Approved: February 11, 2009
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on January 28, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:
Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Hank Avila, Kansas Legislative Research Department
Chris Courtwright, Kansas Legislative Research Department
Kathy Beavers, Committee Assistant

Conferees appearing before the committee:
Steve Stotts, Director of Taxation (KDOR)
Ed Cross, Kansas Independent Oil and Gas Association
Dave Dayvault, Abercrombie Energy
Charlie Wilson, Berexco
Emma Richmond, Berexco
Written testimony:
Don Bromley, Pioneer Natural Resources USA, Inc.
Tom Bruno, Eastern Kansas Oil & Gas Association

Others attending:
See attached list.

Bill Introductions:
Representative Pat Colloton requested a bill concerning sales taxation; relating to exemptions; Stephanie Waterman Tennis Foundation. A motion was made by Representative Carlson requesting a bill concerning sales taxation; relating to exemptions; Stephanie Waterman Tennis Foundation. The motion was seconded by Representative Frownfelter. The motion carried.

Representative Peggy Mast requested a bill introduction concerning income taxation; relating to credits; adoption expenses. A motion was made by Representative Carlson requesting a bill introduction concerning income taxation; relating to credits; adoption expenses. Representative Powell seconded the motion. The motion carried.

Chris Wilson, Kansas Home Builders, requested a bill introduction concerning low income housing property tax exemption. A motion was made by Representative Carlson and seconded by Representative Powell to accept the introduction. The motion carried.

HB 2046 - Time of payment and making a return pursuant to the Kansas mineral severance tax act.

The Chairman opened the hearing on **HB 2046**.

Staff member Chris Courtwright gave a brief introduction and review of **HB 2046** and the fiscal note for the bill (Attachment 1). He stood for questions.

Steve Stotts, Director of Taxation (KDOR) testified in favor of **HB 2046** (Attachment 2). He stated that **HB 2046** would amend K.S.A. 2008 Supp. 79-4220 and 79-4221. Tax payments would be due by the 20th of the first month following removal of the coal, gas or oil from the lease or production unit. This change will accelerate into FY 2010, one additional monthly payment of severance tax revenue and is expected to provide a one-time increase to FY 2010 State General Fund revenues of $10 million. Mr. Stotts stated that the Kansas Department of Revenue would absorb the administrative costs. He stood for questions.

Ed Cross, Kansas Independent Oil and Gas Association testified in opposition to **HB 2046** (Attachment 3). He stood for questions.

Minutes of the House Taxation Committee at 9:00 a.m. on January 28, 2009, in Room 535-N of the Capitol.

Dave Dayvault, Abercrombie Energy, testified in opposition to **HB 2046** (Attachment 4). In most contracts between the producers and the purchaser of crude oil and natural gas the payment date is sometimes subsequent to the 20th of the first month following the production month. **HB 2046** would require that tax be due prior to the time that the remitter had received the funds or would even be able to calculate the amount of tax due. He stood for questions.

Charles Wilson, Berexco, testified in opposition to **HB 2046**. He reviewed the process of data to more accurately prepare various state tax filings and remittance. Mr. Wilson stated that it would be impossible for Central Crude to compile the data by the 16th-18th of the month in order to insure accurate filings. Inaccurate filing would expose them to unfair penalties and excessive burdens on purchasers and the KDOR staff (Attachment 5). He stood for questions.

Emma Richmond, Berexco, testified in opposition to **HB 2046** (Attachment 6). She stated that opposition to **HB 2046** is based on the following reasons:

- Would require remittance of severance taxes before the company has received the associated revenues.
- Would require them to report and pay severance tax based on estimated gas volumes and gross values each month.
- Would require them to estimate severance tax exemptions.
- Would not have enough time to accurately verify data and resolve problems prior to payment of taxes.

Ms. Richmond stood for questions.

The Chairman called attention to the written testimony from Don Bromley, Pioneer Natural Resources USA, Inc. (Attachment 7) and Tom Bruno, Eastern Kansas Oil & Gas Association (Attachment 8).

