

LEGISLATIVE BILL 228

Approved by the Governor May 26, 1983

Introduced by Wesely, 26; Landis, 46; Wiitala, 31;
DeCamp, 40; Fowler, 27

AN ACT to amend sections 57-701, 57-702, and 57-903, Reissue Revised Statutes of Nebraska, 1943, and sections 57-703 and 57-705, Revised Statutes Supplement, 1982, relating to gas and oil; to define terms; to change provisions relating to oil and gas severance taxes; to provide for payment of such taxes as prescribed; to provide collection procedures; to provide powers and duties; to provide penalties; to provide an operative date; to provide for severability; and to repeal the original sections, and also sections 57-711 and 57-713, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 57-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

57-701. As used in sections 57-701 to 57-745 Chapter 57, article 7, and sections 6 to 9 of this act, unless the context otherwise requires:

(1) Base production level shall mean a property's production for the preceding twelve months divided by the number of producing well production days. Enhanced recovery injection wells may be counted as producing wells to determine the base production level for a property;

~~(1)~~ (2) Oil shall mean any petroleum product or other oil taken from the earth;

~~(2)~~ (3) Severed shall mean the taking from the land by any means whatsoever of the natural resources enumerated in sections 57-701 to 57-745 Chapter 57, article 7, and sections 6 to 9 of this act; and

~~(3)~~ (4) Person shall mean any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, or any person acting under a declaration of trust or as an operator under a lease agreement or

unitization agreement:-

(5) Property shall mean the right to produce crude oil or natural gas which arises from a lease, fee, or mineral interest. A property owner may treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil or natural gas if such reservoir is recognized by the Nebraska Oil and Gas Conservation Commission as a producing formation that is separate and distinct from and not in communication with any other producing formation;

(6) Producer shall mean the owner of a well or wells capable of producing oil or gas or both or any person who owns and operates a lease, or a unit of producing leases in which other persons own interests, with respect to such well or wells;

(7) Stripper oil shall mean oil produced from a property where the base production level is ten or fewer barrels per day; and

(8) Nonstripper oil shall mean oil produced from a property where the base production level is more than ten barrels per day.

Sec. 2. That section 57-702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

57-702. (1) Commencing on January 1, 1956, and for each subsequent year, taxes are hereby levied on oil and natural gas severed from the soil of this state, except such oil or gas as is used only in severing operations or for repressuring or recycling purposes. Such taxes shall: (a) Be (1) be paid by (i) the first purchaser, if such oil or natural gas is sold in the state, or (ii) the person severing such oil or gas if such oil or natural gas is sold outside the state; and person engaged in the severing of such oil or natural gas; (2) (b) become due and payable monthly, as provided by sections 57-704 to 57-745 Chapter 57, article 7, and sections 6 to 9 of this act, and (3) operate as a first lien on all such resources, which lien shall follow the resources into the hands of third persons, whether in good or bad faith or whether the same are found in a manufactured or unmanufactured state:

(2) The state shall have a prior and preferred lien, which shall arise when the tax levied in subsection (1) of this section, is delinquent as provided in section 57-704, for the amount of the taxes, penalties, and interest imposed pursuant to Chapter 57, article 7, and sections 6 to 9 of this act, on:

(a) The oil to which the tax applies that is possessed by the producer, first purchaser, or subsequent purchaser;

(b) The leasehold interest, oil rights, the value of oil rights, and other interests, including oil

produced and oil runs owned by a person liable for the tax;

(c) Equipment, tools, tanks, and other implements used on the leasehold from which the oil is produced; and

(d) Any other property not exempt from forced sale owned by the person liable for the tax.

As soon as possible after such lien arises, the Tax Commissioner shall cause such lien to be filed in the office of the county clerk in the appropriate county.

Sec. 3. That section 57-703, Revised Statutes Supplement, 1982, be amended to read as follows:

57-703. The taxes Taxes, as levied by the provisions of section 57-702, shall be levied upon the value of the resources severed, and shall be paid at the rate of three per cent of the value of nonstripper such oil and natural gas, except that oil produced from properties producing stripper oil any wells which produce ten barrels per day or less of crude oil for the average of all producing days during the taxable year shall be subject to a two per cent severance tax. The value of oil and natural gas shall be computed immediately after such severance at the place where the same were severed.

Sec. 4. That section 57-705, Revised Statutes Supplement, 1982, be amended to read as follows:

57-705. All taxes, levied by the provisions of sections 57-701 to Chapter 57, article 7, and sections 6 to 9 of this act 57-745, shall be paid to the Tax Commissioner. He or she shall pay to the State Treasurer all money so received. All such sums of money received, under the provisions of sections 57-701 to 57-745 by the State Treasurer, shall be placed by him or her in a fund to be known as the Severance Tax Fund. An appropriate amount equal to one per cent of the gross severance tax receipts, excluding those receipts from tax derived from oil and natural gas severed from school lands, as determined by the Tax Commissioner, so placed in such fund shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the Severance Tax Administration Fund, to be used for the expenses of administering the provisions of sections 57-701 to 57-745 Chapter 57, article 7, and sections 6 to 9 of this act. The balance of the Severance Tax Fund received from school lands shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the Permanent School Fund as established in Article VII, section 7, of the Constitution of Nebraska. Of the balance of the Severance Tax Fund received from other than school lands prior to July 1, 1986, (1) five hundred thousand dollars annually shall be allocated to the Nebraska Energy Resource Fund, which

