STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

CONFERENCE COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 3568

By: McBride and Fetgatter of the House

and

Allen of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; creating the Oklahoma Emission Reduction Technology Incentive Act; stating legislative findings; defining term; creating the Oklahoma Emission Reduction Technology Rebate Program; providing rebate for certain documented expenditures; requiring administration by the Department of Environmental Quality and the Oklahoma Tax Commission; providing for eligibility; requiring the Department to approve or disapprove claims; limiting amount of rebate payments; prescribing procedures if certain limit or balance is exceeded; creating the Oklahoma Emission Reduction Technology Incentive Revolving Fund; stating sources of fund; providing for expenditures from fund; providing for transfer of funds under certain circumstance; requiring the promulgation of rules; providing sunset of rebate program; amending 68 O.S. 2021, Section 1001, which relates to gross production tax; creating exemption for certain secondary recovery projects; limiting exemption under certain circumstances; defining terms; providing procedure to qualify for exemption; creating exemption for certain projects; allowing a refund for certain projects; prescribing refund procedure; limiting eligibility for exemptions;

amending 68 O.S. 2021, Section 1001.3a, which relates to exemptions from gross production tax; modifying definitions; modifying exemption amounts; decreasing total amount of refunds; clarifying refund procedure; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55006 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "Oklahoma Emission Reduction Technology Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55007 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby finds that the reduction of emissions from upstream and midstream oil and gas production, exploration, completions, gatherings, storage, processing, and transmission activities serves the interests of the citizens of Oklahoma and such emission reduction activities with new and innovative technologies should be encouraged and incentivized.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55008 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Emission Reduction Technology Incentive Act, "Emission Reduction Project" means and includes, but is not limited to:

1. Existing and new technology projects that reduce emissions of regulated pollutants from stationary sources; and

2. Existing and new technology projects that reduce emissions from upstream and midstream oil and gas exploration, production, completions, gathering, storage, processing, and transmission activities through the following:

a. the replacement, repair, or retrofit of stationary compressor engines,

b. the installation of systems and/or equipment to reduce or eliminate the loss of gas, venting of gas, flaring of gas, or burning of gas using other combustion control devices, or

c. the installation of emissions monitoring equipment or devices.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55009 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Upon the effective date of this act, there is hereby created the Oklahoma Emission Reduction Technology Rebate Program. There is hereby created a rebate in the amount of up to twenty-five percent (25%) of documented expenditures made in this state directly attributable to the implementation of a qualified Emission Reduction Project.

B. The rebate program shall be administered by the Department of Environmental Quality and the Oklahoma Tax Commission, as provided in the Oklahoma Emission Reduction Technology Incentive Act.

C. To be eligible for a rebate payment:

1. The applicant responsible for the implementation of a qualified Emission Reduction Project in this state shall submit documentation to the Department of Environmental Quality no later than six (6) months after the end of the fiscal year in which the expenditures were made stating the amount of expenditures made in this state directly related to the implementation of the qualified Emission Reduction Project;

2. The applicant has filed all Oklahoma tax returns and tax documents which are required by the laws of this state; and

3. The applicant shall provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars ($1,000,000.00) and a workers' compensation policy pursuant to the laws of this state which shall include coverage of employer's liability.

D. The Department of Environmental Quality shall approve or disapprove all claims for a rebate payment and shall notify the Oklahoma Tax Commission. The Tax Commission shall, upon notification of approval from the Department of Environmental Quality, issue a rebate payment for all approved claims from funds in the Oklahoma Emission Reduction Technology Incentive Revolving Fund created in Section 5 of this act. Rebate payments from the fund shall not exceed Ten Million Dollars ($10,000,000.00) in any fiscal year. If the amount of approved claims exceeds the amount specified in this subsection in a fiscal year, payments shall be made proportionately to all of the parties making a claim prior to the deadline which is approved by the Department of Environmental Quality with the amount to be paid to each approved party being product of the individual claim amount times the percentage resulting from Ten Million Dollars ($10,000,000.00) divided by the total amount of approved claims for the period. If an approved claim is not paid in whole or in part, the unpaid claim or unpaid portion shall be paid in the following fiscal years in the order in which the claims are approved by the Department.

E. Approved claims for rebate that exceed the balance of the Oklahoma Emission Reduction Technology Incentive Revolving Fund created in Section 5 of this act may be paid in part and the unpaid portion shall be paid upon the fund reaching a sufficient balance in the order in which the claims are approved by the Department.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55010 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission to be designated the "Oklahoma Emission Reduction Technology Incentive Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Tax Commission from any public or private donations, contributions, and gifts received for the benefit of the fund and any amounts appropriated by the Oklahoma Legislature designated for deposit in the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Tax Commission for the purpose of paying rebates as provided in this act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment. Any remaining unencumbered balance upon the cessation of the Oklahoma Emission Reduction Technology Rebate Program, as provided in Section 7 of this act, shall be transferred to the General Revenue Fund of the State of Oklahoma.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55011 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Department of Environmental Quality and the Oklahoma Tax Commission shall promulgate rules necessary to implement the provisions of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55012 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Emission Reduction Technology Rebate Program shall cease on July 1, 2027.

SECTION 8. AMENDATORY 68 O.S. 2021, Section 1001, is amended to read as follows:

Section 1001. A. There is hereby levied upon the production of asphalt, ores bearing lead, zinc, jack and copper a tax equal to three-fourths of one percent (3/4 of 1%) on the gross value thereof.

B. On or after the effective date of this act and except as provided by paragraph 4 of this subsection, there shall be levied a tax on the gross value of the production of oil and gas as follows:

1. Upon the production of oil a tax equal to seven percent (7%) of the gross value of the production of oil based on a per barrel measurement of forty-two (42) U.S. gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit;

2. Upon the production of gas a tax equal to seven percent (7%) of the gross value of the production of gas;

3. Notwithstanding the levies in paragraphs 1 and 2 of this subsection, the production of oil, gas, or oil and gas from wells spudded prior to the effective date of this act, and on or after the effective date of this act, shall be taxed at a rate of five percent

(5%) commencing with the month of first production for a period of thirty-six (36) months. Thereafter, the production shall be taxed as provided in paragraphs 1 and 2 of this subsection; and

4. If the provisions of Article XIII-C of the Oklahoma Constitution are approved by the people pursuant to adoption of State Question No. 795, the rate of gross production tax imposed by paragraph 3 of this subsection shall be reduced to two percent (2%) for the first thirty-six (36) months of production and thereafter the rate of taxation shall be seven percent (7%).

C. The taxes hereby levied shall also attach to, and are levied on, what is known as the royalty interest, and the amount of such tax shall be a lien on such interest.

D. 1. Except as otherwise provided in this section, for secondary and tertiary recovery projects approved or having an initial project start date on or after July 1, 2022, all production which results from such secondary and tertiary recovery projects shall be exempt from the gross production tax levied pursuant to this section for a period not to exceed five (5) years from the initial project start date or for a period ending upon the termination of the secondary and tertiary recovery process, whichever occurs first.

2. For purposes of this subsection, "project start date" means the date on which the injection of liquids, gases, or other matter begins on an enhanced recovery project.

3. For new secondary and tertiary recovery projects approved by the Oklahoma Corporation Commission on or after July 1, 2022, such approval shall constitute qualification for an exemption.

4. For all production exempted pursuant to this subsection, a refund against gross production taxes shall be issued as provided in subsection F of this section.

