2003. No other Kansas county did that. In fact, for as long as cell towers have been taxed in Kansas, Sedgwick County and all the other Kansas counties have classified them as personal property.

### *Why should cell towers be classified as personal property?*

The determination of whether property is real or personal must be made on a case-by-case basis. The three tests that comprise the 3-pronged fixture law test are: (1) annexation; (2) adaptability; and (3) intent. All three tests must be considered.<sup>1</sup>

*Annexation:* Towers rest on a concrete pad and are anchored / stabilized by three sets of guyed wires. To restore the land to its original condition, the tower, concrete pad and guyed anchors must be removed. As a condition of obtaining a ground lease, landowners require that the tower equipment be removed and the land be returned to its original condition. TEST PASSED

*Adaptability:* The basic function of a tower is to broadcast radio waves. Products sold to customers by carriers who lease space on these towers use radio waves. Since the tower is involved in the production of the product, it is personal property. TEST PASSED

*Intent:* Lease agreements state that the tower owner will remove the tower and all associated facilities and return the land to its original condition at the termination of the ground lease. The intent of both parties is that the tower not become a permanent structure. TEST PASSED

### *How will this taxation impact the wireless industry?*

Leases between landowners and tower owners provide for the pass-thru of tax increases which can be attributed to the structure and equipment placed on the land. Leases between tower owners and wireless operators also provide for the pass-thru of tax increases that can be attributed to the equipment placed on the tower or in the surrounding tower compound.

### *How will this impact the wireless customer?*

Wireless customers include cellular/PCS customer, paging customers and wireless data communications companies. Each of these customer types typically has fixed price contracts with their service provider so the service provider can not recover the tax increase from the current subscriber base. The result is the cost to future subscribers will be higher. Will the increase in cost hinder the growth of limited services? Probably. Will this have an adverse impact on economic growth, the delivery of health care service and education in Kansas? Definitely.

### *What to do?*

Enact legislation that clearly states that structures and equipment that are placed on real property are to be considered personal property.

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<sup>1</sup> 2004 Personal Property Valuation Guide, Classification and Assessment, Real Property v. Personal Property – Revised 12/2003

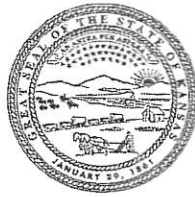
## Suggested Amendment

K.S.A. 79-1439 (b)(2)(F).....Insert the following:

“Wireless communication towers, antenna and relay sites shall be classified for property tax purposes as personal property.”

The present sub-section (F) could then become new (G).





# K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE  
OFFICE OF POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Committee on Assessment and Taxation  
Richard Cram, Director of Policy & Research

February 3, 2004

## Senate Bill 369

Chairman Corbin and Members of the Committee:

Senate Bill 369 is the Department's proposal to increase from one to two years the mineral tax minimum production exemption renewal period on oil wells and oil production leases. K.S.A. 79-4217(b)(3)(A)&(B) requires that taxpayers apply to the Department for renewal of minimum production exemptions on oil wells and oil production leases annually. This proposal would change the renewal period to every two years, instead of one year. Eighty-eight % of leases qualify for the minimum production exemption every year. For the most part, KDOR processes the same wells for renewal year after year.

Section 1 amends K.S.A. 79-4216, the definitions statute, to add a definition for "lease number," so that the Department can assign a number for each lease or production unit.

Section 2 amends K.S.A. 79-4217(b)(3) to provide that, for administrative efficiency, the minimum production exemption period will be two years, with the expiration period to be staggered depending on whether the lease number is even or odd, so that initially, for odd-numbered leases, the initial minimum production exemption period after this proposal becomes effective will expire in one year. For even-numbered leases, the initial exemption period will be two years. Thereafter, the two-year exemption period for odd-numbered leases and wells will expire next year and the period for even-numbered leases and wells will expire the year after, and so on.

Changing the exemption period to two years will reduce the Department's burden in processing renewal applications by approximately 7,000 per year. This will also reduce the paperwork burden on mineral taxpayers in applying for exemption renewals. As discussed above, there will be a two-year "phase-in" period. This would reduce the number of outgoing letters by 21,000 per year (3 mailings/letters per renewal, as well as reduction in FTE hours to review and approve the exemptions). The Department can use the saved FTE hours to perform additional tasks, such as collection enhancement.

**Kansas Independent Oil & Gas Association**  
800 S.W. Jackson Street, Suite 1400  
Topeka, Kansas 66612  
785-232-7772  
Email: kiogaed@swbell.net

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**Testimony to the Senate Committee on Assessment and Taxation**  
**Senate Bill 369 – An Act Concerning Mineral Severance Tax Exemptions**

Edward P. Cross, Executive Vice President  
Kansas Independent Oil & Gas Association  
February 2, 2004

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Good morning Chairman Corbin and members of the Committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents oil and gas producers in Kansas, a vast majority of which are small business entities. We appear this morning to express our support for SB 369. Allowing qualified taxpayers applying for an exemption from the excise tax imposed on the severance and production of oil and gas biennially makes good sense. Marginal oil and gas wells operate at the lower edge of profitability, even during times of relatively high oil and gas prices. Most of the wells qualifying for the severance tax exemption will almost certainly qualify each year. These marginal wells, we call stripper wells, are in the mature stage of their productive life and will not increase their productive capacity unless other producing zones are developed in the wells, formation enhancements and stimulation procedures are conducted, or new technology is developed to increase recoverability of remaining oil and gas reserves. Biennial application for the severance tax exemption cuts general administrative costs for marginal oil and gas well operators and cuts costs for the State of Kansas by allowing a biennial review of the exemption applications and frees State employee time for addressing other tasks.