The Chairman closed the hearing on **HB 2046**.

Representative Carlson stated that **HB 2026** and **HB 2071** will be heard and possibly worked at tomorrows meeting.

The next meeting is scheduled for January 29, 2009.

The meeting was adjourned at 10:25 a.m.

HOUSE TAXATION COMMITTEE

SIGN IN SHEET

DATE: 1-28-09

Derek Hein	Hein Law Firm
KAREN-MARIE HYLAND	BP AMERICA
Dave Holtwick	OP Chamber of Commerce
Leon Stanton	Northern Natural Gas Co
J.P. SMALL	ExxonMobil
Ed Cross	KIOGA
Emma Richmond	Berexco & Redwing Gas Systems
Charlie Wilson	Central Crude Corp.
David Dayvault	KIOGA / Abercrombie Energy
Ken PETERSON	KS Petroleum Council
[illegible]	[illegible]
Wendy Harms	

KANSAS
DIVISION OF THE BUDGET

Kathleen Sebelius, Governor
Duane A. Goossen, Director
http://budget.ks.gov

January 27, 2009

The Honorable Richard Carlson, Chairperson
House Committee on Taxation
Statehouse, Room 411-S
Topeka, Kansas 66612

Dear Representative Carlson:

SUBJECT: Fiscal Note for HB 2046 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2046 is respectfully submitted to your committee.

HB 2046 would accelerate the collection of severance taxes by one month. Current law requires severance tax payments to be paid by the 20th day of the second month after the coal, oil, or gas is removed. The bill would require that severance tax payments be paid by the 20th day of the first month after the coal, oil, or gas is removed.

Estimated State Fiscal Effect				
	FY 2009 SGF	FY 2009 All Funds	FY 2010 SGF	FY 2010 All Funds
Revenue	--	--	$10,000,000	$10,000,000
Expenditure	--	--	--	--
FTE Pos.	--	--	--	--

The Department of Revenue estimates that HB 2046 would increase state revenues to the State General Fund by $10.0 million in FY 2010. The increase in revenues and how the November 4, 2008 consensus revenue estimate for FY 2010 would be affected are shown in the following table:

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e-mail: duane.goossen@budget.ks.gov

House Taxation Committee
1-28-09
Attachment 1

The Honorable Richard Carlson, Chairperson
January 27, 2009
Page 2—2046

Effect on FY 2010 Consensus Revenue Estimates
(Dollars in Thousands)

Receipt Description	Consensus Revenue Estimates (Nov. 4, 2008)	Change in Revenue FY 2010	Proposed Adjusted CRE FY 2010
Motor Carrier	$ 28,500	$ --	$ 28,500
Income Taxes:			
Individual	2,990,000	--	2,990,000
Corporate	365,000	--	365,000
Financial Institutions	32,000	--	32,000
Estate	15,000	--	15,000
Excise Taxes:			
Retail Sales	1,750,000	--	1,750,000
Compensating Use	225,000	--	225,000
Cigarette	110,000	--	110,000
Corporate Franchise	20,000	--	20,000
Severance	130,200	10,000	140,200
All Other Excise Taxes	90,100	--	90,100
Other Taxes	121,500	--	121,500
Total Taxes	$5,877,300	$ 10,000	$5,887,300
Other Revenues:			
Interest	$ 50,000	$ --	$ 50,000
Transfers	(199,500)	--	(199,500)
Agency Earnings	54,600	--	54,600
Total Other Revenues	($ 94,900)	$ --	($ 94,900)
Total Receipts	$5,782,400	$ 10,000	$5,792,400

HB 2046 would require one additional month of severance tax payments to be made in FY 2010. This one-time payment would provide additional severance tax collections in FY 2010 only and would not affect the amount of severance tax collections in FY 2011 or beyond. To formulate these estimates, the Department of Revenue reviewed data on severance tax collections from tax year 2006 through tax year 2008. The Department of Revenue indicates that the administrative costs to implement HB 2046 would be negligible and could be absorbed within existing resources. The fiscal effect associated with HB 2046 is reflected in *The FY 2010 Governor's Budget Report*.