is hereby created, and (2) the remainder shall be allocated to the School Weatherization Fund, which is hereby created. For fiscal years 1982-83, 1983-84, 1984-85, and 1985-86, the Legislature shall appropriate each year from the Nebraska Energy Resource Fund one hundred thousand dollars to the State Energy Office for the purpose of carrying out sections 66-1029 to 66-1055 and for energy conservation purposes and providing technical assistance in developing alternate sources of energy and one hundred thousand dollars to the State Energy Office for grants to assist in developing geothermal energy sources. For fiscal years 1982-83, 1983-84, 1984-85, and 1985-86, the Legislature shall appropriate one hundred thousand dollars from the Nebraska Energy Resource Fund to the Nebraska Gasohol Committee and two hundred thousand dollars to the Department of Revenue to assist in the administration of sections 66-1029 to 66-1055. Commencing July 1, 1986, the balance of the Severance Tax Fund received from other than school lands shall be credited and inure to the School Foundation and Equalization Fund. The amount allocated to the School Foundation and Equalization Fund under this section shall be in addition to any other amounts appropriated to such fund and shall be specifically allocated for distribution pursuant to (a) section 79-1334, in an amount not to exceed sixty percent of such additional funds, and (b) section 79-1339. Any balance in the School Weatherization Fund on July 1, 1986, shall be transferred to the School Foundation and Equalization Fund.

Sec. 5. That section 57-903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

57-903. As used in sections 57-901 to 57-921, unless the context otherwise requires:

(1) (a) Waste, as applied to oil, shall include underground waste, inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive, surface waste, open pit storage, and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage, other than open pit storage, reasonably necessary for building up or maintaining crude stocks and products thereof for consumption, use, and sale; (b) waste, as applied to gas shall include: (i) the escape, blowing, or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas from wells producing oil or both oil and gas; and (ii) the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; but excluding gas that is

reasonably necessary in the drilling, completing, testing, and producing of wells and gas unavoidably produced with oil if it is not economically feasible for the producer to save or use such gas; and (c) waste shall also mean the abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable or excessive withdrawals of oil or gas therefrom causing reasonably avoidable drainage between tracts of land or resulting in one or more owners in such pool producing more than his or her just and equitable share of the oil or gas from such pool;

(2) Commission shall mean the Nebraska Oil and Gas Conservation Commission;

(3) Person shall mean and include any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and include any department, agency, or instrumentality of the state or of any governmental subdivision thereof;

(4) Oil shall mean and include crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the well-head in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casing-head gas;

(5) Gas shall mean and include all natural gas and all other fluid hydrocarbons not hereinabove defined as oil;

(6) Pool shall mean an underground reservoir containing a common accumulation of oil or gas or both; each zone of the structure which is completely separated from any other zone in the same structure is a pool, as that term is used in sections 57-901 to 57-921;

(7) Field shall mean the general area underlaid by one or more pools;

(8) Owner shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he or she produces therefrom either for himself or herself or for himself or herself and others;

(9) Producer Producers shall mean the owner of a well or wells capable of producing oil or gas or both or any person who owns and operates a lease, or a unit of producing leases in which other persons own interests, with respect to such well or wells;

(10) Correlative rights shall mean the opportunity afforded to the owner of each property in a pool to produce, so far as it is reasonably practicable to do so without waste, his or her just and equitable share of the oil or gas, or both, in the pool; and

(11) The word and shall include the word or, and the word or shall include the word and.

Sec. 6. The producer or a person designated by the producer shall, for each oil or natural gas producing property, file a certificate with the crude oil or natural gas purchaser and the Tax Commissioner which identifies the name and location of the oil or natural gas producing property, the property class, and the date upon which the property qualified for the class so certified. Such person shall notify the crude oil or natural gas purchaser and the Tax Commissioner of any changes in the property's classification.

Sec. 7. (1) The Tax Commissioner shall establish procedures to insure that all severance taxes which are due are paid in full and in a timely manner and shall undertake to insure that all oil and natural gas producing property classifications are current and correct.

(2) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten per cent thereof. In making a determination, the Tax Commissioner may offset overpayments for any period, together with interest on the overpayments, against underpayments for any period, against penalties, and against interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in this section.

(3) If any person fails to make a return, the Tax Commissioner shall make an estimate of the amount of severance tax due. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten per cent thereof. One or more determinations may be made for one or more than one period.

(4) The amount of the determination of any deficiency, exclusive of penalties, shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the last day of the month following the period for which the amount should have been returned until the

date of payment.

(5) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade Chapter 57, article 7, and sections 6 to 9 of this act or authorized rules and regulations, a penalty of twenty-five per cent of the amount of the determination shall be added thereto.

(6) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

Sec. 8. (1) The Tax Commissioner shall enforce Chapter 57, article 7, and sections 6 to 9 of this act and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections. The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of Chapter 57, article 7, and sections 6 to 9 of this act, and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such sections.

(3) Every person subject to Chapter 57, article 7, and sections 6 to 9 of this act shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may require. Every such person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person liable for the severance tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

Sec. 9. (1) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation of a false or fraudulent return, affidavit, claim, or document under or in connection with any matter arising under Chapter 57, article 7, and sections 6 to 9 of this act shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or

document, be guilty of a Class IV felony.

(2) Any person who violates or aids or abets in the violation of Chapter 57, article 7, and sections 6 to 9 of this act, except as otherwise provided, shall be guilty of a Class IV misdemeanor. In the case of a continuing violation, every day of violation shall be considered a separate offense.

(3) Any corporate officer or employee with the duty to pay taxes imposed upon a corporation or to perform some other act required of a corporation shall be personally liable for the payment of such taxes or penalties in the event of willful failure on his or her part to perform such act.

Sec. 10. This act shall become operative on September 1, 1983.

Sec. 11. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 12. That original sections 57-701, 57-702, and 57-903, Reissue Revised Statutes of Nebraska, 1943, and sections 57-703 and 57-705, Revised Statutes Supplement, 1982, and also sections 57-711 and 57-713, Reissue Revised Statutes of Nebraska, 1943, are repealed.