

SENATE BILL NO. 468

INTRODUCED BY GAGE
BY REQUEST OF THE SENATE TAXATION COMMITTEE

IN THE SENATE

MARCH 20, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

 FIRST READING.

MARCH 28, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

APRIL 1, 1991 PRINTING REPORT.

APRIL 2, 1991 SECOND READING, DO PASS.

APRIL 3, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 49; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

APRIL 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

 FIRST READING.

APRIL 13, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 17, 1991 SECOND READING, CONCURRED IN.

 ON MOTION, RULES SUSPENDED. BILL
PLACED ON THIRD READING THIS DAY.

 THIRD READING, CONCURRED IN.
AYES, 92; NOES, 6.

 RETURNED TO SENATE.

IN THE SENATE

APRIL 18, 1991 RECEIVED FROM HOUSE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *468*
 2 INTRODUCED BY *Dup*
 3 BY REQUEST OF THE SENATE TAXATION COMMITTEE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
 6 TAXATION OF OIL AND NATURAL GAS FOR STATE SEVERANCE TAX AND
 7 LOCAL GOVERNMENT SEVERANCE TAX PURPOSES; CLARIFYING THE
 8 DEFINITION OF GROSS VALUE FOR COMPUTATION OF THE LOCAL
 9 GOVERNMENT SEVERANCE TAX; CONFORMING THE ADMINISTRATION OF
 10 THE LOCAL GOVERNMENT SEVERANCE TAX TO THE STATE SEVERANCE
 11 TAX; AMENDING SECTIONS 15-23-603, 15-36-101, 15-36-105,
 12 15-36-107, 15-36-108, 15-36-113, 15-36-114, AND 15-36-121,
 13 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
 14 RETROACTIVE APPLICABILITY DATE."
 15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 15-36-101, MCA, is amended to read:

18 "15-36-101. Definitions and rate of tax -- state
 19 severance tax -- local government severance tax --
 20 assessment of nonworking interest owner -- exemption. (1)
 21 Every person engaging in or carrying on the business of
 22 producing petroleum, other mineral or crude oil, or natural
 23 gas within this state or engaging in or carrying on the
 24 business of owning, controlling, managing, leasing, or
 25 operating within this state any well or wells from which any

1 merchantable or marketable petroleum, other mineral or crude
 2 oil, or natural gas is extracted or produced shall, except
 3 as provided in 15-36-121, each year when engaged in or
 4 carrying on the business in this state pay to the department
 5 of revenue a state severance tax for the exclusive use and
 6 benefit of the state of Montana plus a local government
 7 severance tax in lieu of a tax on net proceeds for the
 8 exclusive use and benefit of local government. Except as
 9 provided in subsection (3), the state severance tax and the
 10 local government severance tax are as follows:

11 (a) except as provided in subsections (1)(b), (1)(c),
 12 and (1)(d), a 5% state severance tax on the ~~total~~ gross
 13 taxable value of all the petroleum and other mineral or
 14 crude oil produced by the person, plus the local government
 15 severance tax of 8.4% on the gross taxable value, as defined
 16 in subsection (6)(a)(ii), of all the petroleum and other
 17 mineral or crude oil produced by the person other than
 18 ~~interim-production-and~~ new production, from each lease or
 19 unit; but in determining the amount of the state severance
 20 tax and local government severance tax, there must be
 21 excluded from consideration all petroleum or other crude or
 22 mineral oil produced and used by the person during the year
 23 in connection with his operations in prospecting for,
 24 developing, and producing the petroleum or crude or mineral
 25 oil;



1 (b) a 2.65% state severance tax on the ~~total~~ gross
 2 taxable value of all natural gas produced by the person,
 3 plus the local government severance tax of 15.25% on the
 4 ~~total~~ gross taxable value, as defined in subsection
 5 (6)(a)(ii), of all natural gas produced by the person other
 6 than ~~interim--production-or~~ new production, from each lease
 7 or unit; but in determining the amount of the state
 8 severance tax and the local government severance tax, there
 9 must be excluded from consideration all gas produced and
 10 used by the person during the year in connection with his
 11 operations in prospecting for, developing, and producing the
 12 gas or petroleum or crude or mineral oil; and there must
 13 also be excluded from consideration all gas, including
 14 carbon dioxide gas, recycled or reinjected into the ground;

15 (c) a 2.5% state severance tax on the ~~total~~ gross
 16 taxable value of the incremental petroleum and other mineral
 17 or crude oil produced by the person, plus the local
 18 government severance tax of 5% on the ~~total~~ gross taxable
 19 value, as defined in subsection (6)(a)(ii), of the
 20 incremental petroleum and other mineral or crude oil
 21 produced by the person other than ~~interim-production-and~~ new
 22 production, from each lease or unit in a tertiary recovery
 23 project after July 1, 1985. For purposes of this section, a
 24 tertiary recovery project must meet the following
 25 requirements:

1 (i) the project must be approved as a tertiary recovery
 2 project by the board of oil and gas conservation department
 3 ~~of--revenue~~. The approval may be extended only after notice
 4 and hearing in accordance with Title 2, chapter 4.

5 (ii) the property to be affected by the project must be
 6 adequately delineated according to the specifications
 7 required by the board department; and

8 (iii) the project must involve the application of one or
 9 more tertiary recovery methods that can reasonably be
 10 expected to result in an increase, determined by the
 11 department board to be significant in light of all the facts
 12 and circumstances, in the amount of crude oil which may
 13 potentially be recovered. For purposes of this section,
 14 tertiary recovery methods include but are not limited to:

- 15 (A) miscible fluid displacement;
- 16 (B) steam drive injection;
- 17 (C) micellar/emulsion flooding;
- 18 (D) in situ combustion;
- 19 (E) polymer augmented water flooding;
- 20 (F) cyclic steam injection;
- 21 (G) alkaline or caustic flooding;
- 22 (H) carbon dioxide water flooding;
- 23 (I) immiscible carbon dioxide displacement; or
- 24 (J) any other method approved by the department as a
 25 tertiary recovery method.

1 (d) a 5% local government severance tax on the ~~total~~
 2 gross taxable value, as defined in subsection (6)(a)(ii), of
 3 all petroleum and other mineral or crude oil produced by the
 4 person other than ~~interim-and~~ new production produced by a
 5 stripper well, as defined in ~~15-36-121~~ subsection (7).

6 (2) For purposes of this section, the term "incremental
 7 petroleum and other mineral or crude oil" means the amount
 8 of oil, as determined by the ~~department-of-revenue~~ board, to
 9 be in excess of what would have been produced by primary and
 10 secondary methods. The determination arrived at by the
 11 ~~department~~ board must be made only after notice and hearing
 12 and shall specify through the life of a tertiary project,
 13 calendar year by calendar year, the combined amount of
 14 primary and secondary production that must be used to
 15 establish the incremental production from each lease or unit
 16 in a tertiary recovery project.

17 (3) (a) A local government severance tax is imposed on
 18 the gross value paid in cash or apportioned in kind to a
 19 nonworking interest owner by the operator or producer of
 20 extracted marketable petroleum, other mineral or crude oil,
 21 or natural gas subject to local government severance taxes
 22 imposed under this chapter. The local government severance
 23 tax on nonworking interest owners is computed at the
 24 following rates:

25 (i) 12.5% on the gross value paid in cash or

1 apportioned in kind to a nonworking interest owner by the
 2 operator or producer of extracted marketable petroleum and
 3 other mineral or crude oil;

4 (ii) 15.25% on the gross value paid in cash or
 5 apportioned in kind to a nonworking interest owner by the
 6 operator or producer of extracted or marketable natural gas.

7 (b) The amounts paid or apportioned in kind to
 8 nonworking interest owners are exempt from the local
 9 government severance taxes imposed under 15-36-121(2) and
 10 under subsections (1)(a) through (1)(d) of this section.

11 (4) Nothing in this part may be construed as requiring
 12 laborers or employees hired or employed by any person to
 13 drill any oil or natural gas well or to work in or about any
 14 oil or natural gas well or prospect or explore for or do any
 15 work for the purpose of developing any petroleum, other
 16 mineral or crude oil, or natural gas to pay the severance
 17 tax, nor may work done or the drilling of a well or wells
 18 for the purpose of prospecting or exploring for petroleum,
 19 other mineral or crude oil, or natural gas or for the
 20 purpose of developing them be considered to be the engaging
 21 in or carrying on of the business. If, in the doing of any
 22 work, in the drilling of any oil or natural gas well, or in
 23 prospecting, exploring, or development work, any
 24 merchantable or marketable petroleum, other mineral or crude
 25 oil, or natural gas in excess of the quantity required by

1 the person for carrying on the operation is produced
 2 sufficient in quantity to justify the marketing of the
 3 petroleum, other mineral or crude oil, or natural gas, the
 4 work, drilling, prospecting, exploring, or development work
 5 is considered to be the engaging in and carrying on of the
 6 business of producing petroleum, other mineral or crude oil,
 7 or natural gas within this state within the meaning of this
 8 section.