Sincerely,

Duane A. Goossen

Duane A. Goossen
Director of the Budget

cc: Steve Neske, Revenue

KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Testimony to the House Taxation Committee

Steve Stotts

January 28, 2009

Testimony in Support of House Bill 2046

Representative Richard Carlson, Chair, and Members of the Committee:

House Bill 2046 would amend K.S.A. 2008 Supp. 79-4220 and 79-4221 so that severance tax payments would be due by the 20th day of the first month following removal of the coal, gas or oil from the lease or production unit. This change will accelerate into FY 2010 one additional monthly payment of severance tax revenue, and is expected to provide a one-time increase to FY 2010 State General Fund revenues of $10 million. The Department's fiscal note is attached.

State General Fund revenues from severance tax were, or are projected, as follows:

FY 2008 (actual)		FY 2009 (Nov CRE)	FY 2010 (Nov CRE)
Gas	$91,511,000	$92,300,000	$80,000,000
Oil	$56,662,000	$64,400,000	$50,200,000
Total	$148,172,000	$156,700,000	$130,200,000

Under current law, severance tax payments are due by the 20th day of the second month following removal of the coal, gas or oil from the lease or production unit.

The Department has been advised by industry of the practical difficulty in determining the proper amount of tax within the time allowed in House Bill 2046, and the proposal needs to be modified to provide for a monthly estimated severance tax payment process, with the estimated payments to be "trued up" at some point. The Department will work with industry on developing language needed to modify this proposal to provide an acceptable monthly estimated severance tax payment process. The Department will present a balloon amendment to House Bill 2046 as soon as that language is available.

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Voice of the Kansas Independent Petroleum Industry

Kansas Independent Oil & Gas Association
800 SW Jackson Street – Suite 1400
Topeka, Kansas 66612-1216
785-232-7772 Fax 785-232-0917
Email: kiogaed@swbell.net

Testimony to the House Taxation Committee
House Bill 2046 – An Act concerning mineral severance tax; relating to time of payment and making a return

Edward P. Cross, President
Kansas Independent Oil & Gas Association

January 28, 2009

Good morning Chairman Carlson and members of the committee. I am Edward Cross, President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents the interests of independent oil and gas producers in Kansas. We have over 1,400 members from across the entire state and our members produce 86% of the oil and 63% of the natural gas produced in Kansas. We are the lead state and national advocate for Kansas independent oil and gas producers. I am responsible for public policy advocacy and interaction with external stakeholders including elected officials, regulators, governmental decision-makers, and community thought leaders. I am here today to express our opposition to House Bill 2046.

KIOGA understands that the state is facing significant budget challenges. The oil and gas industry too faces many budget challenges. However, because of unique marketing characteristics of oil and natural gas, accelerating the collection of mineral severance taxes creates many problems that could become more costly not only for industry but also for the state and these costs may exceed perceived financial benefit.

The individuals who follow me will share testimony that underscores these problems. These individuals have the knowledge and experience to detail our opposition and answer your questions. KIOGA urges you to reject HB 2046. Thank you.

The Testimony of David M. Dayvault
HB 2046
House Committee on Taxation
January 28, 2009

My name is David M. Dayvault. I am the Chairman of the Kansas Independent Oil and Gas Association (KIOGA) and the Chief Financial Officer of Abercrombie Energy, LLC. KIOGA is a trade association representing over 1400 oil and gas producers and related service companies in the State of Kansas. Abercrombie Energy, LLC. produces oil and gas in 35 counties.

KIOGA recognizes that the state faces a significant budget shortfall and that accelerating the collection of mineral severance taxes would provide some relief. Currently mineral severance taxes are due by the 20^{th} day of the second month following the month in which production occurs. HB 2046 would accelerate that payment date to the 20^{th} day of the first month following the month in which the production had occurred. Such an acceleration of the payment date would, in many circumstances, cause the payment to be due before the taxpayer had received funds or would even be able to accurately calculate the amount of tax due.