Ladies and gentlemen, as you may know, another bill (House Bill 2651) addressing severance tax exemptions is being considered by the House Committee on Utilities. While the House Bill addresses other issues in the Severance Tax Act (K.S.A. 2003 Supp. 79-4217), perhaps this Committee would like to address the changes noted in the House Bill. We propose that SB 369 be amended to reflect the following changes noted from HB 2651.

- Page 4, Line 9 (\$16 changes to \$19)
- Page 4, Line 11 (\$15 changes to \$17)
- Page 4, Line 13 (\$14 changes to \$16)
- Page 4, Line 15 (\$13 changes to \$15)
- Page 4, Line 31 (\$16 changes to \$19)
- Page 4, Line 33 (\$15 changes to \$17)
- Page 4, Line 35 (\$14 changes to \$16)

Senate Assessment & Taxation  
2-2-04  
Attachment 4

These price reference points for severance tax exemptions for low-volume gas wells and low-volume oil wells are increased in recognition of the cost increases that have occurred since the reference points were established or last revised. They would not have any current fiscal affect and are simply price risk mitigation measures for marginal oil and gas operations.

- Page 5, Line 26 (. . . and continuing for a period of 24 months, *or a period of 48 months in the case of gas produced from coal seams*, from the month in which . . .)
- Page 5, Line 31 (. . . months, *or a period of 48 months in the case of gas produced from coal seams*, following the month in which oil or gas was first produced from . . .)

Coal bed methane (CBM) production is an economic development opportunity for Kansas. Because of the unique production characteristics of CBM, extending the severance tax exemption period will promote exploration and production of CBM.

- Page 5, Line 33, 34, & 35 (. . . or gas in *one or more natural reservoirs in communication so as to constitute* a single pressure system so that production from one part of the pool affects the *pressure* throughout its extent;)

This measure allows oil and gas producers to unitize more than one single and separate natural reservoir if the same are in communication so as to constitute a single pressure system. In essence, this measure would encourage more efficient development of pools that extend beyond single lease boundaries.

- Page 8, Line 4 (\$20 changes to \$23) *oil*
- Page 8, Line 6 (\$2.50 changes to \$3) *gas*

These price reference points for production enhancement exemptions are increased in recognition of the cost increases that have occurred since the reference points were established or revised. They are simply a price risk mitigation measure for marginal oil and gas operations.

KIOGA also recommends a change to Line 33 on page 3. The House Bill changes \$87 to \$135. KIOGA believes this low-volume severance tax exemption should be based on volume produced, not dollars generated per day. With fluctuations in natural gas prices, many gas producers are faced with daily changes in a particular well's exemption status. Marginal gas wells, stripper wells, operate at the lower edge of profitability. The Interstate Oil & Gas Compact Commission (IOGCC) defines a low-volume stripper well as a natural gas well that produces 60 thousand cubic feet (Mcf) per day or less. Data collected from the Kansas Corporation Commission (KCC) indicates current Kansas oil and gas operations include 17,647 gas wells. The 2003 IOGCC National Stripper Natural Gas Well Survey indicates Kansas has 10,437 stripper gas wells. KCC data indicates Kansas produces 453.5 billion cubic feet (Bcf) per year.

If all the stripper gas wells in Kansas produced an average of 60 Mcf per day, gas production from stripper wells would be 228.570300 MMcf per year leaving the remaining 7,210 gas wells producing 453.2714297 Bcf per year for an average well production of 172.2384928 Mcf per day. For comparison, if all the stripper gas wells in Kansas produced an average of 50 Mcf per day, gas production from stripper wells would be 190.475250 MMcf per year leaving the remaining 7,210 gas wells producing 453.3095248 Bcf per year for an average well production of 172.2529686 Mcf per day. In summary, using the IOGCC definition of a stripper gas well as being one which produces 60 Mcf per day or less and the data presented today which indicates the average production of a Kansas natural gas producing well that is not defined as a stripper well at approximately 172 Mcf per day, a stripper well in Kansas produces at a level some 65% below the average non-stripper gas well in Kansas. The data also indicates that less than 1% of the total gas produced in Kansas comes from the 10,437 stripper gas wells in Kansas.

I would like to briefly discuss KIOGA's natural gas market outlook for 2004. Natural gas demand declined by 2.3% in 2003 as high prices discouraged demand in the industrial and electric power sectors. The U.S. economy is expected to grow in 2004, adding to natural gas demand. In addition, natural gas production in the U.S. is projected to decrease in 2004 as drilling intensity declines. High natural gas prices in 2002 and 2003 resulted in strong natural gas directed drilling activity. Lower natural gas storage injection requirements in 2004 is expected to more than offset the gap between the projected increase in natural gas demand and the decline in natural gas supply resulting from drilling intensity decline. As result, KIOGA projects natural gas prices to soften in 2004 to a \$3.80 to \$4.00 per Mcf range.

Therefore, in consideration of the information presented, KIOGA suggests placing the low-volume severance tax exemption on gas wells found on Line 33 of Page 3 of SB 369 at 60 Mcf per day. Low-volume production exemption is consistent with thresholds set for marginal production by national studies and, more importantly, sets the exemption status at approximately 65% below the average non-stripper gas well in Kansas. Basing the exemption on production volume rather than monetary value is more logical and less burdensome for marginal oil and gas producers and the State of Kansas. If natural gas prices indeed do fluctuate between \$3.80 and \$4.00 per Mcf as we project, the monetary value of the exemption would fluctuate from \$228 to \$240. If natural gas prices fluctuate above \$4 for a significant period of time, many natural gas producers who operate marginal gas wells will find their budgets more accommodating for pursuing production stimulation and enhancement programs that would boost their production beyond 60 Mcf per day threshold and take them out of the low-volume exemption status.

Thank you for your time and consideration. I would be happy to answer any questions.