9 (5) Every person required to pay the state or local
 10 government severance tax under this section shall pay the
 11 tax in full for his own account and for the account of each
 12 of the other owner or owners of the gross proceeds in value
 13 or in kind of all the marketable petroleum or other mineral
 14 or crude oil or natural gas extracted and produced,
 15 including owner or owners of working interest, royalty
 16 interest, overriding royalty interest, carried working
 17 interest, net proceeds interest, production payments, and
 18 all other interest or interests owned or carved out of the
 19 total gross proceeds in value or in kind of the extracted
 20 marketable petroleum or other mineral or crude oil or
 21 natural gas, except that any of the interests that are owned
 22 by the federal, state, county, or municipal governments are
 23 exempt from taxation under this chapter. Unless otherwise
 24 provided in a contract or lease, the pro rata share of any
 25 royalty owner or owners will be deducted from any

1 settlements under the lease or leases or division of
 2 proceeds orders or other contracts.

3 (6) For purposes of this section, the following
 4 definitions apply:

5 (a) (i) "Gross taxable value", for the purpose of
 6 computing the state severance tax, means the gross value of
 7 the product as determined in 15-36-103.

8 (ii) "Gross taxable value", for the purpose of computing
 9 the local government severance tax, means the gross value of
 10 the product as determined in 15-36-103 less the gross value
 11 paid in cash or apportioned in kind to a nonworking interest
 12 owner by the operator or producer of extracted marketable
 13 petroleum, other mineral or crude oil, or natural gas.

14 (b) "Nonworking interest owner" means any interest
 15 owner who does not share in the development and operation
 16 costs of the lease or unit.

17 (7) For the purposes of this section, "stripper well"
 18 means a well that produces less than 10 barrels a day,
 19 determined by dividing the amount of production from a lease
 20 or unitized area for the year prior to the current calendar
 21 year by the number of producing wells in the lease or
 22 unitized area and by dividing the resulting quotient by
 23 365."

24 **Section 2.** Section 15-36-105, MCA, is amended to read:
 25 "15-36-105. Statement to accompany payment -- records

1 -- collection of tax -- refunds. (1) Each person shall,
 2 within 60 days after the end of each following quarter,
 3 complete on forms prescribed by the department of revenue a
 4 statement showing the total number of barrels of
 5 merchantable or marketable petroleum and other mineral or
 6 crude oil or cubic feet of natural gas produced or extracted
 7 by the person in the state during each month of the quarter
 8 and during the whole quarter, the average value of the
 9 production during each month, and the total value of the
 10 production for the whole quarter, together with the total
 11 amount due to the state as severance taxes and local
 12 government severance taxes for the quarter, and shall within
 13 such 60 days deliver the statement and, except as provided
 14 in 15-36-102(2) and 15-36-121, pay to the department the
 15 amount of the taxes shown by the statement to be due to the
 16 state for the quarter for which the statement is made. The
 17 statement must be signed by the individual or the president,
 18 vice-president, treasurer, assistant treasurer, or managing
 19 agent in this state of the association, corporation,
 20 joint-stock company, or syndicate making the statement. Any
 21 person engaged in carrying on business at more than one
 22 place in this state or owning, leasing, controlling, or
 23 operating more than one oil or gas well in this state may
 24 include all operations in one statement. The department
 25 shall receive and file all statements and collect and

1 receive from the person making and filing a statement the
 2 amount of tax payable by the person, if any, as appears in
 3 the statement.

4 (2) (a) It is the duty of the department to examine
 5 each of the statements and compute the taxes thereon imposed
 6 under this chapter, and the amount computed by the
 7 department is the tax imposed, assessed against, and payable
 8 by the taxpayer making the statement for the quarter for
 9 which the statement is filed.

10 (b) If the state severance tax found to be due is
 11 greater than the amount paid, the excess must be paid by the
 12 taxpayer to the department within 10 days after written
 13 notice of the amount of the deficiency is mailed by the
 14 department to the taxpayer. If the state severance tax
 15 imposed is less than the amount paid, the difference must be
 16 applied as a credit against tax liability for subsequent
 17 quarters or refunded if there is no subsequent tax
 18 liability.

19 (c) If the local government severance tax found to be
 20 due is greater than the amount paid, the excess is due at
 21 the time for payment provided for in 15-36-102(2). If the
 22 local government severance tax imposed is less than the
 23 amount paid, the difference must be applied as a credit
 24 against tax liability for subsequent quarters or refunded if
 25 there is no subsequent tax liability.

1 (3) If the state severance tax or the local government
 2 severance tax is not paid on or before the due date, there
 3 must be assessed a penalty of 10% of the amount of the tax
 4 not paid, unless it is shown that the failure was due to
 5 reasonable cause and not due to neglect. If any the state
 6 severance tax under this chapter or the local government
 7 severance tax is not paid when due, interest must be added
 8 to the tax at the rate of 1% a month or fraction thereof,
 9 computed on the total amount of the state severance tax or
 10 local government severance tax and penalty from the due date
 11 until paid."

12 **Section 3.** Section 15-36-107, MCA, is amended to read:

13 "15-36-107. Procedure to compute tax in absence of
 14 statement -- penalty and interest. If any-such a person
 15 shall-fail fails, neglect, or refuse to file any statement
 16 required by 15-36-105 within the time therein required, the
 17 department of revenue shall, immediately after such time has
 18 expired, proceed-to-inform-itself-as-best-it-may--regarding
 19 ascertain the number of barrels of petroleum and other
 20 mineral or crude oil or cubic feet of gas extracted and
 21 produced by such the person in this state during such the
 22 quarter and during each month thereof of the quarter and the
 23 average value thereof of the barrels produced during each
 24 such month or the average value of cubic feet of gas
 25 extracted and produced during each month and shall

1 determine--and fix the amount of the state severance taxes
 2 due to the state or the amount of local government severance
 3 taxes due from such the person for such the quarter and
 4 shall--add--to--the--amount--of--such-severance-taxes plus a
 5 penalty of 10% thereof of the tax due plus interest at the
 6 rate of 1% per month or fraction thereof of a month computed
 7 on the total amount of state or local government severance
 8 taxes and penalty. Interest shall must be computed from the
 9 date the severance taxes were due to the date of payment.
 10 The department shall mail to the person required to file a
 11 quarterly statement and pay any severance tax taxes, a
 12 letter setting forth the amount of state severance tax or
 13 local government severance tax, penalty, and interest due,
 14 and, the The letter shall-further must contain a statement
 15 that if payment is not made, a warrant for distraint may be
 16 filed. The department may waive the 10% penalty herein
 17 provided-may-be-waived-by-the-department if reasonable cause
 18 for the failure and-neglect to file the statement required
 19 by 15-36-105 is provided to the department."

20 **Section 4.** Section 15-36-108, MCA, is amended to read:

21 "15-36-108. Warrant for distraint. If all or part of
 22 the state severance tax or the local government severance
 23 tax imposed by this part is not paid when due, the
 24 department of revenue may issue a warrant for distraint as
 25 provided in Title 15, chapter 1, part 7. The resulting lien

1 has precedence over any other claim, lien, or demand
2 thereafter filed and recorded."

3 **Section 5.** Section 15-36-113, MCA, is amended to read:

4 "15-36-113. **Deficiency assessment -- hearing --**
5 **interest.** (1) When the department of revenue determines that
6 the amount of the state severance tax or local government
7 severance tax due is greater than the amount disclosed by a
8 return, it shall mail to the taxpayer a notice of the
9 additional state severance tax or local government severance
10 tax proposed to be assessed. Within 30 days after mailing of
11 the notice, the taxpayer may file with the department a
12 written protest against the proposed additional state
13 severance tax or local government severance tax, setting
14 forth the grounds upon which the protest is based, and may
15 request in his protest an oral hearing or an opportunity to
16 present additional evidence relating to his tax liability.
17 If no protest is filed, the amount of the additional state
18 severance tax or local government severance tax proposed to
19 be assessed becomes final upon the expiration of the 30-day
20 period. If a protest is filed, the department must
21 reconsider the proposed assessment and, if the taxpayer has
22 so requested, must grant the taxpayer an oral hearing. After
23 consideration of the protest and the evidence presented at
24 any oral hearing, the department's action upon the protest
25 is final when it mails notice of its action to the taxpayer.