The way that crude oil is marketed and natural gas is marketed is quite different but HB 2046 would create problems for each segment of the industry. Severance tax attributable to the production of crude oil is generally collected and remitted by the first purchaser of the crude oil. However, these first purchasers fall into two categories. The first category includes those purchasers who have extensive investments in gathering facilities, trucks, pipelines, and refineries. There is a second set of first purchasers which lack those extensive investments but serve more as marketing and service companies. Charlie Wilson with Central Crude Corporation represents companies of the second category. He will better explain to you the practical considerations of this proposal. Similarly, in the natural gas business, severance tax is either remitted by two types of companies. The first are the companies with extensive networks of pipelines within the state. However, much of the tax is remitted by operators and smaller gathering companies. Emma Richmond with Redwing Gas Systems will explain the practical considerations of the proposal on the second type of gas severance tax remitter.

Crude oil and natural gas are sold pursuant to long term contracts between the producers and the purchasers of those commodities. Those contracts cover many subjects including the date upon which payment is due. In most of these contracts the payment date is sometime subsequent to the 20^{th} of the first month following the production month. HB 2046 would not alter these contracts. It would simply require that tax be due prior to the time that the remitter had received the funds or would even be able to calculate the amount of tax due in many circumstances. In many circumstances this proposal would require the payment of tax based upon estimates. Payment of tax based upon estimates would require regular and recurring prior period adjustments. This would be a time consuming and unproductive exercise for both the producers and the Kansas Department of Revenue. Payment of tax prior to the receipt of the underlying income and the use of estimates in the submission of tax returns is not good public policy. A similar proposal was made to the legislature earlier this decade. KIOGA pointed out the difficulties in implementation at that time and the legislature rejected the proposal. I urge you to do likewise.

HB 2046

House Committee on Taxation
Testimony by Charles B. Wilson
January 28, 2009

My name is Charlie Wilson, vice president of Central Crude Corporation, with headquarters in Wichita, Ks. Central Crude has been in existence since 1975 as a first purchaser of crude oil. We purchase at the lease approximately 210,000 barrels a month from leases in Kansas, Oklahoma, Nebraska, Colorado, Texas and Arkansas. And for further background, we purchase from ~ 655 oil leases in Kansas and approximately 6% of Kansas' daily crude oil production. Our back office staff is comprised of 3 accountants and 1 division order administrator.

We appreciate the grave budget issues of our state and further respect the challenge and the constitutional responsibility this Committee has to find workable solutions.

I am here today to explain the proposed terms of HB 2046, while well intended, are not practical at the administrative level.

Central Crude does not generate original lease sale run tickets, but relies on third parties to perform these services. We begin receiving the data mid-month after the month of oil purchases, and prepare journals, statements and remittances to lease owners by the 24th of the month. Thereafter, we then focus on accurately preparing the various state tax filings and remittances. Even if we hired more staff, it would be impossible for Central Crude to have the monthly tax data compiled by the 16th -18th of the month, which would be the deadline date to enter inputs for bank ACH payments due on the 20th (the proposed filing/payment date of HB 2046). Moreover, there are many reconciling issues such as new well exemptions, owner exemptions, late run tickets, prior month adjustments, etc that need to be calculated before an accurate severance tax rendition can be filed.

number of years ago, the filing requirement for the severance tax filings was the 25th of the first month, with an allowance provided by the KDOR that a filing by the 31st was considered timely. The statutory filing date was later moved back to the 20th of the 2nd month, not as a cash flow benefit to purchasers, but to provide time to insure accurate filings. With the prior early filing date, purchasers and the KDOR were spending an inordinate amount of wasteful time dealing with corrective adjustments, prior-period adjustments, estimated payments, and etc. On-going correspondence with KDOR and reconciliations of such issues would literally take months to resolve. In other words, the filing date was moved to the current date to eliminate the accounting and administrative nightmare that was occurring on both sides of the fence.

HB 2046, as proposed, would create a worse situation as we could not even have the data assembled to make an anywhere near accurate filing by the 16th - 18th (the ACH date), which would expose us to unfair penalties and excessive burdens on purchasers and the KDOR staff. And I would suggest, HB 2046, as currently proposed, would create hidden costs on the KDOR that are not included in the revenue note related to the Bill.

I respectfully encourage the Committee to oppose HB 2046 in its current form.

THE TESTIMONY OF EMMA RICHMOND
HOUSE BILL 2046
HOUSE COMMITTEE ON TAXATION
JANUARY 28, 2009

My name is Emma Richmond. I am Gas Manager of BEREXCO INC. and Beren Corporation and Manager of Redwing Gas Systems Inc. BEREXCO and Beren are privately owned oil and gas production companies and Redwing is an affiliated company used to aggregate and sell our operated natural gas production - a first purchaser of natural gas. We are headquartered in Wichita and have operations in 44 Kansas counties. Additionally, we have oil and gas production in Nebraska, Colorado, Oklahoma, Arkansas, Texas, Wyoming and Montana. I am also a member of the Kansas Independent Oil and Gas Association's Natural Gas Committee.

My responsibilities include negotiating sales agreements for our natural gas, verifying payment is received, calculating and remitting severance tax, and forwarding the net amount to our revenue department for further distribution to the working and royalty interest owners.

I am here today in opposition to the proposed House Bill 2046 which would accelerate the payment date for Kansas severance taxes on natural gas from the twentieth day of the SECOND month following the production month to the twentieth day of the FIRST month following production.

My opposition to HB 2046 is based on the following reasons:

1. HB 2046 would require us to remit severance taxes before our company has even received the associated revenues. The vast majority of our natural gas is sold at the wellhead to pipeline companies. Pursuant to our Gas Purchase Agreements, payment is due "on or before the last day of the month following production." For example, payment for December 2008 gas production is due on or before January 31, 2009. Under HB 2046, we could be required to remit taxes up to eleven days before we even receive the gas revenues.

2. HB 2046 would require us to report and pay severance tax based on estimated gas volumes and gross values each month. The pipeline companies measure the gas at each delivery point, determine the price, calculate the gross value, and send us detail which we generally receive about the same time as we receive payment. Without this detail, our monthly severance tax remittances would be based solely on estimates which would necessitate filing adjustments each month for nearly every well on which we purchase gas.

3. HB 2046 would require us the estimate severance tax exemptions. As the committee is aware, a well is exempt from severance tax on natural gas if the average daily production during a calendar month

has a gross value of not more than $87 per day. In order to determine the gross value per day, we must have the payment detail and have time to allocate the gas to the various wells behind the applicable delivery point and calculate the gross value at the well level. Then we have to incorporate the days on for each such well in order to get an accurate determination as to whether a well is exempt or not exempt from severance tax.

4. Verifying data and resolving problems prior to paying taxes is extremely important to us as it takes considerably more time, for both our company and the Kansas Department of Revenue, to file adjustments if errors are discovered after taxes are paid.

Although we appreciate the desire of the State to raise additional tax revenues, it is not practical to expect remitters of severance taxes to remit such taxes to the State before we receive the revenue and have the opportunity to analyze the supporting detail.

I urge you to reject HB 2046.

PIONEER
NATURAL RESOURCES

Written Testimony, Re: HB 2046
Committee on Taxation
Submitted by Don Bromley
on behalf of
Pioneer Natural Resources USA, Inc.
January 28, 2009

Mr. Chairman, Members of the Committee:

My name is Don Bromley, and I am the Revenue Accounting Manager for Pioneer Natural Resources USA, Inc. Pioneer is one of the largest independent exploration and production oil and gas companies in North America and is a major natural gas producer in the Hugoton and Panoma Fields in Southwest Kansas. Pioneer currently operates approximately 662 Hugoton gas wells and 328 Panoma gas wells in Kansas.

Pioneer opposes HB 2046 for the reasons that are set forth in my testimony.

