

ORIGINAL HOUSE  
BILL NO. 0133

ENROLLED ACT NO. 36, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING  
2008 BUDGET SESSION

AN ACT relating to taxation and revenue; providing for the taxation of helium as specified; providing definitions; providing legislative findings; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 39-14-212 is created to read:

**39-14-212. Taxation of certain helium.**

(a) As used in this section:

(i) "Helium" means helium which is a component of a natural gas stream leased by the United States to any lessee pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. section 181. All other helium shall be subject to taxation pursuant to the provisions of this article;

(ii) "Present and continuing privilege of removing, extracting, severing or producing" means the right to physically separate the helium, by itself, or as a component of the gas stream, from the ground;

(iii) All other definitions in W.S. 39-14-201 are incorporated herein by reference to the extent that they may apply.

(b) Administration; confidentiality: The department shall annually value and assess helium production at its fair market value for taxation in accordance with the applicable provisions of W.S. 39-14-202.

(c) Taxable event: There is levied a severance tax on the value of the gross product extracted for the present

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and continuing privilege of removing, extracting, severing or producing helium in this state. The tax imposed by this subsection shall be in addition to all other taxes imposed by law.

(d) Basis of tax: Helium shall be valued for taxation as natural gas as provided in W.S. 39-14-203(b).

(e) Taxpayer: Any person removing, extracting, or severing helium from the ground; or, to the extent of his interest ownership, any person owning an interest in the helium, is liable for the payment of the severance taxes together with any penalties and interest, provided however, that helium shall be subject to the severance tax only once.

(f) Tax rate: Helium shall be subject to the severance tax rate for natural gas as provided in W.S. 39-14-204.

(g) Exemptions: The exemptions from taxation provided by W.S. 39-14-205 for natural gas shall apply to natural gas containing helium.

(h) Compliance; collection procedures: The severance tax related provisions of W.S. 39-14-207 shall apply to helium production.

(j) Enforcement: All severance tax related provisions of W.S. 39-14-208 shall apply to helium production.

(k) Taxpayer remedies: All severance tax related provisions of W.S. 39-14-209 shall apply to helium production.

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(m) Distribution: Severance tax revenues from helium production shall be distributed as provided by W.S. 39-14-211.

**Section 2.**

(a) The legislature finds that:

(i) There are in Wyoming extensive reserves of natural gas which contain helium, much of which underlie lands which are owned by the United States, and the leases of the natural gas by the federal government under laws which are now obsolete and outdated operate in a fashion which allows the producer to avoid taxation for the privilege of removing, extracting, severing or producing the helium;

(ii) All helium producers in this state should be taxed in the same manner;

(iii) Under certain unique circumstances, more particularly described in *Department of Revenue v. Exxon Mobil Corporation*, 162 P.3d 515 (Wyo. 2007), natural gas is leased to an oil and gas producer, reserving the title to the helium component of the natural gas in the United States; however, the producer takes possession of the natural gas, transports, processes and extracts the helium from the gas stream, and the title to the helium first passes to the producer downstream of the point of valuation;

(iv) These circumstances occur in cases in which the federal lease is issued pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. section 181, which requires that the United States reserve "the ownership of and the right to extract helium from all gas produced from lands leased or

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otherwise granted," and title to the helium is passed pursuant to a sale and purchase agreement, as opposed to a federal lease;

(v) From and after the effective date of the Helium Privatization Act of 1996, 50 U.S.C. section 167a, the United States may lease helium as it does any other mineral rendering helium production subject to state taxation; however, the removal, extraction, severance and production of helium which is leased pursuant to the Mineral Leasing Act of 1920, avoids taxation by the state of Wyoming, and thus is treated differently than all other components of natural gas produced within the state of Wyoming;

(vi) Production of helium-containing natural gas leased pursuant to the Mineral Leasing Act of 1920 should be treated similarly to the production of helium leased pursuant to the Helium Privatization Act of 1996, or helium produced from nonfederal lands with regard to taxation by the state of Wyoming;

(vii) The severance tax is defined multiple times in Title 39, Chapter 14, as "an excise tax imposed on the present and continuing privilege of removing, extracting, severing or producing any mineral in this state." It is the intent of the legislature that the tax be imposed on either the person who physically removes, extracts or severs the mineral from the ground, or the person who owns the right to do so, but that no mineral be subject to double taxation. To that extent the decision in *Lance Oil & Gas Co. v. Wyoming Department of Revenue*, 101 P.3d 899 (Wyo. 2004), does not reflect the intent of the legislature with regard to the imposition of the severance tax; however, in the case of all other minerals produced in this state, the holding did not allow minerals other than

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helium produced pursuant to leases issued under the Mineral Leasing Act of 1920 to avoid taxation;

(viii) Helium within natural gas leased pursuant to the Mineral Leasing Act of 1920 is a valuable deposit, but its production avoids taxation in violation of the requirements of Wyoming constitution, article 15, sections 3 and 19, and taxation statutes enacted pursuant thereto.

**Section 3.** This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk