

ENROLLED ACT NO. 88, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2009 GENERAL SESSION

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

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

Section 1. W.S. 39-13-112 is created to read:

39-13-112. Property 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 ad valorem taxation pursuant to the provisions of this chapter;

(ii) All other definitions in W.S. 39-13-101 and 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. 39-13-102.

(c) Taxable event: There is levied an ad valorem tax on the value of the gross product produced, as provided in article 15, section 3 of the Wyoming constitution, on the helium produced in this state. The tax imposed by this subsection shall be in addition to all other taxes imposed by law.

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(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 producing helium; or, to the extent of his interest ownership, any person owning or producing an interest in the helium, by lease or other contract right, is liable for the payment of the ad valorem taxes together with any penalties and interest, provided however, that helium shall be subject to the ad valorem tax only once.

(f) Tax rate: Helium shall be subject to the ad valorem tax rate as provided in W.S. 39-13-104.

(g) Exemptions: The exemptions from taxation provided by W.S. 39-13-105 shall apply to helium.

(h) Compliance; collection procedures: The ad valorem tax related provisions of W.S. 39-13-107 shall apply to helium production.

(j) Enforcement: All ad valorem tax related provisions of W.S. 39-13-108 shall apply to helium production.

(k) Taxpayer remedies: All ad valorem tax related provisions of W.S. 39-13-109 shall apply to helium production.

(m) Distribution: Ad valorem tax revenues from helium production shall be distributed as provided by W.S. 39-13-111.

Section 2.

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(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 of the helium to avoid ad valorem taxation, but retain the right to produce, market and sell the helium and retain revenue from the sale of 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, extracts the helium from the gas stream and sells the helium, and the title to the helium first passes to the producer downstream of the point of valuation, thus allowing helium to avoid ad valorem taxation;

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

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(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 value of the helium gross product removed, extracted, produced and sold which is produced in the natural gas stream leased pursuant to the Mineral Leasing Act of 1920, avoids ad valorem taxation, and thus is treated differently than 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 ad valorem taxation;

(vii) It is the intent of the legislature that the tax be imposed on either the person who owns the mineral, or the person who owns the right to produce, remove or sell the mineral by lease or other contractual right, but that no mineral be subject to double ad valorem taxation. The Wyoming constitution, article 15, section 3, provides that the minerals which are "or may be produced" shall be taxed on the "gross product thereof, as may be prescribed by law." Under certain unique circumstances, more particularly described in *Department of Revenue v. Exxon Mobil Corporation*, 162 P.3d 515 (Wyo. 2007), certain helium produced avoids ad valorem taxation because it is produced by contract and not a lease, which decision does not reflect the intent of the legislature with regard to helium;

(viii) Helium within natural gas leased pursuant to the Mineral Leasing Act of 1920 is a valuable deposit,

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but its production avoids taxation in violation of the requirements of Wyoming constitution, article 15, section 3, and taxation statutes enacted pursuant thereto;

(ix) It is the intent of the legislature that the state of Wyoming should encourage the United States government to lease helium as it does other minerals.

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