HOUSE BILL NO. HB0054

Natural gas valuation.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

AN ACT relating to taxation and revenue; providing for the valuation of certain natural gas for taxation purposes; providing definitions; amending related provisions; providing reporting requirements; specifying applicability; and providing for an effective date.

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

Section 1. W.S. 39-14-201(a) by creating new paragraphs (xxxiii) through (xxxvi) and 39-14-203(b)(vi)(D)(intro) and by creating a new subparagraph (E) are amended to read:

39-14-201. Definitions.

(a) As used in this article:

(xxxiii) For the purposes of W.S. 39-14-203(b)(vi)(E), "rate of return" means the weighted average cost of capital (hereafter referred to as the "capitalization rate") as calculated under this paragraph for the ten (10) largest natural gas producers in this state on a production volume basis during the preceding production year for which the appropriate data is publicly available (hereafter referred to as the "representative companies"). The following shall apply:

(A) The capitalization rate is any rate used to convert an income stream into a present worth of future benefits. The rate reflects the relationship between one (1) year's income or an annual average of several years' income and the corresponding value. The department shall annually calculate the capitalization rate based upon the band of investment method as defined by this paragraph. The primary components of the capitalization rate shall include capital structure and cost of capital (debt, preferred and equity capital) as developed in appropriate money markets for the representative companies;

(B) "Band of investment method" means that the capitalization rate is equal to the weighted average cost of the debt and equity portions of the capital investment. The following shall apply:

(I) Proper development and application of the band of investment shall require obtaining and analyzing data for the percent of debt and equity which makes up the capital structure as determined from published financial sources such as Moody's bond record, Moody's bond survey, Value Line, Moody's public utility or transportation manuals, regulatory reports or other recognized financial materials. The determination shall be done by the corporate bonds' rating of the representative companies or other means if bond ratings are not available;

(II) Debt rate estimates used in the band of investment method shall reflect the average current cost of yield to maturity of outstanding issues of debt financing for the year ending closest to the date of the calculation of the capitalization rate required by this paragraph. The rates shall be taken from published financial sources such as Moody's public utility news reports or other recognized financial materials. The determination shall be done by corporate bond rating of the representative companies;

(III) Preferred rate estimates used in the band of investment method shall reflect the average current cost of market yield of outstanding issues of preferred stock financing for the year ending closest to the date of the calculation of the capitalization rate required by this paragraph. The rates shall be taken from published financial sources such as Moody's public utility news reports or other recognized financial materials. The determination shall be done by corporate bond rating of the representative companies;

(IV) The current cost of equity shall be based on data from the capital markets of the representative companies. Equity rates shall reflect the representative cost of equity financing for the representative companies by corporate bond rating as of the date of the calculation of the capitalization rate under this paragraph. The current cost of equity shall be developed by accepted models in the appraisal and financial communities. These models shall include, but are not limited to, equity risk premium, capital asset pricing model and the discounted cash flow model. The sources of required data shall be taken from published financial sources such as Value Line, Ibbotson Associates, Wall Street Journal, regulatory filings and other recognized financial materials. Not later than March 15 of each year, the department shall conduct a public meeting for presentation of the capitalization rate to be used to value production in the same calendar year in which the rate is determined. Notice of the date and time of the meeting shall be provided to all interested parties at least thirty (30) days prior to the meeting. Interested parties may present written or oral comments on the proposed capitalization rate or within five (5) business days thereafter. A final determination of the capitalization rate shall be made available on or before March 31 or as soon thereafter as possible;

(V) Within thirty (30) days of the final capitalization rate determination under this paragraph, the taxpayer shall file amended returns and remit any severance tax due for that portion of the year for which the capitalization rate had yet to be determined and no interest or penalty shall be due as a result of the application of the new capitalization rate.