Under the current law, monthly severance tax payments are due and payable on or before the 20^{th} day of the second month following the end of the month in which the oil and natural gas is produced. HB 2046 would move the payment date to the 20^{th} day of the first month following the end of the month in which oil and natural gas is produced. Pioneer is opposed to this change for the following reasons:

(1) Pioneer does not receive payments for its gas production until the 25^{th} day of the month following the month in which the gas is produced.

(2) Pioneer does not have all production report volumes until the 25^{th} day of the month following the month in which the gas is produced.

(3) Pioneer pays taxes on wells operated by other producers for Pioneer's working interest share. Pioneer does not receive volume data until the end of the month following the month in which the gas is produced.

E K O G A

Eastern Kansas Oil & Gas Association
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HOUSE TAXATION COMMITTEE

January 27, 2009

RE: HB 2046 - An Act concerning mineral severance tax; relating to time of payment and making a return; amending K.S.A. 79-4220 and 79-4221and repealing the existing sections.

Testimony of David Bleakley - Legislative Chairman

Eastern Kansas Oil and Gas Association

&

Director of Acquisitions & Land Management

Colt Energy, Inc.

The Eastern Kansas Oil and Gas Association (EKOGA) **strongly oppose** amending K.S.A. 79-4220 and 79-4221and repealing the existing sections.

Our association represents and supports eastern Kansas oil and gas producers, gas gatherers, service companies, royalty owners and associated businesses along with the overall welfare of the Kansas oil and gas industry in this state.

INDUSTRY CONCERNS

1. Remitters of the severance tax and the Kansas Department of Revenue personnel would be required to estimate payments and adjust such estimated payments to actual numbers every month. COSTING BOTH PARTIES CONSIDERABLE TIME AND MONEY.

2. This acceleration of one month would be a ONE TIME SHOT to the State and as described above may end up costing the state more than they receive because of the necessity to hire additional personnel at KDOR to handle the adjustments.

3. What price for Crude Oil and Natural Gas is the estimated $10 million ONE TIME revenue enhancement based on?

CRUDE OIL

2008 CRUDE OIL AVERAGE $ FOR EASTERN KANSAS PAID BY NCRA WAS $84.37 PER BBL. BEFORE DEDUCTIONS.

2009 CRUDE OIL AVERAGE $ FOR EASTERN KANSAS PAID BY NCRA THRU JAN. 23 WAS $25.72 PER BBL. BEFORE DEDUCTIONS.

CURRENT JANUARY 2009 PRICE PAID FOR EASTERN KANSAS CRUDE OIL THRU NCRA IS ALMOST **70%** LESS THAN 2008'S AVERAGE

NATURAL GAS

2008 NATURAL GAS AVERAGE $ FOR KANSAS THRU SOUTHERN STAR WAS $7.81 PER MMBTU BEFORE DEDUCTIONS.

2009 NATURAL GAS AVERAGE FOR KANSAS THRU SOUTHERN STAR FOR JANUARY WAS $4.74 PER MMBTU BEFORE DEDUCTIONS.

CURRENT JANUARY 2009 PRICE PAID FOR KANSAS NATURAL GAS THRU SOUTHERN STARS PIPELINE IS ALMOST **40%** LESS THAN 2008'S AVERAGE

CONCLUSION

The industry realizes the large budgetary shortfall our state faces and the significant difficulties our industry is currently experiencing, that by almost all projections will continue for the foreseeable future. HB 2046 will offer a ONE TIME SHOT of revenue to the State (that in all likelihood) will not generate the $10 million projected and will cost the state and the industry significant additional expenses implementing and would be a major burden on the smaller crude oil purchasers and operators that distribute oil and gas checks and small gas gathers that pay the severance tax into the state and therefore, would not be worth the burden and cost to change from current collection practices. There is a reason for the two month collection period instead of one.

Therefore, Mr. Chairman and members of this Committee, **EKOGA WOULD STRONGLY URGE YOU TO VOTE AGAINST HB 2046** and let the current system for collections that has worked well for many years continue as it is.

Thank you for your time.

David P. Bleakley