

HOUSE BILL NO. HB0287

Helium-property tax.

Sponsored by: Representative(s) Philp, Anderson, R., Buchanan, Davison and Roscoe and Senator(s) Schiffer

A BILL

for

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

5

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

7

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

9

10 **39-13-112. Property taxation of certain helium.**

11

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 ad valorem taxation pursuant to the provisions of this
3 chapter;

4

5 (ii) All other definitions in W.S. 39-13-101 and
6 39-14-201 are incorporated herein by reference to the
7 extent that they may apply.

8

9 (b) Administration; confidentiality: The department
10 shall annually value and assess helium production at its
11 fair market value for taxation in accordance with the
12 applicable provisions of W.S. 39-13-102.

13

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

20

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

23

1 (e) Taxpayer: Any person producing helium; or, to
2 the extent of his interest ownership, any person owning or
3 producing an interest in the helium, by lease or other
4 contract right, is liable for the payment of the ad valorem
5 taxes together with any penalties and interest, provided
6 however, that helium shall be subject to the ad valorem tax
7 only once.

8

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

11

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

14

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

18

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

22

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

4
5 (m) Distribution: Ad valorem tax revenues from
6 helium production shall be distributed as provided by W.S.
7 39-13-111.

8

9 **Section 2.**

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11 (a) The legislature finds that:

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13 (i) There are in Wyoming extensive reserves of
14 natural gas which contain helium, much of which underlie
15 lands which are owned by the United States, and the leases
16 of the natural gas by the federal government under laws
17 which are now obsolete and outdated operate in a fashion
18 which allows the producer of the helium to avoid ad valorem
19 taxation, but retain the right to produce, market and sell
20 the helium and retain revenue from the sale of the helium;

21

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

24

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

12

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

21

22 (v) From and after the effective date of the
23 Helium Privatization Act of 1996, 50 U.S.C. section 167a,
24 the United States may lease helium as it does any other

1 mineral rendering helium production subject to state
2 taxation; however, the value of the helium gross product
3 removed, extracted, produced and sold which is produced in
4 the natural gas stream leased pursuant to the Mineral
5 Leasing Act of 1920, avoids ad valorem taxation, and thus
6 is treated differently than other components of natural gas
7 produced within the state of Wyoming;

8

9 (vi) Production of helium containing natural gas
10 leased pursuant to the Mineral Leasing Act of 1920 should
11 be treated similarly to the production of helium leased
12 pursuant to the Helium Privatization Act of 1996, or helium
13 produced from nonfederal lands with regard to ad valorem
14 taxation;

15

16 (vii) It is the intent of the legislature that
17 the tax be imposed on either the person who owns the
18 mineral, or the person who owns the right to produce,
19 remove or sell the mineral by lease or other contractual
20 right, but that no mineral be subject to double ad valorem
21 taxation. The Wyoming constitution, article 15, section 3,
22 provides that the minerals which are "or may be produced"
23 shall be taxed on the "gross product thereof, as may be
24 prescribed by law." Under certain unique circumstances,

1 more particularly described in *Department of Revenue v.*
2 *Exxon Mobil Corporation*, 162 P.3d 515 (Wyo. 2007), certain
3 helium produced avoids ad valorem taxation because it is
4 produced by contract and not a lease, which decision does
5 not reflect the intent of the legislature with regard to
6 helium;

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

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

18

19

(END)