

HOUSE BILL NO. HB0133

Taxation of helium.

Sponsored by: Representative(s) Anderson, R., Gilmore, Miller, Semlek and Wallis and Senator(s) Anderson, J., Case and Mockler

A BILL

for

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

5

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

7

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

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10 **39-14-212. Taxation of certain helium.**

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12 (a) As used in this section:

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14 (i) "Helium" means helium which is a component
15 of a natural gas stream leased by the United States to any
16 lessee pursuant to the Mineral Leasing Act of 1920, 30

1 U.S.C. section 181. All other helium shall be subject to
2 taxation pursuant to the provisions of this article;

3

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

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

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

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18 (c) Taxable event: There is levied a severance tax
19 on the value of the gross product extracted for the present
20 and continuing privilege of removing, extracting, severing
21 or producing helium in this state. The tax imposed by this
22 subsection shall be in addition to all other taxes imposed
23 by law.

24

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

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

11

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

15

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

19

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

23

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

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

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9 (m) Distribution: Severance tax revenues from helium
10 production shall be distributed as provided by W.S.
11 39-14-211.

12

13 **Section 2.**

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15 (a) The legislature finds that:

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

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

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

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16 (iv) These circumstances occur in cases in which
17 the federal lease is issued pursuant to the Mineral Leasing
18 Act of 1920, 30 U.S.C. section 181, which requires that the
19 United States reserve "the ownership of and the right to
20 extract helium from all gas produced from lands leased or
21 otherwise granted," and title to the helium is passed
22 pursuant to a sale and purchase agreement, as opposed to a
23 federal lease;

24

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

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

18

19 (vii) The severance tax is defined multiple
20 times in Title 39, Chapter 14, as "an excise tax imposed on
21 the present and continuing privilege of removing,
22 extracting, severing or producing any mineral in this
23 state." It is the intent of the legislature that the tax
24 be imposed on either the person who physically removes,

1 extracts or severs the mineral from the ground, or the
2 person who owns the right to do so, but that no mineral be
3 subject to double taxation. To that extent the decision in
4 *Lance Oil & Gas Co. v. Wyoming Department of Revenue*, 101
5 P.3d 899 (Wyo. 2004), does not reflect the intent of the
6 legislature with regard to the imposition of the severance
7 tax; however, in the case of all other minerals produced in
8 this state, the holding did not allow minerals other than
9 helium produced pursuant to leases issued under the Mineral
10 Leasing Act of 1920 to avoid taxation;

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12 (viii) Helium within natural gas leased pursuant
13 to the Mineral Leasing Act of 1920 is a valuable deposit,
14 but its production avoids taxation in violation of the
15 requirements of Wyoming constitution, article 15, sections
16 3 and 19, and taxation statutes enacted pursuant thereto.

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

22

23 (END)