

1 *HOUSE* BILL NO. *7*
2 INTRODUCED BY *Rufe Deluge*
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5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING UNIFORM
6 TAX RATES FOR THE PURPOSES OF NET PROCEEDS AND LOCAL
7 GOVERNMENT SEVERANCE TAXATION OF OIL AND OF NATURAL GAS
8 BASED ON THE 1989 PRODUCTION YEAR, WHICH RATES ARE TO BE
9 REVENUE NEUTRAL TO FISCAL YEAR 1990 NET PROCEEDS TAX
10 COLLECTIONS; ESTABLISHING A BASE YEAR FOR THE DISTRIBUTION
11 OF LOCAL GOVERNMENT SEVERANCE TAXES; DISTRIBUTING LOCAL
12 GOVERNMENT SEVERANCE TAXES TO ELIGIBLE TAXING UNITS;
13 PROVIDING FOR A PERCENTAGE DISTRIBUTION MECHANISM FOR LOCAL
14 GOVERNMENT SEVERANCE TAXES UNDER CERTAIN CONDITIONS;
15 CLARIFYING THE APPLICATION OF THE LOCAL GOVERNMENT SEVERANCE
16 TAX TO INCLUDE ALL NATURAL GAS STRIPPER WELLS; CLARIFYING
17 THE LOCAL GOVERNMENT SEVERANCE TAX ON OIL STRIPPER WELLS;
18 CLARIFYING THAT LOCAL PRODUCTION TAXES ON OIL, NATURAL GAS,
19 AND COAL ARE INCLUDED IN THE GUARANTEED TAX BASE
20 CALCULATION; CLARIFYING THE DEFINITION OF THE GUARANTEED TAX
21 BASE; AMENDING SECTIONS 15-23-607, 15-36-101, 15-36-112,
22 15-36-121, AND 20-9-366, MCA; AND PROVIDING AN IMMEDIATE
23 EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES."

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

25 Section 1. Section 15-23-607, MCA, is amended to read:

1 "15-23-607. County assessors to compute taxes. (1)
2 Immediately after the board of county commissioners has
3 fixed tax levies on the second Monday in August, the county
4 assessor shall, subject to the provisions of 15-23-612,
5 compute the taxes on net proceeds, as provided in subsection
6 (2) of this section, and royalty assessments and shall
7 deliver the book to the county treasurer on or before
8 September 15. The county treasurer shall proceed to give
9 full notice of the assessments to the operator and shall
10 collect the taxes as provided by law.

11 (2) For interim production or new production, as
12 defined in 15-23-601, the county assessor may not levy or
13 assess any mills against the value of the interim production
14 or new production, but shall instead levy a tax as follows:

15 (a) for interim production or new production of
16 petroleum or other mineral or crude oil, 7% 9% of net
17 proceeds, as described in 15-23-603(2); or

18 (b) for interim production or new production of natural
19 gas, 12% 15.25% of net proceeds, as described in
20 15-23-603(2).

21 (3) The amount of tax levied in subsections (2)(a) and
22 (2)(b), divided by the appropriate tax rate and multiplied
23 by 60%, must be treated as taxable value for county bonding
24 purposes.

25 (4) The taxable value of net proceeds for the purpose

1 of computing guaranteed tax base aid for schools is the
 2 amount of tax received by a district in the previous year
 3 divided by the number of mills levied by the district in the
 4 previous year, multiplied by 1,000. This amount must be
 5 added to the district, county, and statewide taxable value
 6 when computing guaranteed tax base aid under 20-9-368.

7 (5) The operator or producer is liable for the payment
 8 of the taxes that, except as provided in 15-16-121, are
 9 payable by and must be collected from the operators in the
 10 same manner and under the same penalties as provided for the
 11 collection of taxes upon net proceeds of mines. However, the
 12 operator may at his option withhold from the proceeds of
 13 royalty interest, either in kind or in money, an estimated
 14 amount of the tax to be paid by him upon the royalty or
 15 royalty interest. After the withholding, any deviation
 16 between the estimated tax and the actual tax may be
 17 accounted for by adjusting subsequent withholdings from the
 18 proceeds of royalty interests."

19 Section 2. Section 15-36-101, MCA, is amended to read:

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

1 this state any well or wells from which any merchantable or
 2 marketable petroleum, other mineral or crude oil, or natural
 3 gas is extracted or produced ~~sufficient--in--quantity--to~~
 4 ~~justify--the--marketing--of--the--same--must~~ shall, except as
 5 provided in 15-36-121, each year when engaged in or carrying
 6 on the business in this state pay to the department of
 7 revenue a severance tax for the exclusive use and benefit of
 8 the state of Montana plus a local government severance tax
 9 in lieu of a tax on net proceeds for the exclusive use and
 10 benefit of local government. The state severance tax and the
 11 local government severance tax are computed ~~at-the-following~~
 12 rates as follows:

13 (a) except as provided in subsections (1)(b), (1)(c),
 14 and (1)(d), and (1)(e), a 5% of state severance tax on the
 15 total gross value of all the petroleum and other mineral or
 16 crude oil produced by the person, plus the local government
 17 severance tax of ~~8-4%~~ 9% on production other than interim
 18 production and new production, from each lease or unit; but
 19 in determining the amount of the state severance tax and the
 20 local government severance tax, there must be excluded from
 21 consideration all petroleum or other crude or mineral oil
 22 produced and used by the person during the year in
 23 connection with his operations in prospecting for,
 24 developing, and producing the petroleum or crude or mineral
 25 oil;

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

13 (c) a 2.5% of state severance tax on the total gross
 14 value of the incremental petroleum and other mineral or
 15 crude oil produced, plus the local government severance tax
 16 of ~~4.2%~~ 9% on production other than interim production and
 17 new production, from each lease or unit in a tertiary
 18 recovery project after July 1, 1985. For purposes of this
 19 section, a tertiary recovery project must meet the following
 20 requirements:

21 (i) the project must be approved as a tertiary recovery
 22 project by the department of revenue. The approval may be
 23 extended only after notice and hearing in accordance with
 24 Title 2, chapter 4.

25 (ii) the property to be affected by the project must be

1 adequately delineated according to the specifications
 2 required by the department; and

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

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

22 (d) except as provided in 15-36-121(2), a 3% of state
 23 severance tax on the total gross value of all the petroleum
 24 and other mineral or crude oil production after the first 5
 25 barrels, ~~plus the local government severance tax of 4.2% on~~

1 ~~all--production--other--than--interim--production--and--new~~
 2 ~~production~~, produced by a stripper well, as defined in
 3 15-36-121, that produces more than 5 barrels a day during
 4 the period beginning April 1, 1989, and ending March 31,
 5 1991;

6 (e) a 9% local government severance tax on all
 7 petroleum and other mineral or crude oil production other
 8 than interim and new production produced by a stripper well,
 9 as defined in 15-36-121.

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

21 (3) Nothing in this part may be construed as requiring
 22 laborers or employees hired or employed by any person to
 23 drill any oil or natural gas well or to work in or about any
 24 oil or natural gas well or prospect or explore for or do any
 25 work for the purpose of developing any petroleum, or other

1 mineral or crude oil, or natural gas to pay the severance
 2 tax, nor may work done or the drilling of a well or wells
 3 for the purpose of prospecting or exploring for petroleum,
 4 or other mineral or crude ~~oil~~ oil, or natural gas or for
 5 the purpose of developing them be considered to be the
 6 engaging in or carrying on of the business. If, in the doing
 7 of any work, in the drilling of any oil or natural gas well,
 8 or in prospecting, exploring, or development work, any
 9 merchantable or marketable petroleum, or other mineral or
 10 crude oil, or natural gas in excess of the quantity required
 11 by the person for carrying on the operation is produced
 12 sufficient in quantity to justify the marketing of the
 13 petroleum, or other mineral or crude oil, or natural gas,
 14 the work, drilling, prospecting, exploring, or development
 15 work is considered to be the engaging in and carrying on of
 16 the business of producing petroleum, or other mineral or
 17 crude oil, or natural gas within this state within the
 18 meaning of this section.

19 (4) Every person required to pay the state or local
 20 government severance tax under this section shall pay the
 21 tax in full for his own account and for the account of each
 22 of the other owner or owners of the gross proceeds in value
 23 or in kind of all the marketable petroleum or other mineral
 24 or crude oil or natural gas extracted and produced,
 25 including owner or owners of working interest, royalty

1 interest, overriding royalty interest, carried working
 2 interest, net proceeds interest, production payments, and
 3 all other interest or interests owned or carved out of the
 4 total gross proceeds in value or in kind of the extracted
 5 marketable petroleum or other mineral or crude oil or
 6 natural gas, except that any of the interests that are owned
 7 by the federal, state, county, or municipal governments are
 8 exempt from taxation under this chapter. Unless otherwise
 9 provided in a contract or lease, the pro rata share of any
 10 royalty owner or owners will be deducted from any
 11 settlements under the lease or leases or division of
 12 proceeds orders or other contracts. (Subsection (1)(d)
 13 terminates on occurrence of contingency--sec. 7, Ch. 656, L.
 14 1987.)"

15 Section 3. Section 15-36-112, MCA, is amended to read:

16 "15-36-112. Disposition of oil and gas state and local
 17 government severance taxes -- calculation of unit value for
 18 local government severance tax. (1) Each year the department
 19 of revenue shall determine the amount of tax collected under
 20 this chapter from within each school-district taxing unit.

21 (2) For purposes of the distribution of local
 22 government severance taxes collected under ~~15-36-101~~ this
 23 chapter, the department shall determine the unit value of
 24 oil and gas for each school-district taxing unit as follows:

25 (a) The unit value for petroleum and other mineral or

1 crude oil for each district taxing unit is the quotient
 2 obtained by dividing the net proceeds taxes calculated on
 3 petroleum or mineral or crude oil produced in that district
 4 taxing unit in calendar year 1988 by the number of barrels
 5 of petroleum or other mineral or crude oil produced in that
 6 district taxing unit during 1988, excluding new and interim
 7 production.