1 (2) When a deficiency is determined and the state
2 severance tax or local government severance tax becomes
3 final, the department shall mail a notice and demand for
4 payment to the taxpayer. The tax is due and payable at the
5 expiration of 10 days from the date of such notice and
6 demand. Interest on any deficiency assessment shall bear
7 interest until paid at the rate of 1% a month or fraction
8 thereof, computed from the original due date of the return."

9 **Section 6.** Section 15-36-114, MCA, is amended to read:

10 "15-36-114. **Credit for overpayment -- interest on**
11 **overpayment.** (1) If the department of revenue determines
12 that the amount of state severance tax or local government
13 severance tax, penalty, or interest due for any year taxable
14 period is less than the amount paid, the amount of the
15 overpayment shall be credited against any state severance
16 tax or local government severance tax, penalty, or interest
17 then due from the taxpayer and the balance refunded to the
18 taxpayer or its successor through reorganization, merger, or
19 consolidation or to its shareholders upon dissolution.

20 (2) Except as provided in subsection (3), interest
21 shall be allowed on overpayments at the same rate as is
22 charged on deficiency assessments provided in 15-36-113 due
23 from the due date of the return or from the date of
24 overpayment (whichever date is later) to the date the
25 department approves refunding or crediting of the

1 overpayment.

2 (3) (a) Interest shall not accrue during any period the
3 processing of a claim for refund is delayed more than 30
4 days by reason of failure of the taxpayer to furnish
5 information requested by the department for the purpose of
6 verifying the amount of the overpayment.

7 (b) No interest shall be allowed:

8 (i) if the overpayment is refunded within 6 months from
9 the date the return is due or from the date the return is
10 filed, whichever is later; or

11 (ii) if the amount of interest is less than \$1.

12 (c) A payment not made incident to a bona fide and
13 orderly discharge of an actual tax liability or one
14 reasonably assumed to be imposed by this law shall not be
15 considered an overpayment with respect to which interest is
16 allowable."

17 **Section 7.** Section 15-36-121, MCA, is amended to read:

18 "15-36-121. **Exemption from state severance tax --**
19 **imposition of local government severance tax.** (1) It is the
20 public policy of this state to promote a sufficient supply
21 of natural gas to provide for the residents of this state,
22 to lessen Montana's dependence on imported natural gas, and
23 to encourage the exploration for and development and
24 production of natural gas, petroleum, and other mineral and
25 crude oil within the state.

1 (2) All the natural gas produced from any well that has
2 produced 60,000 cubic feet or less of natural gas a day for
3 the calendar year prior to the current year shall be taxed
4 as provided in this section. Production must be determined
5 by dividing the amount of production from a lease or
6 unitized area for the year prior to the current calendar
7 year by the number of producing wells in the lease or
8 unitized area and by dividing the resulting quotient by 365.
9 The first 30,000 cubic feet of average daily production per
10 well is exempt from all of the state severance tax imposed
11 by 15-36-101. The first 30,000 cubic feet of average daily
12 production per well is subject to a local government
13 severance tax of 10% on the gross taxable value, as defined
14 in 15-36-101(6)(a)(ii). Everything over 30,000 cubic feet of
15 gas produced is taxed at 1.59% on the gross taxable value
16 for the state severance tax plus a local government
17 severance tax of 10% on the gross taxable value, as defined
18 in 15-36-101(6)(a)(ii).

19 ~~{3}--For the purposes of this section,--"stripper--well"~~
20 ~~means--a--well--that--produces--less--than--10--barrels--per--day,~~
21 ~~determined--by--dividing--the--amount--of--production--from--a--lease~~
22 ~~or--unitized--area--for--the--year--prior--to--the--current--calendar~~
23 ~~year--by--the--number--of--producing--wells--in--the--lease--or~~
24 ~~unitized--area--and--by--dividing--the--resulting--quotient--by~~
25 ~~365.~~

1 ~~(4)~~(3) Notwithstanding the provisions of subsection
2 (2), all reporting requirements under the state severance
3 tax remain in effect."

4 **Section 8.** Section 15-23-603, MCA, is amended to read:

5 "15-23-603. Net proceeds -- how computed. (1) As
6 provided in subsection (2), the department of revenue shall
7 calculate and compute from the returns the gross sales
8 proceeds of the product yielded from the well for the year
9 covered by the statement and shall calculate the net
10 proceeds of the well yielded to the producer, which net
11 proceeds are determined by subtracting from the gross sales
12 proceeds of the well all royalty paid in cash by the
13 operator or producer and the gross value of all royalty
14 apportioned in kind by the operator or producer determined
15 by using as the value of a barrel of oil or a cubic foot of
16 gas the average selling price for the calendar year of a
17 barrel of oil or a cubic foot of gas from the well out of
18 which the royalty was paid.

19 (2) For ~~interim--production--or~~ new production, net
20 proceeds are the equivalent of the gross sales proceeds,
21 without deduction for excise taxes, of the product yielded
22 from the well for the quarter covered by the statement,
23 except that in computing the total number of barrels of
24 petroleum and other mineral or crude oil or cubic feet of
25 natural gas produced, there must be deducted so much of the

1 product as is used in the operation of the well from which
2 the petroleum or other mineral or crude oil or natural gas
3 is produced for pumping the petroleum or other mineral or
4 crude oil or natural gas from the well to a tank or
5 pipeline.

6 (3) In the statement of sales proceeds required under
7 15-23-602 for lease or unitized areas from which ~~interim-or~~
8 new production and other production have been sold, the
9 number of barrels of ~~interim-and~~ new production of oil or
10 cubic feet of ~~interim-or~~ new production of gas must be
11 segregated from and stated separately from the number of
12 barrels of other production of oil or cubic feet of other
13 production of gas.

14 (4) In calculating the deduction for money expended for
15 necessary chemical supplies needed and used in a tertiary
16 recovery project approved by the ~~department-of-revenue board~~
17 of oil and gas conservation, as provided in 15-36-101, the
18 department shall require that the necessary chemical
19 supplies, which include but are not limited to carbon
20 dioxide supplies, be amortized over a 10-year period
21 beginning with the year in which the money was expended."

22 NEW SECTION. **Section 9.** Effective date. [This act] is
23 effective on passage and approval.

24 NEW SECTION. **Section 10.** Retroactive applicability.
25 [This act] applies retroactively, within the meaning of

LC 2047/01

1 1-2-109, to oil and gas production during quarters beginning
2 after December 31, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for SB0468, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

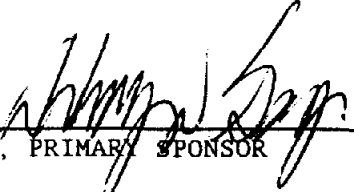
An act relating to the taxation of oil and natural gas for state severance tax and local government severance tax purposes; clarifying the definition of gross value for computation of the local government severance tax; conforming the administration of the local government severance tax to the state severance tax; and providing an immediate effective date and a retroactive applicability date.

FISCAL IMPACT:

The proposal should have no impact on expenditures or revenues.



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 5-22-91



DELWYN GAGE, PRIMARY SPONSOR DATE
Fiscal Note for SB0468, as introduced 3/22/91
SB 468-1

APPROVED BY COMMITTEE
ON TAXATION
AS AMENDED

SENATE BILL NO. 468

INTRODUCED BY GAGE

BY REQUEST OF THE SENATE TAXATION COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF OIL AND NATURAL GAS FOR STATE SEVERANCE TAX AND LOCAL GOVERNMENT SEVERANCE TAX PURPOSES; CLARIFYING THE DEFINITION OF GROSS VALUE FOR COMPUTATION OF THE LOCAL GOVERNMENT SEVERANCE TAX; CONFORMING THE ADMINISTRATION OF THE LOCAL GOVERNMENT SEVERANCE TAX TO THE STATE SEVERANCE TAX; AMENDING SECTIONS 15-23-603, 15-36-101, 15-36-105, 15-36-107, 15-36-108, 15-36-113, 15-36-114, AND 15-36-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax -- state severance tax -- local government severance tax -- assessment of nonworking interest owner -- exemption. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any

merchutable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), a 5% state severance tax on the ~~total~~ gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (6)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person other than ~~interim-production-and~~ new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

1 (b) a 2.65% state severance tax on the total gross
 2 taxable value of all natural gas produced by the person,
 3 plus the local government severance tax of 15.25% on the
 4 total gross taxable value, as defined in subsection
 5 (6)(a)(ii), of all natural gas produced by the person other
 6 than ~~interim--production-or~~ new production, from each lease
 7 or unit; but in determining the amount of the state
 8 severance tax and the local government severance tax, there
 9 must be excluded from consideration all gas produced and
 10 used by the person during the year in connection with his
 11 operations in prospecting for, developing, and producing the
 12 gas or petroleum or crude or mineral oil; and there must
 13 also be excluded from consideration all gas, including
 14 carbon dioxide gas, recycled or reinjected into the ground;

15 (c) a 2.5% state severance tax on the total gross
 16 taxable value of the incremental petroleum and other mineral
 17 or crude oil produced by the person, plus the local
 18 government severance tax of 5% on the total gross taxable
 19 value, as defined in subsection (6)(a)(ii), of the
 20 incremental petroleum and other mineral or crude oil
 21 produced by the person other than ~~interim-production-and~~ new
 22 production, from each lease or unit in a tertiary recovery
 23 project after July 1, 1985. For purposes of this section, a
 24 tertiary recovery project must meet the following
 25 requirements:

1 (i) the project must be approved as a tertiary recovery
 2 project by the board of oil and gas conservation department
 3 ~~of--revenue~~. The approval may be extended only after notice
 4 and hearing in accordance with Title 2, chapter 4.

