

HOUSE BILL No. 2747

By Committee on Taxation

2-14

Proposed Committee Amendments to
 HB No. 2747
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 First Assistant Revisor
 Office of Revisor of Statutes
 February 20, 2012

1 AN ACT concerning taxation; relating to income and privilege tax rates;
 2 income tax deductions and credits and income determination;
 3 distribution of sales and use tax revenue; ~~severance tax exemptions;~~
 4 rural opportunity zones; amending K.S.A. 79-32,128 and K.S.A. 2011
 5 Supp. 74-50,222, 79-1107, 79-1108, 79-32,110, 79-32,111, 79-32,117,
 6 79-32,119, 79-32,205, 79-3620; ~~79-3710 and 79-4217~~ and repealing the
 7 existing sections.
 8

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

9 New Section 1. (a) (1) Except as provided in subsection (a)(2),
 10 commencing with fiscal year 2012, in any fiscal year in which the amount
 11 of selected actual state general fund receipts from such fiscal year exceeds
 12 the selected actual state general fund receipts for the immediately
 13 preceding fiscal year by more than 2%, the director of legislative research
 14 shall certify such excess amount to the secretary of revenue and the
 15 director of the budget. Upon receipt of such certified amount, the secretary
 16 shall compute the excess percentage increase in selected actual state
 17 general fund receipts above 2%. Based on such excess percentage of
 18 calculated receipt growth, the secretary shall compute the income tax rate
 19 reductions to go into effect for the next tax year that would reduce by such
 20 certified amount the tax rates during the fiscal year after the next fiscal
 21 year according to the provisions of this section, as follows: (A) Rate
 22 reductions for individual income tax rates shall be applied to reduce the
 23 middle marginal income tax rate applicable to the current tax year by such
 24 excess percentage, the highest marginal income tax rate applicable to the
 25 current tax year, by such excess percentage minus 0.5%, and the lowest
 26 marginal income tax rate applicable to the current tax year by such excess
 27 percentage plus 0.5%. In any such computation by the secretary pursuant
 28 to this subsection in which the income tax rate for any individual marginal
 29 income tax rate is below 0.4%, such rate shall be 0%. Based on all such
 30 determinations, the secretary shall reduce individual income tax rates
 31 prescribed by K.S.A. 79-32,110, and amendments thereto, as required by
 32 this section;
 33

34 (B) upon all individual marginal income tax rates being reduced to
 35 0% pursuant to the provisions of subsection (a)(1)(A), rate reduction next
 36 shall be applied for the surtax on corporations applicable to the current tax

House Taxation
 Date: 2/20/12
 Attachment: 5

(e) All revenue certified by the director of taxation as having been collected or received from the tax imposed by subsection (c) of K.S.A. 79-3603, and amendments thereto, on the sale or furnishing of gas, water, electricity and heat for use or consumption within the intermodal facility district described in this subsection, shall be credited by the state treasurer to the state highway fund. Such revenue may be transferred by the secretary of transportation to the rail service improvement fund pursuant to law. The provisions of this subsection shall take effect upon certification by the secretary of transportation that a notice to proceed has been received for the construction of the improvements within the intermodal facility district, but not later than December 31, 2010, and shall expire when the secretary of revenue determines that the total of all amounts credited hereunder and pursuant to subsection (e) of K.S.A. 79-3620, and amendments thereto, is equal to \$53,300,000, but not later than December 31, 2045. Thereafter, all revenues shall be collected and distributed in accordance with applicable law. For all tax reporting periods during which the provisions of this subsection are in effect, none of the exemptions contained in K.S.A. 79-3601 *et seq.*, and amendments thereto, shall apply to the sale or furnishing of any gas, water, electricity and heat for use or consumption within the intermodal facility district. As used in this subsection, "intermodal facility district" shall consist of an intermodal transportation area as defined by subsection (oo) of K.S.A. 12-1770a, and amendments thereto, located in Johnson county within the polygonal-shaped area having Waverly Road as the eastern boundary, 191st Street as the southern boundary, Four Corners Road as the western boundary, and Highway 56 as the northern boundary, and the polygonal-shaped area having Poplar Road as the eastern boundary, and the polygonal-shaped area having Waverly Road as the western boundary, 183rd Street as the southern boundary, Waverly Road as the western boundary, and the BNSF mainline track as the northern boundary, that includes capital investment in an amount exceeding \$150 million for the construction of an intermodal facility to handle the transfer, storage and distribution of freight through railway and trucking operations.