E. Except as otherwise provided by this section, the production of oil, gas, or oil and gas from wells drilled but not completed as of July 1, 2021, which are completed with the use of recycled water on or after July 1, 2022, shall earn an exemption from the gross production tax levied from the date of first sales for a period of twenty-four (24) months. The exemption provided in this subsection shall be proportional to the percentage of the total amount of water used to complete the well that is recycled water. For all production exempted pursuant to this subsection, a refund against gross production taxes shall be issued as provided in subsection F of this section. For purposes of this subsection, "recycled water" means oil and gas produced water and waste that has been reconditioned or treated by mechanical or chemical processes into a reusable form.

F. On or after July 1, 2022, for all oil and gas production exempt from gross production taxes pursuant to subsections D and E of this section during a given fiscal year, a refund of gross production taxes shall be issued to the well operator or a designee in the amount of such exempted gross production taxes paid during such period, subject to the following provisions:

1. A refund shall not be claimed until after the end of the fiscal year. As used in this subsection, a fiscal year shall be deemed to begin on July 1 of one calendar year and shall end on June 30 of the subsequent calendar year;

2. Unless otherwise specified, no claims for refunds pursuant to the provisions of this subsection shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is first available;

3. Any person claiming a refund pursuant to the exemption provided in subsections D and E of this section shall file an application with the Tax Commission which, upon determination of qualification by the Corporation Commission, shall approve the application for such exemption;

4. The Tax Commission may require any person claiming a refund pursuant to the exemptions provided in subsections D and E of this section to furnish information or records concerning the exemption as is deemed necessary by the Tax Commission;

5. No claims for refunds pursuant to the provisions of this subsection shall be filed by or on behalf of persons other than the operator or a working interest owner of record at the time of production;

6. No entity, including subsidiaries of the entity, shall be authorized to receive refunds claimed pursuant to the exemption provided in subsection D of this section that exceed twenty percent (20%) of the limitation provided in paragraph 7 of this subsection; and

7. The total amount of refunds authorized shall not exceed Fifteen Million Dollars ($15,000,000.00) pursuant to the exemption provided in subsection D of this section and Ten Million Dollars ($10,000,000.00) pursuant to the exemption provided in subsection E of this section for any fiscal year. If the amount of claims for refunds exceed the limits provided in this paragraph, the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund which may be claimed by any taxpayer so that the maximum amounts authorized by this paragraph are not exceeded.

G. On or after July 1, 2022, all persons shall only be entitled to either the exemption granted pursuant to subsection D or E of this section for each oil, gas, or oil and gas well drilled or recompleted in this state. However, any person who qualifies for the exemption granted pursuant to subsection E of this section shall not be prohibited from qualification for the exemption granted pursuant to subsection D of this section if the exemption granted pursuant to subsection E of this section has expired.

H. The Tax Commission shall have the power to require any such person engaged in mining or the production or the purchase of such asphalt, mineral ores aforesaid, oil, or gas, or the owner of any royalty interest therein to furnish any additional information by it deemed to be necessary for the purpose of correctly computing the amount of the tax; and to examine the books, records and files of such person; and shall have power to conduct hearings and compel the attendance of witnesses, and the production of books, records and papers of any person.

~~E.~~ I. Any person or any member of any firm or association, or any officer, official, agent or employee of any corporation who shall fail or refuse to testify; or who shall fail or refuse to produce any books, records or papers which the Tax Commission shall require; or who shall fail or refuse to furnish any other evidence or information which the Tax Commission may require; or who shall fail or refuse to answer any competent questions which may be put to him or her by the Tax Commission, touching the business, property, assets or effects of any such person relating to the gross production tax imposed by this article or exemption authorized pursuant to this section or other laws, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or imprisonment in the jail of the county where such offense shall have been committed, for not more than one (1) year, or by both such fine and imprisonment; and each day of such refusal on the part of such person shall constitute a separate and distinct offense.