5 (ii) the property to be affected by the project must be
 6 adequately delineated according to the specifications
 7 required by the board department; and

8 (iii) the project must involve the application of one or
 9 more tertiary recovery methods that can reasonably be
 10 expected to result in an increase, determined by the
 11 department board to be significant in light of all the facts
 12 and circumstances, in the amount of crude oil which may
 13 potentially be recovered. For purposes of this section,
 14 tertiary recovery methods include but are not limited to:

- 15 (A) miscible fluid displacement;
 16 (B) steam drive injection;
 17 (C) micellar/emulsion flooding;
 18 (D) in situ combustion;
 19 (E) polymer augmented water flooding;
 20 (F) cyclic steam injection;
 21 (G) alkaline or caustic flooding;
 22 (H) carbon dioxide water flooding;
 23 (I) immiscible carbon dioxide displacement; or
 24 (J) any other method approved by the department as a
 25 tertiary recovery method.

1 (d) a 5% local government severance tax on the ~~total~~
 2 gross taxable value, as defined in subsection (6)(a)(ii), of
 3 all petroleum and other mineral or crude oil produced by the
 4 person other than ~~interim-~~and new production produced by a
 5 stripper well, as defined in ~~15-36-121~~ subsection (7).

6 (2) For purposes of this section, the term "incremental
 7 petroleum and other mineral or crude oil" means the amount
 8 of oil, as determined by the ~~department-of-revenue~~ board, to
 9 be in excess of what would have been produced by primary and
 10 secondary methods. The determination arrived at by the
 11 department board must be made only after notice and hearing
 12 and shall specify through the life of a tertiary project,
 13 calendar year by calendar year, the combined amount of
 14 primary and secondary production that must be used to
 15 establish the incremental production from each lease or unit
 16 in a tertiary recovery project.

17 (3) (a) A local government severance tax is imposed on
 18 the gross value paid in cash or apportioned in kind to a
 19 nonworking interest owner by the operator or producer of
 20 extracted marketable petroleum, other mineral or crude oil,
 21 or natural gas subject to local government severance taxes
 22 imposed under this chapter. The local government severance
 23 tax on nonworking interest owners is computed at the
 24 following rates:

25 (i) 12.5% on the gross value paid in cash or

1 apportioned in kind to a nonworking interest owner by the
 2 operator or producer of extracted marketable petroleum and
 3 other mineral or crude oil;

4 (ii) 15.25% on the gross value paid in cash or
 5 apportioned in kind to a nonworking interest owner by the
 6 operator or producer of extracted or marketable natural gas.

7 (b) The amounts paid or apportioned in kind to
 8 nonworking interest owners are exempt from the local
 9 government severance taxes imposed under 15-36-121(2) and
 10 under subsections (1)(a) through (1)(d) of this section.

11 (4) Nothing in this part may be construed as requiring
 12 laborers or employees hired or employed by any person to
 13 drill any oil or natural gas well or to work in or about any
 14 oil or natural gas well or prospect or explore for or do any
 15 work for the purpose of developing any petroleum, other
 16 mineral or crude oil, or natural gas to pay the severance
 17 tax, nor may work done or the drilling of a well or wells
 18 for the purpose of prospecting or exploring for petroleum,
 19 other mineral or crude oil, or natural gas or for the
 20 purpose of developing them be considered to be the engaging
 21 in or carrying on of the business. If, in the doing of any
 22 work, in the drilling of any oil or natural gas well, or in
 23 prospecting, exploring, or development work, any
 24 merchantable or marketable petroleum, other mineral or crude
 25 oil, or natural gas in excess of the quantity required by

1 the person for carrying on the operation is produced
 2 sufficient in quantity to justify the marketing of the
 3 petroleum, other mineral or crude oil, or natural gas, the
 4 work, drilling, prospecting, exploring, or development work
 5 is considered to be the engaging in and carrying on of the
 6 business of producing petroleum, other mineral or crude oil,
 7 or natural gas within this state within the meaning of this
 8 section.

9 (5) Every person required to pay the state or local
 10 government severance tax under this section shall pay the
 11 tax in full for his own account and for the account of each
 12 of the other owner or owners of the gross proceeds in value
 13 or in kind of all the marketable petroleum or other mineral
 14 or crude oil or natural gas extracted and produced,
 15 including owner or owners of working interest, royalty
 16 interest, overriding royalty interest, carried working
 17 interest, net proceeds interest, production payments, and
 18 all other interest or interests owned or carved out of the
 19 total gross proceeds in value or in kind of the extracted
 20 marketable petroleum or other mineral or crude oil or
 21 natural gas, except that any of the interests that are owned
 22 by the federal, state, county, or municipal governments are
 23 exempt from taxation under this chapter. Unless otherwise
 24 provided in a contract or lease, the pro rata share of any
 25 royalty owner or owners will be deducted from any

1 settlements under the lease or leases or division of
 2 proceeds orders or other contracts.

3 (6) For purposes of this section, the following
 4 definitions apply:

5 (a) (i) "Gross taxable value", for the purpose of
 6 computing the state severance tax, means the gross value of
 7 the product as determined in 15-36-103.

8 (ii) "Gross taxable value", for the purpose of computing
 9 the local government severance tax, means the gross value of
 10 the product as determined in 15-36-103 less the gross value
 11 paid in cash or apportioned in kind to a nonworking interest
 12 owner by the operator or producer of extracted marketable
 13 petroleum, other mineral or crude oil, or natural gas.

14 (b) "Nonworking interest owner" means any interest
 15 owner who does not share in the development and operation
 16 costs of the lease or unit.

17 (7) For the purposes of this section, "stripper well"
 18 means a well that produces less than 10 barrels a day,
 19 determined by dividing the amount of production from a lease
 20 or unitized area for the year prior to the current calendar
 21 year by the number of producing wells in the lease or
 22 unitized area and by dividing the resulting quotient by
 23 365."

24 **Section 2.** Section 15-36-105, MCA, is amended to read:
 25 "15-36-105. Statement to accompany payment -- records

1 -- collection of tax -- refunds. (1) Each person shall,
 2 within 60 days after the end of each following quarter,
 3 complete on forms prescribed by the department of revenue a
 4 statement showing the total number of barrels of
 5 merchantable or marketable petroleum and other mineral or
 6 crude oil or cubic feet of natural gas produced or extracted
 7 by the person in the state during each month of the quarter
 8 and during the whole quarter, the average value of the
 9 production during each month, and the total value of the
 10 production for the whole quarter, together with the total
 11 amount due to the state as severance taxes and local
 12 government severance taxes for the quarter, and shall within
 13 such 60 days deliver the statement and, except as provided
 14 in 15-36-102(2) and 15-36-121, pay to the department the
 15 amount of the taxes shown by the statement to be due to the
 16 state for the quarter for which the statement is made. The
 17 statement must be signed by the individual or the president,
 18 vice-president, treasurer, assistant treasurer, or managing
 19 agent in this state of the association, corporation,
 20 joint-stock company, or syndicate making the statement. Any
 21 person engaged in carrying on business at more than one
 22 place in this state or owning, leasing, controlling, or
 23 operating more than one oil or gas well in this state may
 24 include all operations in one statement. The department
 25 shall receive and file all statements and collect and

1 receive from the person making and filing a statement the
 2 amount of tax payable by the person, if any, as appears in
 3 the statement.

4 (2) (a) It is the duty of the department to examine
 5 each of the statements and compute the taxes thereon imposed
 6 under this chapter, and the amount computed by the
 7 department is the tax imposed, assessed against, and payable
 8 by the taxpayer making the statement for the quarter for
 9 which the statement is filed.