~~See. 13. K.S.A. 2011 Supp. 79-4217 is hereby amended to read as follows: 79-4217. (a) There is hereby imposed an excise tax upon the severance and production of coal, oil or gas from the earth or water in this state for sale, transport, storage, profit or commercial use, subject to the following provisions of this section. Such tax shall be borne ratably by all persons within the term "producer" as such term is defined in K.S.A. 79-4216, and amendments thereto, in proportion to their respective beneficial interest in the coal, oil or gas severed. Such tax shall be applied equally to all portions of the gross value of each barrel of oil severed and subject to such tax and to the gross value of the gas severed and subject to such tax. The rate of such tax shall be 9% of the gross value of all oil or gas severed.~~

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DEPARTMENT OF REVENUE
 OFFICE OF THE SECRETARY
 TAXATION SECTION

1 from the earth or water in this state and subject to the tax imposed under
2 this act. The rate of such tax with respect to coal shall be \$1 per ton. For
3 the purposes of the tax imposed hereunder the amount of oil or gas
4 produced shall be measured or determined: (1) In the case of oil, by tank
5 tables compiled to show 100% of the full capacity of tanks without
6 deduction for overage or losses in handling; allowance for any reasonable
7 and bona fide deduction for basic sediment and water; and for correction of
8 temperature to 60 degrees Fahrenheit will be allowed; and if the amount of
9 oil severed has been measured or determined by tank tables compiled to
10 show less than 100% of the full capacity of tanks, such amount shall be
11 raised to a basis of 100% for the purpose of the tax imposed by this act;
12 and (2) in the case of gas, by meter readings showing 100% of the full
13 volume expressed in cubic feet at a standard base and flowing temperature
14 of 60 degrees Fahrenheit, and at the absolute pressure at which the gas is
15 sold and purchased; correction to be made for pressure according to
16 Boyle's law, and used for specific gravity according to the gravity at which
17 the gas is sold and purchased, or if not so specified, according to the test
18 made by the balance method.

strike

19 (b) The following shall be exempt from the tax imposed under this
20 section:

21 (1) The severance and production of gas which is: (A) injected into
22 the earth for the purpose of lifting oil, recycling or repressuring; (B) used
23 for fuel in connection with the operation and development for or
24 production of oil or gas in the lease or production unit where severed; (C)
25 lawfully vented or flared; (D) severed from a well having an average daily
26 production during a calendar month having a gross value of not more than
27 \$87 per day, which well has not been significantly curtailed by reason of
28 mechanical failure or other disruption of production; in the event that the
29 production of gas from more than one well is gauged by a common meter,
30 eligibility for exemption hereunder shall be determined by computing the
31 gross value of the average daily combined production from all such wells
32 and dividing the same by the number of wells gauged by such meter; (E)
33 inadvertently lost on the lease or production unit by reason of leaks,
34 blowouts or other accidental losses; (F) used or consumed for domestic or
35 agricultural purposes on the lease or production unit from which it is
36 severed; or (G) placed in underground storage for recovery at a later date
37 and which was either originally severed outside of the state of Kansas, or
38 as to which the tax levied pursuant to this act has been paid.

39 (2) The severance and production of oil which is: (A) from a lease or
40 production unit whose average daily production is five barrels or less per
41 producing well which well or wells have not been significantly curtailed
42 by reason of mechanical failure or other disruption of production; (B) from
43 a lease or production unit, the producing well or wells upon which have a