(xxxiv) For the purposes of W.S. 39-14-203(b)(vi)(E), "return on investment" means the product of the rate of return multiplied by the gross capital investment in all processing and transportation facilities used by the taxpayer to process or transport natural gas from the point of valuation to the point of arms-length sale as maintained on the taxpayer's books and records under generally accepted accounting principles;

(xxxv) For the purposes of W.S. 39-14-203(b)(vi)(E), "total direct processing and transportation costs" means all costs incurred by the taxpayer to operate all processing or transportation facilities from the point of valuation to the point of arms-length sale as maintained on the taxpayer's books and records. The costs shall include salaries and benefits; contract labor; repairs and maintenance including processing facility turnarounds; fuel, power and utilities; chemicals; processing facility premise lease costs to nonaffiliated parties; waste water treatment; disposal of byproduct and waste products; safety; costs of environmental permitting and monitoring, federal and state environmental compliance fees and costs, excluding compensatory and punitive damages and governmental penalties; laboratory; distributive control system; and ad valorem taxes on real and tangible personal property excluding the gross products tax. The taxpayer shall be entitled to its proportionate share of the total direct processing and transportation costs as measured by its percentage of inlet volumes;

(xxxvi) For the purposes of paragraph (xxxiv) of this subsection, "gross capital investment" means the total gross capitalized investment in the processing and transportation facilities from the point of valuation to the point of arms-length sale as maintained on the taxpayer's books and records under generally accepted accounting principles. The gross capital investment shall be calculated based on the company's books and records as of January 1 plus December 31 of the production year, divided by two (2). For purposes of this paragraph, gross capital investment shall not include any investment in equipment that is considered permanently abandoned under generally accepted accounting principles. Gross capital investment shall include items which are not in continuous operation if they remain on the company's books and records under generally accepted accounting principles.

39-14-203. Imposition.

(b) Basis of tax. The following shall apply:

(vi) In the event the crude oil, lease condensate or natural gas production as provided by paragraphs (iii) and (iv) of this subsection is not sold at or prior to the point of valuation by bona fide arms-length sale, or, except as otherwise provided, if the production is used without sale, the department shall identify the method it intends to apply under this paragraph to determine the fair market value and notify the taxpayer of that method on or before September 1 of the year preceding the year for which the method shall be employed. The department shall determine the fair market value by application of one (1) of the following methods:

(D) Proportionate profits - The proportionate profits method shall only be used as a method in conjunction with the provisions of the modified netback method in subparagraph (E) of this paragraph. The fair market value is:

(E) Modified netback - The fair market value is:

(I) The total amount received from the sale of the natural gas minus the total direct processing and transportation costs, any arms-length transportation fees from the point of valuation to the point of arms-length sale, overhead costs directly related to facility operations not to exceed ten percent (10%) of the total direct processing and transportation costs, exempt royalties and return on investment incurred by the taxpayer from the point of valuation to the point of arms-length sale;

(II) There shall be one (1) point of valuation for all interest owners of the processing facility;

(III) Any producer utilizing the modified netback method set forth in this subparagraph shall be required to calculate the taxable value for the tax year under the methods of both this subparagraph and subparagraph (D) of this paragraph (hereafter referred to as the "annual floor test"). The taxable value for the year shall be the higher of the two (2) taxable values determined under the annual floor test. If the valuation method is changed as a result of the provision in this subparagraph, no interest or penalties shall be due if the taxpayer files the amended returns and remits the additional severance tax due under this subparagraph not later than May 25 of that calendar year. After the first year of applicability of this subparagraph, for each succeeding year the taxpayer's monthly severance tax returns shall be filed using the valuation method determined under the annual floor test for the immediately preceding calendar year.

Section 2.

(a) The department shall report to the governor and the joint revenue interim committee on the results of applying the modified netback valuation method as provided by this act. The report shall be submitted not later than October 1 of each year beginning in 2009 through 2019. The report shall, subject to confidentiality restrictions imposed by law:

(i) Describe whether producer-processors paid taxes using the modified netback method or the proportionate profits method;

(ii) Include a table showing taxable value per mcf under the modified netback, proportionate profits, comparable value and any other natural gas valuation methods employed;

(iii) Present a summary of all proceedings pending before, or decisions made by, the state board of equalization or any Wyoming court pertaining to producer-processed natural gas; and

(iv) Provide a listing of any taxes paid under protest by a producer-processor, specifying the amounts and the county or counties involved.

Section 3. This act shall apply to all natural gas production occurring on and after January 1, 2009.

Section 4. This act is effective July 1, 2008.

(END)