10 (b) If the state severance tax found to be due is
 11 greater than the amount paid, the excess must be paid by the
 12 taxpayer to the department within 10 days after written
 13 notice of the amount of the deficiency is mailed by the
 14 department to the taxpayer. If the state severance tax
 15 imposed is less than the amount paid, the difference must be
 16 applied as a credit against tax liability for subsequent
 17 quarters or refunded if there is no subsequent tax
 18 liability.

19 (c) If the local government severance tax found to be
 20 due is greater than the amount paid, the excess is due at
 21 the time for payment provided for in 15-36-102(2). If the
 22 local government severance tax imposed is less than the
 23 amount paid, the difference must be applied as a credit
 24 against tax liability for subsequent quarters or refunded if
 25 there is no subsequent tax liability.

1 (3) If the state severance tax or the local government
 2 severance tax is not paid on or before the due date, there
 3 must be assessed a penalty of 10% of the amount of the tax
 4 not paid, unless it is shown that the failure was due to
 5 reasonable cause and not due to neglect. If any the state
 6 severance tax under this chapter or the local government
 7 severance tax is not paid when due, interest must be added
 8 to the tax at the rate of 1% a month or fraction thereof,
 9 computed on the total amount of the state severance tax or
 10 local government severance tax and penalty from the due date
 11 until paid."

12 **Section 3.** Section 15-36-107, MCA, is amended to read:

13 "15-36-107. Procedure to compute tax in absence of
 14 statement -- penalty and interest. If any-such a person
 15 shall-fail fails, neglects, or refuse to file any statement
 16 required by 15-36-105 within the time therein required, the
 17 department of revenue shall, immediately after such time has
 18 expired, proceed-to-inform-itself-as-best-it-may-regarding
 19 ascertain the number of barrels of petroleum and other
 20 mineral or crude oil or cubic feet of gas extracted and
 21 produced by such the person in this state during such the
 22 quarter and during each month thereof of the quarter and the
 23 average value thereof of the barrels produced during each
 24 such month or the average value of cubic feet of gas
 25 extracted and produced during each month and shall

1 determine--and fix the amount of the state severance taxes
 2 due to the state or the amount of local government severance
 3 taxes due from such the person for such the quarter and
 4 shall--add--to--the--amount--of--such-severance-taxes plus a
 5 penalty of 10% thereof of the tax due plus interest at the
 6 rate of 1% per month or fraction thereof of a month computed
 7 on the total amount of state or local government severance
 8 taxes and penalty. Interest shall must be computed from the
 9 date the severance taxes were due to the date of payment.
 10 The department shall mail to the person required to file a
 11 quarterly statement and pay any severance tax taxes, a
 12 letter setting forth the amount of state severance tax or
 13 local government severance tax, penalty, and interest due,
 14 and, the The letter shall-further must contain a statement
 15 that if payment is not made, a warrant for distraint may be
 16 filed. The department may waive the 10% penalty herein
 17 provided-may-be-waived-by-the-department if reasonable cause
 18 for the failure and neglect to file the statement required
 19 by 15-36-105 is provided to the department."

20 **Section 4.** Section 15-36-108, MCA, is amended to read:

21 "15-36-108. Warrant for distraint. If all or part of
 22 the state severance tax or the local government severance
 23 tax imposed by this part is not paid when due, the
 24 department of revenue may issue a warrant for distraint as
 25 provided in Title 15, chapter 1, part 7. The resulting lien

1 has precedence over any other claim, lien, or demand
2 thereafter filed and recorded."

3 **Section 5.** Section 15-36-113, MCA, is amended to read:

4 "15-36-113. **Deficiency assessment -- hearing --**
5 **interest.** (1) When the department of revenue determines that
6 the amount of the state severance tax or local government
7 severance tax due is greater than the amount disclosed by a
8 return, it shall mail to the taxpayer a notice of the
9 additional state severance tax or local government severance
10 tax proposed to be assessed. Within 30 days after mailing of
11 the notice, the taxpayer may file with the department a
12 written protest against the proposed additional state
13 severance tax or local government severance tax, setting
14 forth the grounds upon which the protest is based, and may
15 request in his protest an oral hearing or an opportunity to
16 present additional evidence relating to his tax liability.
17 If no protest is filed, the amount of the additional state
18 severance tax or local government severance tax proposed to
19 be assessed becomes final upon the expiration of the 30-day
20 period. If a protest is filed, the department must
21 reconsider the proposed assessment and, if the taxpayer has
22 so requested, must grant the taxpayer an oral hearing. After
23 consideration of the protest and the evidence presented at
24 any oral hearing, the department's action upon the protest
25 is final when it mails notice of its action to the taxpayer.

1 (2) When a deficiency is determined and the state
2 severance tax or local government severance tax becomes
3 final, the department shall mail a notice and demand for
4 payment to the taxpayer. The tax is due and payable at the
5 expiration of 10 days from the date of such notice and
6 demand. Interest on any deficiency assessment shall bear
7 interest until paid at the rate of 1% a month or fraction
8 thereof, computed from the original due date of the return."

9 **Section 6.** Section 15-36-114, MCA, is amended to read:

10 "15-36-114. **Credit for overpayment -- interest on**
11 **overpayment.** (1) If the department of revenue determines
12 that the amount of state severance tax or local government
13 severance tax, penalty, or interest due for any year taxable
14 period is less than the amount paid, the amount of the
15 overpayment shall be credited against any state severance
16 tax or local government severance tax, penalty, or interest
17 then due from the taxpayer and the balance refunded to the
18 taxpayer or its successor through reorganization, merger, or
19 consolidation or to its shareholders upon dissolution.

20 (2) Except as provided in subsection (3), interest
21 shall be allowed on overpayments at the same rate as is
22 charged on deficiency assessments provided in 15-36-113 due
23 from the due date of the return or from the date of
24 overpayment (whichever date is later) to the date the
25 department approves refunding or crediting of the

1 overpayment.

2 (3) (a) Interest shall not accrue during any period the
3 processing of a claim for refund is delayed more than 30
4 days by reason of failure of the taxpayer to furnish
5 information requested by the department for the purpose of
6 verifying the amount of the overpayment.

7 (b) No interest shall be allowed:

8 (i) if the overpayment is refunded within 6 months from
9 the date the return is due or from the date the return is
10 filed, whichever is later; or

11 (ii) if the amount of interest is less than \$1.

12 (c) A payment not made incident to a bona fide and
13 orderly discharge of an actual tax liability or one
14 reasonably assumed to be imposed by this law shall not be
15 considered an overpayment with respect to which interest is
16 allowable."

17 **Section 7.** Section 15-36-121, MCA, is amended to read:

18 "15-36-121. **Exemption from state severance tax --**
19 **imposition of local government severance tax.** (1) It is the
20 public policy of this state to promote a sufficient supply
21 of natural gas to provide for the residents of this state,
22 to lessen Montana's dependence on imported natural gas, and
23 to encourage the exploration for and development and
24 production of natural gas, petroleum, and other mineral and
25 crude oil within the state.

1 (2) All the natural gas produced from any well that has
2 produced 60,000 cubic feet or less of natural gas a day for
3 the calendar year prior to the current year shall be taxed
4 as provided in this section. Production must be determined
5 by dividing the amount of production from a lease or
6 unitized area for the year prior to the current calendar
7 year by the number of producing wells in the lease or
8 unitized area and by dividing the resulting quotient by 365.
9 The first 30,000 cubic feet of average daily production per
10 well is exempt from all of the state severance tax imposed
11 by 15-36-101. The first 30,000 cubic feet of average daily
12 production per well is subject to a local government
13 severance tax of 10% on the gross taxable value, as defined
14 in 15-36-101(6)(a)(ii). Everything over 30,000 cubic feet of
15 gas produced is taxed at 1.59% on the gross taxable value
16 for the state severance tax plus a local government
17 severance tax of 10% on the gross taxable value, as defined
18 in 15-36-101(6)(a)(ii).

19 ~~{3}--For the purposes of this section,--"stripper--well"~~
20 ~~means--a--well--that--produces--less--than--10--barrels--per--day,~~
21 ~~determined--by--dividing--the--amount--of--production--from--a--lease~~
22 ~~or--unitized--area--for--the--year--prior--to--the--current--calendar~~
23 ~~year--by--the--number--of--producing--wells--in--the--lease--or~~
24 ~~unitized--area,--and--by--dividing--the--resulting--quotient--by~~
25 ~~365.~~

1 ~~(4)~~(3) Notwithstanding the provisions of subsection
2 (2), all reporting requirements under the state severance
3 tax remain in effect."

