WORKING DRAFT

HOUSE BILL NO. ___________

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; 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 (xxxvii), 39-14-203(b)(ii), (vi)(intro) and (C) and by creating a new paragraph (vii), by amending and renumbering (vii) and (viii) as (viii) and (ix), and by renumbering paragraphs (x) and (xi) as (xi) and (xii) are amended to read:

39-14-201. Definitions.

(a) As used in this article:

(xxxiii) "Processing facility" means a facility where any activity occurs which changes the well stream's physical or chemical characteristics, enhances the marketability of the stream or enhances the value of the separate components of the stream. Processing in the facility includes any activity included in the definition of processing provided by paragraph (xviii) of this subsection;

(xxxiv) "Rate of return" means the industrial rate associated with the Standard and Poor's "B" rating for ten (10) year bonds, and shall be the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the production year;

(xxxv) "Return on investment" means the product of the rate of return multiplied by the gross capital investment relating to the processing facility on the financial records of the taxpayer. The gross capital investment shall be calculated as the balances on January 1 plus December 31 of the production year, divided by two (2);

(xxxvi) "Total direct processing costs" means costs incurred within the processing facility attributable to processing the natural gas stream. The costs include salaries and benefits; contract labor; repairs and maintenance including processing facility turnarounds; fuel, power and utilities; chemicals; processing facility premise lease costs to non-affiliated parties; waste water treatment; disposal of byproduct and waste products; safety; costs of environmental permitting and monitoring, federal and state environmental compliance fees, and remediation of environmental accidents; laboratory; distributive control system; and ad valorem taxes on real and tangible personal property excluding the gross products tax;

(xxxvii) "Gross capital investment" means the total gross capitalized investment of a processing facility as defined in W.S. 39-14-201(a)(xxxiii). The gross capital investment shall be determined in accordance with generally accepted accounting practices.

39-14-203. Imposition.

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

(ii) The fair market value for crude oil, lease condensate and natural gas shall be determined after the production process is completed. Notwithstanding paragraph

~~(x)~~ (xi) of this subsection, expenses incurred by the producer prior to the point of valuation are not deductible in determining the fair market value of the mineral;

(vi) Except as otherwise provided in paragraphs (vii) and (viii) of this subsection, 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. For any natural gas referenced in this paragraph which is not processed in a processing facility owned in part or in total by the producer of the natural gas and for which there is no agreement between the taxpayer and the department under paragraph (viii) of this subsection, the department shall determine the fair market value by application of one (1) of the following methods:

(C) Netback - The fair market value is the sales price minus expenses incurred by the producer for transporting produced minerals to the point of sale and third party processing fees;~~. The netback method shall not be utilized in determining the taxable value of natural gas which is processed by the producer of the natural gas;~~

~~(D) Proportionate profits - The fair market value is:~~

~~(I) The total amount received from the sale of the minerals minus exempt royalties, nonexempt royalties and production taxes times the quotient of the direct cost of producing the minerals divided by the direct cost of producing, processing and transporting the minerals; plus~~

~~(II) Nonexempt royalties and production taxes.~~

(vii) The fair market value of natural gas which is processed in a processing facility owned in part or in total by the producer of the natural gas being processed shall be:

(A) The total amount received from the sale of the natural gas minus the total direct processing costs, return on investment and transportation expenses incurred by the producer-processor from the point of valuation to the point of sale;

(B) There shall be one (1) point of valuation for all interest owners of the processing facility in accordance with W.S. 39-14-203(b)(iv);

(C) A minimum fair market value shall be established for each production year. The minimum fair market value shall be the producer's variable direct costs of producing the natural gas, which shall mean all direct expenditures incurred prior to the point of valuation that are specifically attributable to producing the natural gas which was produced during the production year. Variable direct costs of producing include labor costs for field and production personnel directly responsible for extracting the minerals; the costs of all materials, equipment and supplies used for and during production; repairs and maintenance on the wells; cost of fuel, power and other utilities used for production and maintenance; and gathering and transportation expenses to the point of valuation. As used in this subparagraph, "variable direct costs of producing" shall not include any costs which the producer has expended or committed to expend prior to the production year or which are not specifically related to physically producing the natural gas during the production year, including preparation of the well site; tangible and intangible drilling costs; dry hole expense; depreciation, depletion and amortization of wells and well equipment; ad valorem property taxes; royalties or any production taxes.

~~(vii)~~ (viii) When the taxpayer and department jointly agree, that the application of one (1) of the methods listed in paragraph (vi) or (vii) of this subsection does not produce a representative fair market value for the crude oil, lease condensate or natural gas production, a mutually acceptable alternative method may be applied;

~~(viii)~~ (x) If the fair market value of the crude oil, lease condensate or natural gas production as provided by paragraphs (iii) and (iv) of this subsection is determined pursuant to paragraph (vi) of this subsection, the method employed shall be used in computing taxes for three (3) years including the year in which it is first applied or until changed by mutual agreement between the department and taxpayer. If the taxpayer believes the valuation method selected by the department does not accurately reflect the fair market value of the crude oil, lease condensate or natural gas, the taxpayer may appeal to the board of equalization for a change of methods within one (1) year from the date the department notified the taxpayer of the method selected;

~~(x)~~ (xi) If crude oil is enhanced prior to the point of valuation as defined in paragraph (iii) of this subsection by either a blending process with a higher grade hydrocarbon or through a refining process such as cracking, then the fair market value shall be the fair market value of the crude oil absent the blending or refining process;

~~(xi)~~ (xii) For natural gas, the total of all actual transportation costs from the point where the production process is completed to the inlet of the processing facility or main transmission line shall not exceed fifty percent (50%) of the value of the gross product without approval of the department based on documentation that the costs are due to environmental, public health or safety considerations, or other unusual circumstances.

Section 2. W.S. 39-14-203(b)(vi)(D) and (ix) is repealed.

Section 3. This act shall apply to all production on and after January 1, 2004.

Section 4. This act is effective January 1, 2004.

(END)