By: Eckhardt S.B. No. 256

A BILL TO BE ENTITLED

AN ACT

relating to the applicability of the gas production tax to flared or vented gas at an increased rate.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.052, Tax Code, is amended to read as follows:

Sec. 201.052. RATES [~~RATE~~] OF TAX. [~~(a)~~] The tax imposed by this chapter is at the rate of:

(1) 7.5 percent of the market value of gas produced and saved in this state by the producer; and

(2) 25 percent of the market value of gas produced and flared or vented in this state by the producer.

SECTION 2. Section 201.053, Tax Code, is amended to read as follows:

Sec. 201.053. GAS NOT TAXED. The tax imposed by this chapter does not apply to gas:

(1) injected into the earth in this state, unless sold for that purpose;

(2) [~~produced from oil wells with oil and lawfully vented or flared;~~

[~~(3)~~] used for lifting oil, unless sold for that purpose; or

(3) [~~(4)~~] produced in this state from a well that qualifies under Section 202.056 or 202.060, except as provided by

Section 201.062.

SECTION 3. Section 201.054(b), Tax Code, is amended to read as follows:

(b) The rate of the tax imposed by this section is the same as the rate of the tax imposed by Section 201.052(1) [~~201.052 of this code~~].

SECTION 4. Section 201.057(c), Tax Code, is amended to read as follows:

(c) High-cost gas produced from a well that is spudded or completed after August 31, 1996, is entitled to a reduction of the tax imposed by this chapter for the first 120 consecutive calendar months beginning on the first day of production, or until the cumulative value of the tax reduction equals 50 percent of the drilling and completion costs incurred for the well, whichever occurs first. The amount of tax reduction shall be computed by subtracting from the tax rate imposed by Section 201.052(1) [~~201.052~~] the product of that tax rate times the ratio of drilling and completion costs incurred for the well to twice the median drilling and completion costs for high-cost wells spudded or completed during the previous state fiscal year, except that the effective rate of tax may not be reduced below zero.

SECTION 5. Subchapter B, Chapter 201, Tax Code, is amended by adding Sections 201.061 and 201.062 to read as follows:

Sec. 201.061. ANNUAL EXEMPTION FOR FLARED OR VENTED GAS. (a) Each calendar year, a producer is entitled to an exemption from the tax imposed at the rate provided by Section 201.052(2).

(b) The exemption applies to gas produced and flared or vented in this state by the producer during a calendar year in an amount equal to, at the producer's election:

(1) 1,000 mcf; or

(2) 0.005 percent of the total amount of gas produced in this state by the producer during the calendar year.

(c) The comptroller by rule shall provide procedures for a producer to claim the exemption, including electing an amount under Subsection (b) and allocating the amount among all gas produced and flared or vented by the producer during a calendar year.

(d) The exemption under this section may not be transferred to another producer or calendar year.

Sec. 201.062. APPLICABILITY OF CERTAIN PROVISIONS TO FLARED OR VENTED GAS. Notwithstanding any other law including Section 201.058(a), Sections 201.057, 201.059, 202.056, 202.057, and 202.060 do not apply to gas that is flared or vented and may not be used to reduce any amount of tax imposed at the rate provided by Section 201.052(2).

SECTION 6. Sections 201.101(a) and (c), Tax Code, are amended to read as follows:

(a) Except as provided by Section 201.1011, the [~~The~~] market value of gas is its value at the mouth of the well from which it is produced. The value of gas at the mouth of the well is determined by ascertaining the producer's actual marketing costs and subtracting those costs from the producer's gross cash receipts from the sale of the gas.

(c) Marketing costs do not include:

(1) costs incurred in producing the gas;

(2) costs incurred in normal lease separation of the oil or condensate; [~~or~~]

(3) insurance premiums on the marketing facility;

(4) the value of gas that is flared or vented; or

(5) any cost associated with flaring or venting gas.

SECTION 7. Subchapter C, Chapter 201, Tax Code, is amended by adding Section 201.1011 to read as follows:

Sec. 201.1011. MARKET VALUE OF FLARED OR VENTED GAS. (a) The market value of flared or vented gas is equal to the amount determined under Subsection (b) for the month in which the gas is produced.

(b) The comptroller shall determine the average cash value at the mouth of the well for all gas produced and saved in this state during each month, with no deduction for marketing costs. The comptroller shall publish the amount determined on the comptroller's Internet website.

(c) The comptroller may determine an amount under Subsection (b) using a price index or other available statistical data.

SECTION 8. Section 201.151, Tax Code, is amended to read as follows:

Sec. 201.151. PRODUCER'S RECORDS. (a) A producer shall keep accurate records of all gas the producer produces, including the amount of gas produced and saved and the amount of gas produced and flared or vented.

(b) The records shall be kept in the state.

SECTION 9. Section 201.201, Tax Code, is amended to read as follows:

Sec. 201.201. TAX DUE. The tax imposed by this chapter for gas produced [~~and saved~~] is due at the office of the comptroller in Austin on the 20th day of the second month following the month of production.

SECTION 10. Section 201.203(a), Tax Code, is amended to read as follows:

(a) On or before the 20th day of the second month following the month in which gas was produced, the producer shall file a report with the comptroller on forms prescribed by the comptroller. The report must contain the following information concerning gas produced during the month being reported:

(1) the gross amount of gas produced that is subject to the tax imposed by this chapter, including separate statements of the amount of gas produced and saved and the amount of gas produced and flared or vented;

(2) the leases from which the gas was produced;

(3) the names and addresses of the first purchasers of the gas, if applicable; and

(4) other information the comptroller may reasonably require.

SECTION 11. Section 202.056(h), Tax Code, is amended to read as follows:

(h) If the tax is paid at the full rate provided by Section 201.052 [~~201.052(a)~~] or 202.052(a) before the comptroller approves an application for an exemption provided for in this chapter, the operator is entitled to a credit against taxes imposed by this chapter in an amount equal to the tax paid. To receive a credit, the operator must apply to the comptroller for the credit before the expiration of the applicable period for filing a tax refund claim under Section 111.104.

SECTION 12. Section 202.057(d), Tax Code, is amended to read as follows:

(d) If the tax is paid at the full rate provided by Section 201.052 [~~201.052(a) or (b)~~] or Section 202.052(a) or (b) before the comptroller approves an application for an exemption provided in this chapter, the operator is entitled to a credit against taxes imposed by this chapter in an amount equal to 50 percent of the tax paid on the incremental production. To receive the credit, the operator must apply to the comptroller for the credit not later than the first anniversary after the date the commission certifies the incremental ratio for a qualifying lease.

SECTION 13. The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 14. This Act takes effect September 1, 2023.