4 **Section 8.** Section 15-23-603, MCA, is amended to read:

5 "15-23-603. Net proceeds -- how computed. (1) As
6 provided in subsection (2), the department of revenue shall
7 calculate and compute from the returns the gross sales
8 proceeds of the product yielded from the well for the year
9 covered by the statement and shall calculate the net
10 proceeds of the well yielded to the producer, which net
11 proceeds are determined by subtracting from the gross sales
12 proceeds of the well all royalty paid in cash by the
13 operator or producer and the gross value of all royalty
14 apportioned in kind by the operator or producer determined
15 by using as the value of a barrel of oil or a cubic foot of
16 gas the average selling price for the calendar year of a
17 barrel of oil or a cubic foot of gas from the well out of
18 which the royalty was paid.

19 (2) For ~~interim--production--or~~ new production, net
20 proceeds are the equivalent of the gross sales proceeds,
21 without deduction for excise taxes, of the product yielded
22 from the well for the quarter covered by the statement,
23 except that in computing the total number of barrels of
24 petroleum and other mineral or crude oil or cubic feet of
25 natural gas produced, there must be deducted so much of the

1 product as is used in the operation of the well from which
2 the petroleum or other mineral or crude oil or natural gas
3 is produced for pumping the petroleum or other mineral or
4 crude oil or natural gas from the well to a tank or
5 pipeline.

6 (3) In the statement of sales proceeds required under
7 15-23-602 for lease or unitized areas from which ~~interim-or~~
8 new production and other production have been sold, the
9 number of barrels of ~~interim-and~~ new production of oil or
10 cubic feet of ~~interim-or~~ new production of gas must be
11 segregated from and stated separately from the number of
12 barrels of other production of oil or cubic feet of other
13 production of gas.

14 ~~(4)--in-calculating-the-deduction-for-money-expended-for~~
15 ~~necessary--chemical--supplies--needed-and-used-in-a-tertiary~~
16 ~~recovery-project-approved-by-the-department-of-revenue board~~
17 ~~of-oil-and-gas-conservation, as provided in 15-36-101, the~~
18 ~~department---shall---require--that--the--necessary--chemical~~
19 ~~supplies, which--include--but--are--not--limited--to--carbon~~
20 ~~dioxide---supplies,--be--amortized--over--a--10-year--period~~
21 ~~beginning-with-the-year-in-which-the-money-was-expended."~~

22 **NEW SECTION. Section 9.** Effective date. [This act] is
23 effective on passage and approval.

24 **NEW SECTION. Section 10.** Retroactive applicability.
25 [This act] applies retroactively, within the meaning of

SB 0468/02

1 1-2-109, to oil and gas production during quarters beginning
2 after December 31, 1990.

-End-

1 SENATE BILL NO. 468

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE SENATE TAXATION COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
6 TAXATION OF OIL AND NATURAL GAS FOR STATE SEVERANCE TAX AND
7 LOCAL GOVERNMENT SEVERANCE TAX PURPOSES; CLARIFYING THE
8 DEFINITION OF GROSS VALUE FOR COMPUTATION OF THE LOCAL
9 GOVERNMENT SEVERANCE TAX; CONFORMING THE ADMINISTRATION OF
10 THE LOCAL GOVERNMENT SEVERANCE TAX TO THE STATE SEVERANCE
11 TAX; AMENDING SECTIONS 15-23-603, 15-36-101, 15-36-105,
12 15-36-107, 15-36-108, 15-36-113, 15-36-114, AND 15-36-121,
13 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
14 RETROACTIVE APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 15-36-101, MCA, is amended to read:

18 "15-36-101. Definitions and rate of tax -- state
19 severance tax -- local government severance tax --
20 assessment of nonworking interest owner -- exemption. (1)
21 Every person engaging in or carrying on the business of
22 producing petroleum, other mineral or crude oil, or natural
23 gas within this state or engaging in or carrying on the
24 business of owning, controlling, managing, leasing, or
25 operating within this state any well or wells from which any

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.



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 22 producing petroleum, other mineral or crude oil, or natural
 23 gas within this state or engaging in or carrying on the
 24 business of owning, controlling, managing, leasing, or
 25 operating within this state any well or wells from which any

1 merchantable or marketable petroleum, other mineral or crude
 2 oil, or natural gas is extracted or produced shall, except
 3 as provided in 15-36-121, each year when engaged in or
 4 carrying on the business in this state pay to the department
 5 of revenue a state severance tax for the exclusive use and
 6 benefit of the state of Montana plus a local government
 7 severance tax in lieu of a tax on net proceeds for the
 8 exclusive use and benefit of local government. Except as
 9 provided in subsection (3), the state severance tax and the
 10 local government severance tax are as follows:

11 (a) except as provided in subsections (1)(b), (1)(c),
 12 and (1)(d), a 5% state severance tax on the ~~total~~ gross
 13 taxable value of all the petroleum and other mineral or
 14 crude oil produced by the person, plus the local government
 15 severance tax of 8.4% on the gross taxable value, as defined
 16 in subsection (6)(a)(ii), of all the petroleum and other
 17 mineral or crude oil produced by the person other than
 18 ~~interim-production-and~~ new production, from each lease or
 19 unit; but in determining the amount of the state severance
 20 tax and local government severance tax, there must be
 21 excluded from consideration all petroleum or other crude or
 22 mineral oil produced and used by the person during the year
 23 in connection with his operations in prospecting for,
 24 developing, and producing the petroleum or crude or mineral
 25 oil;

1 (b) a 2.65% state severance tax on the ~~total~~ gross
 2 taxable value of all natural gas produced by the person,
 3 plus the local government severance tax of 15.25% on the
 4 ~~total~~ gross taxable value, as defined in subsection
 5 (6)(a)(ii), of all natural gas produced by the person other
 6 than ~~interim-production-or~~ new production, from each lease
 7 or unit; but in determining the amount of the state
 8 severance tax and the local government severance tax, there
 9 must be excluded from consideration all gas produced and
 10 used by the person during the year in connection with his
 11 operations in prospecting for, developing, and producing the
 12 gas or petroleum or crude or mineral oil; and there must
 13 also be excluded from consideration all gas, including
 14 carbon dioxide gas, recycled or reinjected into the ground;

15 (c) a 2.5% state severance tax on the ~~total~~ gross
 16 taxable value of the incremental petroleum and other mineral
 17 or crude oil produced by the person, plus the local
 18 government severance tax of 5% on the ~~total~~ gross taxable
 19 value, as defined in subsection (6)(a)(ii), of the
 20 incremental petroleum and other mineral or crude oil
 21 produced by the person other than ~~interim-production-and~~ new
 22 production, from each lease or unit in a tertiary recovery
 23 project after July 1, 1985. For purposes of this section, a
 24 tertiary recovery project must meet the following
 25 requirements:

1 (i) the project must be approved as a tertiary recovery
 2 project by the board of oil and gas conservation department
 3 of--revenue. The approval may be extended only after notice
 4 and hearing in accordance with Title 2, chapter 4.

5 (ii) the property to be affected by the project must be
 6 adequately delineated according to the specifications
 7 required by the board department; and

8 (iii) the project must involve the application of one or
 9 more tertiary recovery methods that can reasonably be
 10 expected to result in an increase, determined by the
 11 department board to be significant in light of all the facts
 12 and circumstances, in the amount of crude oil which may
 13 potentially be recovered. For purposes of this section,
 14 tertiary recovery methods include but are not limited to:

- 15 (A) miscible fluid displacement;
- 16 (B) steam drive injection;
- 17 (C) micellar/emulsion flooding;
- 18 (D) in situ combustion;
- 19 (E) polymer augmented water flooding;
- 20 (F) cyclic steam injection;
- 21 (G) alkaline or caustic flooding;
- 22 (H) carbon dioxide water flooding;
- 23 (I) immiscible carbon dioxide displacement; or
- 24 (J) any other method approved by the department as a
 25 tertiary recovery method.

1 (d) a 5% local government severance tax on the total
 2 gross taxable value, as defined in subsection (6)(a)(ii), of
 3 all petroleum and other mineral or crude oil produced by the
 4 person other than ~~interim-and~~ new production produced by a
 5 stripper well, as defined in ~~15-36-121~~ subsection (7).

6 (2) For purposes of this section, the term "incremental
 7 petroleum and other mineral or crude oil" means the amount
 8 of oil, as determined by the ~~department-of-revenue~~ board, to
 9 be in excess of what would have been produced by primary and
 10 secondary methods. The determination arrived at by the
 11 department board must be made only after notice and hearing
 12 and shall specify through the life of a tertiary project,
 13 calendar year by calendar year, the combined amount of
 14 primary and secondary production that must be used to
 15 establish the incremental production from each lease or unit
 16 in a tertiary recovery project.