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1 completion depth of 2,000 feet or more, and whose average daily
2 production is six barrels or less per producing well or, if the price of oil as
3 determined pursuant to subsection (d) is \$16 or less, whose average daily
4 production is seven barrels or less per producing well, or, if the price of oil
5 as determined pursuant to subsection (d) is \$15 or less, whose average
6 daily production is eight barrels or less per producing well, or, if the price
7 of oil as determined pursuant to subsection (d) is \$14 or less, whose
8 average daily production is nine barrels or less per producing well, or, if
9 the price of oil as determined pursuant to subsection (d) is \$13 or less,
10 whose average daily production is 10 barrels or less per producing well,
11 which well or wells have not been significantly curtailed by reason of
12 mechanical failure or other disruption of production; (C) from a lease or
13 production unit, whose production results from a tertiary recovery process;
14 "Tertiary recovery process" means the process or processes described in
15 subparagraphs (1) through (9) of 10 C.F.R. § 212.78(c) as in effect on June
16 1, 1979; (D) from a lease or production unit, the producing well or wells
17 upon which have a completion depth of less than 2,000 feet and whose
18 average daily production resulting from a water flood process, is six
19 barrels or less per producing well, which well or wells have not been
20 significantly curtailed by reason of mechanical failure or other disruption
21 of production; (E) from a lease or production unit, the producing well or
22 wells upon which have a completion depth of 2,000 feet or more, and
23 whose average daily production resulting from a water flood process, is
24 seven barrels or less per producing well or, if the price of oil as determined
25 pursuant to subsection (d) is \$16 or less, whose average daily production is
26 eight barrels or less per producing well, or, if the price of oil as determined
27 pursuant to subsection (d) is \$15 or less, whose average daily production is
28 nine barrels or less per producing well, or, if the price of oil as determined
29 pursuant to subsection (d) is \$14 or less, whose average daily production is
30 10 barrels or less per producing well, which well or wells have not been
31 significantly curtailed by reason of mechanical failure or other disruption
32 of production; (F) test, flare or swab oil which is sold or exchanged for
33 value or (G) inadvertently lost on the lease or production unit by reason of
34 leaks or other accidental means;

35 ~~(3) (A) any taxpayer applying for an exemption pursuant to~~
36 ~~subsection (b)(2)(A) and (B) shall make application biennially to the~~
37 ~~director of taxation therefor. Exemptions granted pursuant to subsection~~
38 ~~(b)(2)(A) and (B) shall be valid for a period of two years following the~~
39 ~~date of certification thereof by the director of taxation; (B) any taxpayer~~
40 ~~applying for an exemption pursuant to subsection (b)(2)(D) or (E) shall~~
41 ~~make application biennially to the director of taxation therefor. Such~~
42 ~~application shall be accompanied by proof of the approval of an~~
43 ~~application for the utilization of a water flood process therefor by the~~

1 corporation commission pursuant to rules and regulations adopted under
2 the authority of K.S.A. 55-152 and amendments thereto and proof that the
3 oil produced therefrom is kept in a separate tank battery and that separate
4 books and records are maintained therefor. Such exemption shall be valid
5 for a period of two years following the date of certification thereof by the
6 director of taxation; (C) any exemption granted pursuant to subsections (b)
7 (2)(A), (B), (D) or (E) with an odd lease number and an exemption
8 termination date between June 1, 2004, and May 31, 2005, inclusive, shall
9 be valid for a period of one year following the date of certification; and
10 (D) notwithstanding the provisions of paragraph (A) or (B), any exemption
11 in effect on the effective date of this act affected by the amendments to
12 subsection (b)(2) by this act shall be reetermined in accordance with such
13 amendments. Any such exemption, and any new exemption established by
14 such amendments and applied for after the effective date of this shall be
15 valid for a period commencing with May 1, 1998, and ending on April 30,
16 1999.

17 (4) ~~the severance and production of gas or oil from any pool from~~
18 ~~which oil or gas was first produced on or after April 1, 1983, and prior to~~
19 ~~July 1, 2012, as determined by the state corporation commission and~~
20 ~~certified to the director of taxation, and continuing for a period of 24~~
21 ~~months from the month in which oil or gas was first produced from such~~
22 ~~pool as evidenced by an affidavit of completion of a well, filed with the~~
23 ~~state corporation commission and certified to the director of taxation.~~
24 ~~Exemptions granted for production from any well pursuant to this~~
25 ~~paragraph shall be valid for a period of 24 months following the month in~~
26 ~~which oil or gas was first produced from such pool. The term "pool"~~
27 ~~means an underground accumulation of oil or gas in a single and separate~~
28 ~~natural reservoir characterized by a single pressure system so that~~
29 ~~production from one part of the pool affects the reservoir pressure~~
30 ~~throughout its extent;~~