~~F.~~ J. The Tax Commission shall have the power and authority to ascertain and determine whether or not any report herein required to be filed with it is a true and correct report of the gross products, and of the value thereof, of such person engaged in the mining or production or purchase of asphalt and ores bearing minerals aforesaid and of oil and gas. If any person has made an untrue or incorrect report of the gross production or value or volume thereof, or shall have failed or refused to make such report, the Tax Commission shall, under the rules prescribed by it, ascertain the correct amount of either, and compute the tax.

~~G.~~ K. The payment of the taxes herein levied shall be in full, and in lieu of all taxes by the state, counties, cities, towns, school districts and other municipalities upon any property rights attached to or inherent in the right to the minerals, upon producing leases for the mining of asphalt and ores bearing lead, zinc, jack or copper, or for oil, or for gas, upon the mineral rights and privileges for the minerals aforesaid belonging or appertaining to land, upon the machinery, appliances and equipment used in and around any well producing oil, or gas, or any mine producing asphalt or any of the mineral ores aforesaid and actually used in the operation of such well or mine. The payment of gross production tax shall also be in lieu of all taxes upon the oil, gas, asphalt or ores bearing minerals hereinbefore mentioned during the tax year in which the same is produced, and upon any investment in any of the leases, rights, privileges, minerals or other property described herein. Any interest in the land, other than that herein enumerated, and oil in storage, asphalt and ores bearing minerals hereinbefore named, mined, produced and on hand at the date as of which property is assessed for general and ad valorem taxation for any subsequent tax year, shall be assessed and taxed as other property within the taxing district in which such property is situated at the time.

~~H.~~ L. No equipment, material or property shall be exempt from the payment of ad valorem tax by reason of the payment of the gross production tax except such equipment, machinery, tools, material or property as is actually necessary and being used and in use in the production of asphalt or of ores bearing lead, zinc, jack or copper or of oil or gas. Provided, the exemption shall include the wellbore and non-recoverable down-hole material, including casing, actually used in the disposal of waste materials produced with such oil or gas. It is expressly declared that no ice plants, hospitals, office buildings, garages, residences, gasoline extraction or absorption plants, water systems, fuel systems, rooming houses and other buildings, nor any equipment or material used in connection therewith, shall be exempt from ad valorem tax.

SECTION 9. AMENDATORY 68 O.S. 2021, Section 1001.3a, is amended to read as follows:

Section 1001.3a A. As used in this section:

1. Prior to January 1, 2015, "economically at-risk oil or gas lease" means any oil or gas lease operated at a net loss or at a net profit which is less than the total gross production tax remitted for such lease during the previous calendar year;

2. On or after January 1, 2015, and before January 1, 2022, "economically at-risk oil or gas lease" means any oil or gas lease with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty (60) MCF of natural gas per day or less operated at a net loss or at a net profit which is less than the total gross production tax remitted for such lease during the previous calendar year; ~~and~~

3. For calendar year 2022 and subsequent calendar years, "economically at-risk oil or gas lease" means any oil or gas lease with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty (60) MCF or less of natural gas per day operated at a net loss or at a net profit which is less than the total gross production tax remitted for such lease during the previous calendar year, and any oil lease operating while the gross value of the production of oil is less than Fifty Dollars ($50.00), on an average monthly basis, based on a per-barrel measurement of forty-two (42) U.S. gallons of two hundred thirty-one

(231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit or gas lease operating while the gross value of the production of gas is less than Three Dollars and fifty cents ($3.50), on an average monthly basis, based on a measurement of one million (1,000,000) British thermal units (MMBtu); and

4. "Lease" shall be defined as in Section 1001.2 of this title.

B. When certified as such pursuant to the provisions of this section, production from an economically at-risk oil or gas lease shall be eligible for an exemption from the gross production tax levied pursuant to subsection B of Section 1001 of this title for production on such lease during the previous calendar year in the following amounts:

1. If the gross production tax rate levied pursuant to subsection B of Section 1001 of this title was seven percent (7%), then the exemption shall equal six-sevenths (6/7) of the gross production tax levied; and

2. If the gross production tax rate levied pursuant to subsection B of Section 1001 of this title was ~~four percent (4%)~~ five percent (5%), then the exemption shall equal ~~three-fourths (3/4)~~ four-fifths (4/5) of the gross production tax levied~~; and~~

~~3. If the gross production tax rate levied pursuant to subsection B of Section 1001 of this title was one percent (1%) or two percent (2%), no exemption shall apply~~.