17 (3) (a) A local government severance tax is imposed on
 18 the gross value paid in cash or apportioned in kind to a
 19 nonworking interest owner by the operator or producer of
 20 extracted marketable petroleum, other mineral or crude oil,
 21 or natural gas subject to local government severance taxes
 22 imposed under this chapter. The local government severance
 23 tax on nonworking interest owners is computed at the
 24 following rates:

25 (i) 12.5% on the gross value paid in cash or

1 apportioned in kind to a nonworking interest owner by the
 2 operator or producer of extracted marketable petroleum and
 3 other mineral or crude oil;

4 (ii) 15.25% on the gross value paid in cash or
 5 apportioned in kind to a nonworking interest owner by the
 6 operator or producer of extracted or marketable natural gas.

7 (b) The amounts paid or apportioned in kind to
 8 nonworking interest owners are exempt from the local
 9 government severance taxes imposed under 15-36-121(2) and
 10 under subsections (1)(a) through (1)(d) of this section.

11 (4) Nothing in this part may be construed as requiring
 12 laborers or employees hired or employed by any person to
 13 drill any oil or natural gas well or to work in or about any
 14 oil or natural gas well or prospect or explore for or do any
 15 work for the purpose of developing any petroleum, other
 16 mineral or crude oil, or natural gas to pay the severance
 17 tax, nor may work done or the drilling of a well or wells
 18 for the purpose of prospecting or exploring for petroleum,
 19 other mineral or crude oil, or natural gas or for the
 20 purpose of developing them be considered to be the engaging
 21 in or carrying on of the business. If, in the doing of any
 22 work, in the drilling of any oil or natural gas well, or in
 23 prospecting, exploring, or development work, any
 24 merchantable or marketable petroleum, other mineral or crude
 25 oil, or natural gas in excess of the quantity required by

1 the person for carrying on the operation is produced
 2 sufficient in quantity to justify the marketing of the
 3 petroleum, other mineral or crude oil, or natural gas, the
 4 work, drilling, prospecting, exploring, or development work
 5 is considered to be the engaging in and carrying on of the
 6 business of producing petroleum, other mineral or crude oil,
 7 or natural gas within this state within the meaning of this
 8 section.

9 (5) Every person required to pay the state or local
 10 government severance tax under this section shall pay the
 11 tax in full for his own account and for the account of each
 12 of the other owner or owners of the gross proceeds in value
 13 or in kind of all the marketable petroleum or other mineral
 14 or crude oil or natural gas extracted and produced,
 15 including owner or owners of working interest, royalty
 16 interest, overriding royalty interest, carried working
 17 interest, net proceeds interest, production payments, and
 18 all other interest or interests owned or carved out of the
 19 total gross proceeds in value or in kind of the extracted
 20 marketable petroleum or other mineral or crude oil or
 21 natural gas, except that any of the interests that are owned
 22 by the federal, state, county, or municipal governments are
 23 exempt from taxation under this chapter. Unless otherwise
 24 provided in a contract or lease, the pro rata share of any
 25 royalty owner or owners will be deducted from any

1 settlements under the lease or leases or division of
 2 proceeds orders or other contracts.

3 (6) For purposes of this section, the following
 4 definitions apply:

5 (a) (i) "Gross taxable value", for the purpose of
 6 computing the state severance tax, means the gross value of
 7 the product as determined in 15-36-103.

8 (ii) "Gross taxable value", for the purpose of computing
 9 the local government severance tax, means the gross value of
 10 the product as determined in 15-36-103 less the gross value
 11 paid in cash or apportioned in kind to a nonworking interest
 12 owner by the operator or producer of extracted marketable
 13 petroleum, other mineral or crude oil, or natural gas.

14 (b) "Nonworking interest owner" means any interest
 15 owner who does not share in the development and operation
 16 costs of the lease or unit.

17 (7) For the purposes of this section, "stripper well"
 18 means a well that produces less than 10 barrels a day,
 19 determined by dividing the amount of production from a lease
 20 or unitized area for the year prior to the current calendar
 21 year by the number of producing wells in the lease or
 22 unitized area and by dividing the resulting quotient by
 23 365."

24 **Section 2.** Section 15-36-105, MCA, is amended to read:
 25 "15-36-105. Statement to accompany payment -- records

1 -- collection of tax -- refunds. (1) Each person shall,
 2 within 60 days after the end of each following quarter,
 3 complete on forms prescribed by the department of revenue a
 4 statement showing the total number of barrels of
 5 merchantable or marketable petroleum and other mineral or
 6 crude oil or cubic feet of natural gas produced or extracted
 7 by the person in the state during each month of the quarter
 8 and during the whole quarter, the average value of the
 9 production during each month, and the total value of the
 10 production for the whole quarter, together with the total
 11 amount due to the state as severance taxes and local
 12 government severance taxes for the quarter, and shall within
 13 such 60 days deliver the statement and, except as provided
 14 in 15-36-102(2) and 15-36-121, pay to the department the
 15 amount of the taxes shown by the statement to be due to the
 16 state for the quarter for which the statement is made. The
 17 statement must be signed by the individual or the president,
 18 vice-president, treasurer, assistant treasurer, or managing
 19 agent in this state of the association, corporation,
 20 joint-stock company, or syndicate making the statement. Any
 21 person engaged in carrying on business at more than one
 22 place in this state or owning, leasing, controlling, or
 23 operating more than one oil or gas well in this state may
 24 include all operations in one statement. The department
 25 shall receive and file all statements and collect and

1 receive from the person making and filing a statement the
 2 amount of tax payable by the person, if any, as appears in
 3 the statement.

4 (2) (a) It is the duty of the department to examine
 5 each of the statements and compute the taxes thereon imposed
 6 under this chapter, and the amount computed by the
 7 department is the tax imposed, assessed against, and payable
 8 by the taxpayer making the statement for the quarter for
 9 which the statement is filed.

10 (b) If the state severance tax found to be due is
 11 greater than the amount paid, the excess must be paid by the
 12 taxpayer to the department within 10 days after written
 13 notice of the amount of the deficiency is mailed by the
 14 department to the taxpayer. If the state severance tax
 15 imposed is less than the amount paid, the difference must be
 16 applied as a credit against tax liability for subsequent
 17 quarters or refunded if there is no subsequent tax
 18 liability.

19 (c) If the local government severance tax found to be
 20 due is greater than the amount paid, the excess is due at
 21 the time for payment provided for in 15-36-102(2). If the
 22 local government severance tax imposed is less than the
 23 amount paid, the difference must be applied as a credit
 24 against tax liability for subsequent quarters or refunded if
 25 there is no subsequent tax liability.

1 (3) If the state severance tax or the local government
 2 severance tax is not paid on or before the due date, there
 3 must be assessed a penalty of 10% of the amount of the tax
 4 not paid, unless it is shown that the failure was due to
 5 reasonable cause and not due to neglect. If any the state
 6 severance tax under this chapter or the local government
 7 severance tax is not paid when due, interest must be added
 8 to the tax at the rate of 1% a month or fraction thereof,
 9 computed on the total amount of the state severance tax or
 10 local government severance tax and penalty from the due date
 11 until paid."

12 **Section 3.** Section 15-36-107, MCA, is amended to read:

13 "15-36-107. Procedure to compute tax in absence of
 14 statement -- penalty and interest. If any such a person
 15 shall fail fails, neglect, or refuse to file any statement
 16 required by 15-36-105 within the time therein required, the
 17 department of revenue shall, immediately after such time has
 18 expired, proceed to inform itself as best it may regarding
 19 ascertain the number of barrels of petroleum and other
 20 mineral or crude oil or cubic feet of gas extracted and
 21 produced by such the person in this state during such the
 22 quarter and during each month thereof of the quarter and the
 23 average value thereof of the barrels produced during each
 24 such month or the average value of cubic feet of gas
 25 extracted and produced during each month and shall

1 ~~determine--and~~ fix the amount of the state severance taxes
 2 due to the state or the amount of local government severance
 3 taxes due from such the person for such the quarter and
 4 ~~shall--add--to--the--amount--of--such--severance--taxes~~ plus a
 5 penalty of 10% thereof of the tax due plus interest at the
 6 rate of 1% per month or fraction thereof of a month computed
 7 on the total amount of state or local government severance
 8 taxes and penalty. Interest ~~shall~~ must be computed from the
 9 date the severance taxes were due to the date of payment.
 10 The department shall mail to the person required to file a
 11 quarterly statement and pay any severance tax taxes, a
 12 letter setting forth the amount of state severance tax or
 13 local government severance tax, penalty, and interest due,
 14 and, the The letter ~~shall~~ must contain a statement
 15 that if payment is not made, a warrant for distraint may be
 16 filed. The department may waive the 10% penalty herein
 17 ~~provided--may--be--waived--by--the--department~~ if reasonable cause
 18 for the failure ~~and neglect~~ to file the statement required
 19 by 15-36-105 is provided to the department."