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31 (5) ~~the severance and production of oil of not more than 50 barrels~~
32 ~~per day from any pool from which oil was first produced on or after July 1,~~
33 ~~2012, as determined by the state corporation commission and certified to~~
34 ~~the director of taxation, and continuing for a period of 24 months from the~~
35 ~~month in which oil was first produced from such pool as evidenced by an~~
36 ~~affidavit of completion of a well, filed with the state corporation~~
37 ~~commission and certified to the director of taxation. Exemptions granted~~
38 ~~for production from any well pursuant to this subsection shall be valid for~~
39 ~~a period of 24 months following the month in which oil was first produced~~
40 ~~from such pool. The term "pool" means an underground accumulation of~~
41 ~~oil in a single and separate natural reservoir characterized by a single~~
42 ~~pressure system so that production from one part of the pool affects the~~
43 ~~reservoir pressure throughout its extent;~~

~~(6) the severance and production of oil or gas from a three-year inactive well, as determined by the state corporation commission and certified to the director of taxation for a period of 10 years after the date of receipt of such certification. As used in this paragraph, "three-year inactive well" means any well that has not produced oil or gas in more than one month in the three years prior to the date of application to the state corporation commission for certification as a three-year inactive well. A application for certification as a three-year inactive well shall be in such form and contain such information as required by the state corporation commission, and shall be made prior to July 1, 1996. The commission may revoke a certification if information indicates that a certified well was not a three-year inactive well or if other lease production is credited to the certified well. Upon notice to the operator that the certification for a well has been revoked, the exemption shall not be applied to the production from that well from the date of revocation;~~

~~(6)(7) (A) The incremental severance and production of oil or gas which results from a production enhancement project begun on or after July 1, 1998, shall be exempt for a period of seven years from the startup date of such project. As used in this paragraph (6):~~

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~~(1) "Incremental severance and production" means the amount of oil or natural gas which is produced as the result of a production enhancement project which is in excess of the base production of oil or natural gas, and is determined by subtracting the base production from the total monthly production after the production enhancement project is completed.~~

~~(2) "Base production" means the average monthly amount of production for the twelve-month period immediately prior to the production enhancement project beginning date, minus the monthly rate of production decline for the well or project for each month beginning 180 days prior to the project beginning date. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the well or project for the twelve-month period immediately prior to the production enhancement project beginning date, except that the monthly rate of production decline shall be equal to zero in the case where the well or project has experienced no monthly decline during the twelve-month period immediately prior to the production enhancement project beginning date. Such monthly rate of production decline shall be continued as the decline that would have occurred except for the enhancement project. Any well or project which may have produced during the twelve-month period immediately prior to the production enhancement project beginning date but is not capable of production on the project beginning date shall have a base production equal to zero. The calculation of the base production amount shall be evidenced by an affidavit and supporting documentation filed by the applying taxpayer with the state corporation commission.~~

1 ~~(3) "Workover" means any downhole operation in an existing oil or~~
 2 ~~gas well that is designed to sustain, restore or increase the production rate~~
 3 ~~or ultimate recovery of oil or gas, including but not limited to acidizing,~~
 4 ~~perforation, fracture treatment, sand/paraffin/scale removal or other~~
 5 ~~wellbore cleanouts, casing repair, squeeze cementing, initial installation or~~
 6 ~~enhancement of artificial lifts including plunger lifts, rods, pumps,~~
 7 ~~submersible pumps and coiled tubing velocity strings, downsizing existing~~
 8 ~~tubing to reduce well loading, downhole commingling, bacteria treatments,~~
 9 ~~polymer treatments, upgrading the size of pumping unit equipment, setting~~
 10 ~~bridge plugs to isolate water production zones, or any combination of the~~
 11 ~~forementioned operations; "workover" shall not mean the routine~~
 12 ~~maintenance, routine repair, or like for like replacement of downhole~~
 13 ~~equipment such as rods, pumps, tubing packers or other mechanical~~
 14 ~~device.~~
 15 ~~(4) "Production enhancement project" means performing or causing~~
 16 ~~to be performed the following:~~