C. For all production exempt from gross production taxes pursuant to this section, a refund of gross production taxes paid for production in the previous calendar year in the amounts specified in subsection B of this section, subject to the limitations and provisions specified in subsections D and J of this section, shall be issued to the well operator or a designee. For production in calendar years ending on or before December 31, 2015, the refund shall not be claimed until after July 1 of the year following the year of production. For production in the calendar year ending December 31, 2016, the refund shall be claimed before July 1, 2017. ~~The Tax Commission shall not accept or pay any claim for refund filed on or after July 1, 2017.~~

D. For oil and natural gas produced from qualifying leases in calendar years 2015 and 2016, the total amount of refunds authorized in this section for each calendar year shall not exceed Twelve Million Five Hundred Thousand Dollars ($12,500,000.00) for all products combined. For oil and natural gas produced from qualifying leases in calendar year 2022 and subsequent calendar years, the total amount of refunds authorized in this section for each calendar year shall not exceed Ten Million Dollars ($10,000,000.00) for all products combined. If the amount of claims exceeds ~~Twelve Million Five Hundred Thousand Dollars ($12,500,000.00)~~ the limits provided in this subsection, the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund which may be claimed by any taxpayer so that the maximum amount authorized by this subsection is not exceeded.

E. Any operator making application for an economically at-risk oil or gas lease status under the provisions of this section shall submit documentation to the Tax Commission, as determined by the Tax Commission to be appropriate and necessary.

F. For the purposes of this section, determination of the economically at-risk oil or gas lease status shall be made by subtracting from the gross revenue of that lease for the previous calendar year severance taxes, if any, royalty, operating expenses of the lease to include expendable workover and recompletion costs for the previous calendar year, and including overhead costs up to the maximum overhead percentage allowed by the Council of Petroleum Accountants Societies (COPAS) guidelines. For the purposes of this calculation, depreciation, depletion or intangible drilling costs shall not be included as lease operating expenses.

G. The Tax Commission shall have sole authority to determine if an oil or gas lease qualifies for certification as an economically at-risk oil or gas lease. The Tax Commission shall promulgate rules governing the certification process.

H. Except as provided in subsection I of this section, gross production tax exemptions under the provisions of this section shall be limited to production from calendar years ~~2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013~~ 2005 through 2013 and 2022 and subsequent calendar years; provided, no claims for refunds for calendar years ~~provided in this subsection~~ 2013 and before shall be paid on or after December 31, 2015.

I. Gross production tax exemptions claimed under the provisions of this section shall be limited to production from calendar years 2014, 2015 and 2016; provided, no claims for refunds for the calendar years 2014 and 2015 shall be claimed or paid more than eighteen (18) months after the first day of the fiscal year during which the refund is first available. For production in calendar year 2016, no claim for refund filed on or after July 1, 2017, shall be claimed or paid.

J. Claims for refunds pursuant to the provisions of this section for production periods ending on or before December 31, 2016, shall be paid pursuant to the provisions of this subsection. The claims for refunds referenced herein shall be paid in equal payments over a period of thirty-six (36) months. The first payment shall be made after July 1, 2018, but prior to August 1, 2018. The Tax Commission shall provide, not later than June 30, 2018, to the operator or designated interest owner, a schedule of rebates to be paid out over the thirty-six-month period.

K. Claims for refunds pursuant to the provisions of this section for production periods beginning and ending on or after calendar year 2022 shall be paid in the form of a one-time payment.

SECTION 10. This act shall become effective July 1, 2022.

SECTION 11. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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