20 **Section 4.** Section 15-36-108, MCA, is amended to read:

21 "15-36-108. Warrant for distraint. If all or part of
 22 the state severance tax or the local government severance
 23 tax imposed by this part is not paid when due, the
 24 department of revenue may issue a warrant for distraint as
 25 provided in Title 15, chapter 1, part 7. The resulting lien

1 has precedence over any other claim, lien, or demand
2 thereafter filed and recorded."

3 **Section 5.** Section 15-36-113, MCA, is amended to read:

4 "15-36-113. **Deficiency assessment -- hearing --**
5 **interest.** (1) When the department of revenue determines that
6 the amount of the state severance tax or local government
7 severance tax due is greater than the amount disclosed by a
8 return, it shall mail to the taxpayer a notice of the
9 additional state severance tax or local government severance
10 tax proposed to be assessed. Within 30 days after mailing of
11 the notice, the taxpayer may file with the department a
12 written protest against the proposed additional state
13 severance tax or local government severance tax, setting
14 forth the grounds upon which the protest is based, and may
15 request in his protest an oral hearing or an opportunity to
16 present additional evidence relating to his tax liability.
17 If no protest is filed, the amount of the additional state
18 severance tax or local government severance tax proposed to
19 be assessed becomes final upon the expiration of the 30-day
20 period. If a protest is filed, the department must
21 reconsider the proposed assessment and, if the taxpayer has
22 so requested, must grant the taxpayer an oral hearing. After
23 consideration of the protest and the evidence presented at
24 any oral hearing, the department's action upon the protest
25 is final when it mails notice of its action to the taxpayer.

1 (2) When a deficiency is determined and the state
2 severance tax or local government severance tax becomes
3 final, the department shall mail a notice and demand for
4 payment to the taxpayer. The tax is due and payable at the
5 expiration of 10 days from the date of such notice and
6 demand. Interest on any deficiency assessment shall bear
7 interest until paid at the rate of 1% a month or fraction
8 thereof, computed from the original due date of the return."

9 **Section 6.** Section 15-36-114, MCA, is amended to read:

10 "15-36-114. **Credit for overpayment -- interest on**
11 **overpayment.** (1) If the department of revenue determines
12 that the amount of state severance tax or local government
13 severance tax, penalty, or interest due for any year taxable
14 period is less than the amount paid, the amount of the
15 overpayment shall be credited against any state severance
16 tax or local government severance tax, penalty, or interest
17 then due from the taxpayer and the balance refunded to the
18 taxpayer or its successor through reorganization, merger, or
19 consolidation or to its shareholders upon dissolution.

20 (2) Except as provided in subsection (3), interest
21 shall be allowed on overpayments at the same rate as is
22 charged on deficiency assessments provided in 15-36-113 due
23 from the due date of the return or from the date of
24 overpayment (whichever date is later) to the date the
25 department approves refunding or crediting of the

1 overpayment.

2 (3) (a) Interest shall not accrue during any period the
3 processing of a claim for refund is delayed more than 30
4 days by reason of failure of the taxpayer to furnish
5 information requested by the department for the purpose of
6 verifying the amount of the overpayment.

7 (b) No interest shall be allowed:

8 (i) if the overpayment is refunded within 6 months from
9 the date the return is due or from the date the return is
10 filed, whichever is later; or

11 (ii) if the amount of interest is less than \$1.

12 (c) A payment not made incident to a bona fide and
13 orderly discharge of an actual tax liability or one
14 reasonably assumed to be imposed by this law shall not be
15 considered an overpayment with respect to which interest is
16 allowable."

17 **Section 7.** Section 15-36-121, MCA, is amended to read:

18 "15-36-121. **Exemption from state severance tax --**
19 **imposition of local government severance tax.** (1) It is the
20 public policy of this state to promote a sufficient supply
21 of natural gas to provide for the residents of this state,
22 to lessen Montana's dependence on imported natural gas, and
23 to encourage the exploration for and development and
24 production of natural gas, petroleum, and other mineral and
25 crude oil within the state.

1 (2) All the natural gas produced from any well that has
2 produced 60,000 cubic feet or less of natural gas a day for
3 the calendar year prior to the current year shall be taxed
4 as provided in this section. Production must be determined
5 by dividing the amount of production from a lease or
6 unitized area for the year prior to the current calendar
7 year by the number of producing wells in the lease or
8 unitized area and by dividing the resulting quotient by 365.
9 The first 30,000 cubic feet of average daily production per
10 well is exempt from all of the state severance tax imposed
11 by 15-36-101. The first 30,000 cubic feet of average daily
12 production per well is subject to a local government
13 severance tax of 10% on the gross taxable value, as defined
14 in 15-36-101(6)(a)(ii). Everything over 30,000 cubic feet of
15 gas produced is taxed at 1.59% on the gross taxable value
16 for the state severance tax plus a local government
17 severance tax of 10% on the gross taxable value, as defined
18 in 15-36-101(6)(a)(ii).

19 (3) ~~For the purposes of this section, "stripper well"~~
20 ~~means a well that produces less than 10 barrels per day,~~
21 ~~determined by dividing the amount of production from a lease~~
22 ~~or unitized area for the year prior to the current calendar~~
23 ~~year by the number of producing wells in the lease or~~
24 ~~unitized area, and by dividing the resulting quotient by~~
25 ~~365.~~

1 ~~††~~(3) Notwithstanding the provisions of subsection
2 (2), all reporting requirements under the state severance
3 tax remain in effect."

4 **Section 8.** Section 15-23-603, MCA, is amended to read:

5 "15-23-603. Net proceeds -- how computed. (1) As
6 provided in subsection (2), the department of revenue shall
7 calculate and compute from the returns the gross sales
8 proceeds of the product yielded from the well for the year
9 covered by the statement and shall calculate the net
10 proceeds of the well yielded to the producer, which net
11 proceeds are determined by subtracting from the gross sales
12 proceeds of the well all royalty paid in cash by the
13 operator or producer and the gross value of all royalty
14 apportioned in kind by the operator or producer determined
15 by using as the value of a barrel of oil or a cubic foot of
16 gas the average selling price for the calendar year of a
17 barrel of oil or a cubic foot of gas from the well out of
18 which the royalty was paid.

19 (2) For ~~interim--production--or~~ new production, net
20 proceeds are the equivalent of the gross sales proceeds,
21 without deduction for excise taxes, of the product yielded
22 from the well for the quarter covered by the statement,
23 except that in computing the total number of barrels of
24 petroleum and other mineral or crude oil or cubic feet of
25 natural gas produced, there must be deducted so much of the

1 product as is used in the operation of the well from which
2 the petroleum or other mineral or crude oil or natural gas
3 is produced for pumping the petroleum or other mineral or
4 crude oil or natural gas from the well to a tank or
5 pipeline.

6 (3) In the statement of sales proceeds required under
7 15-23-602 for lease or unitized areas from which ~~interim-or~~
8 new production and other production have been sold, the
9 number of barrels of ~~interim-and~~ new production of oil or
10 cubic feet of ~~interim-or~~ new production of gas must be
11 segregated from and stated separately from the number of
12 barrels of other production of oil or cubic feet of other
13 production of gas.

14 ~~††--in-calculating-the-deduction-for-money-expended-for~~
15 ~~necessary--chemical--supplies--needed-and-used-in-a-tertiary~~
16 ~~recovery-project-approved-by-the-department-of-revenue board~~
17 ~~of-oil-and-gas-conservation,--as-provided-in--15-36-101,--the~~
18 ~~department---shall---require---that---the---necessary---chemical~~
19 ~~supplies,--which--include--but--are--not--limited--to--carbon~~
20 ~~dioxide---supplies,--be--amortized--over--a--10-year--period~~
21 ~~beginning-with-the-year-in-which-the-money-was-expended--"~~

22 NEW SECTION. **Section 9.** Effective date. [This act] is
23 effective on passage and approval.

24 NEW SECTION. **Section 10.** Retroactive applicability.
25 [This act] applies retroactively, within the meaning of

SB 0468/02

- 1 1-2-109, to oil and gas production during quarters beginning
- 2 after December 31, 1990.

-End-