17 ~~(i) Workover;~~

18 ~~(ii) recompletion to a different producing zone in the same well bore,~~
 19 ~~except recompletions in formations and zones subject to a state~~
 20 ~~corporation commission preaction order;~~

21 ~~(iii) secondary recovery projects;~~

22 ~~(iv) addition of mechanical devices to dehydrate gas or oil wells;~~

23 ~~(v) replacement or enhancement of surface equipment;~~

24 ~~(vi) installation or enhancement of compression equipment, line~~
 25 ~~looping or other techniques or equipment which increases production from~~
 26 ~~a well or a group of wells in a project;~~

27 ~~(vii) new discoveries of oil or gas which are discovered as a result of~~
 28 ~~the use of new technology, including but not limited to three dimensional~~
 29 ~~seismic studies.~~

30 ~~(B) The state corporation commission shall adopt rules and~~
 31 ~~regulations necessary to efficiently and properly administer the provisions~~
 32 ~~of this paragraph (6) including rules and regulations for the qualification of~~
 33 ~~production enhancement projects, the procedures for determining the~~
 34 ~~monthly rate of production decline, criteria for determining the share of~~
 35 ~~incremental production attributable to each well when a production~~
 36 ~~enhancement project includes a group of wells, criteria for determining the~~
 37 ~~start up date for any project for which an exemption is claimed, and~~
 38 ~~determining new qualifying technologies for the purposes of paragraph (6)~~
 39 ~~subsection (7)(A)(vii).~~

40 ~~(C) Any taxpayer applying for an exemption pursuant to this~~
 41 ~~paragraph (6) shall make application to the director of taxation. Such~~
 42 ~~application shall be accompanied by a state corporation commission~~
 43 ~~certification that the production for which an exemption is sought results~~

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1 from a qualified production enhancement project and certification of the
2 base production for the enhanced wells or group of wells, and the rate of
3 decline to be applied to that base production. The secretary of revenue
4 shall provide credit for any taxes paid between the project startup date and
5 the certification of qualifications by the commission.

6 (D) The exemptions provided for in this paragraph (6) shall not apply
7 for 12 months beginning July 1 of the year subsequent to any calendar year
8 during which: (1) In the case of oil, the secretary of revenue determines
9 that the weighted average price of Kansas oil at the wellhead has exceeded
10 \$20.00 per barrel; or (2) in the case of natural gas, the secretary of revenue
11 determines that the weighted average price of Kansas gas at the wellhead
12 has exceeded \$2.50 per Mcf.

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13 (E) The provisions of this paragraph (6) shall not affect any other
14 exemption allowable pursuant to this section; and

15 (7) for the calendar year 1988, and any year thereafter, the severance
16 or production of the first 350,000 tons of coal from any mine as certified
17 by the state geological survey;

18 (e) No exemption shall be granted pursuant to subsection (b)(3) or (4)
19 to any person who does not have a valid operator's license issued by the
20 state corporation commission, and no refund of tax shall be made to any
21 taxpayer attributable to any production in a period when such taxpayer did
22 not hold a valid operator's license issued by the state corporation
23 commission.

24 (d) On April 15, 1988, and on April 15 of each year thereafter, the
25 secretary of revenue shall determine from statistics compiled and provided
26 by the United States department of energy, the average price per barrel
27 paid by the first purchaser of crude oil in this state for the six-month
28 period ending on December 31 of the preceding year. Such price shall be
29 used for the purpose of determining exemptions allowed by subsection (b)
30 (2)(B) or (E) for the twelve-month period commencing on May 1 of such
31 year and ending on April 30 of the next succeeding year.

32 Sec. ~~EA~~ K.S.A. 79-32,128 and K.S.A. 2011 Supp. 74-50,222, 79-
33 1107, 79-1108, 79-32,110, 79-32,111, 79-32,117, 79-32,119, 79-32,205,
34 79-362~~(F)~~ ~~79-3710~~ ~~and 79-4247~~ are hereby repealed.

35 Sec. ~~15F~~ This act shall take effect and be in force from and after its
36 publication in the statute book.
37

13

and

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