8 (b) The unit value for natural gas is the quotient
 9 obtained by dividing the net proceeds taxes calculated on
 10 natural gas produced in that district taxing unit in
 11 calendar year 1988 by the number of cubic feet of natural
 12 gas produced in that district taxing unit during 1988,
 13 excluding new and interim production.

14 (3) The state and local government severance taxes
 15 collected under this chapter are allocated as follows:

16 (a) The local government severance tax is statutorily
 17 appropriated, as provided in 17-7-502, for allocation to the
 18 county for distribution as provided in subsection
 19 (4)(a)(iii);

20 (b) ~~Any--amount--not--allocated--to--the--county--under~~
 21 ~~subsection--(3)(a)~~ The state severance tax is allocated to
 22 the state general fund.

23 (4) (a) For the purpose of distribution of the local
 24 government severance tax, the department shall adjust the
 25 unit value determined under this section according to the

1 ratio that the local government severance taxes collected
2 during the quarters to be distributed plus accumulated
3 interest earned by the state and penalties and interest on
4 delinquent local government severance taxes bears to the
5 total liability for local government severance taxes for the
6 quarters to be distributed. The taxes must be calculated and
7 distributed as follows:

8 (i) By November 30 of each year, the department shall
9 calculate and distribute to each eligible county the amount
10 of local government severance tax, determined by multiplying
11 unit value as adjusted in this subsection (4)(a) times the
12 units of production on which the local government severance
13 tax was owed during the calendar quarters ending March 31
14 and June 30 of the preceding calendar year.

15 (ii) By May 31 of each year, the department shall
16 calculate and distribute to each eligible county the amount
17 of local government severance tax, determined by multiplying
18 unit value as adjusted in this subsection (4)(a) times the
19 units of production on which the local government severance
20 tax was owed during the 2 calendar quarters immediately
21 following those quarters referred to in subsection
22 (4)(a)(i).

23 (b) Any amount by which the total tax liability exceeds
24 or is less than the total distributions determined in
25 subsections (4)(a)(i) and (4)(a)(ii) must be calculated and

1 distributed in the following manner:

2 (i) The excess amount or shortage must be divided by
3 the total ~~units--of-production-to-obtain-the-tax-value-per~~
4 unit-of-production distribution determined for that period
5 to obtain an excess or shortage percentage.

6 (ii) ~~The--tax--value--per--unit--of--production--must-be~~
7 multiplied-by-the-units-of-production-in-that-taxable-period
8 in-each-school-district-that-had-production-in-that--period,
9 and--this--amount--must--be--added-to-or-subtracted-from-the
10 distribution--to--each--respective---district The excess
11 percentage must be multiplied by the distribution to each
12 taxing unit, and this amount must be added to the
13 distribution to each respective taxing unit.

14 (iii) The shortage percentage must be multiplied by the
15 distribution to each taxing unit, and this amount must be
16 subtracted from the distribution to each respective taxing
17 unit.

18 (5) The county treasurer shall distribute the money
19 received under subsection ~~(3)(a)~~ (4) to the taxing
20 ~~jurisdictions~~ units that levied mills in fiscal year 1990
21 against calendar year 1988 ~~production during-fiscal-year~~
22 ~~1989~~ in the same manner that all other property tax proceeds
23 were distributed during ~~fiscal year 1989~~ 1990 in the taxing
24 ~~jurisdiction~~ unit, except that no distribution may be made
25 to a municipal taxing ~~jurisdiction~~ unit."

Section 4. Section 15-36-121, MCA, is amended to read:

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

(2) All new production, as defined in 15-23-601, from a well during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system is exempt from all of the state severance tax imposed by 15-36-101, provided the notification was made after March 31, 1987, and before July 1, 1991.

(3) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 15.25%. Everything over 30,000 cubic feet of gas produced is taxed at 1.59% plus a local government severance tax of ~~7.625%~~ 15.25%.

(4) The first 5 barrels of average daily production from a stripper well are exempt from all of the state severance tax imposed by 15-36-101, ~~except but not from~~ the local government severance tax.

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

(6) Notwithstanding the provisions of subsections (2) through (4), all reporting requirements under the state severance tax remain in effect. (Subsections (2) and (4) terminate on occurrence of contingency--sec. 7, Ch. 656, L. 1987.)"

Section 5. Section 20-9-366, MCA, is amended to read:

"20-9-366. (Effective July 1, 1990) Definitions. As

1 used in 20-9-366 through 20-9-369, the following definitions
2 apply:

3 (1) "County mill value per elementary ANB" or "county
4 mill value per high school ANB" means the sum of the current
5 taxable valuation of all property in the county plus the
6 taxable value of oil and gas net proceeds determined under
7 15-23-607(4) and the taxable value of coal gross proceeds
8 determined under 15-23-703(3) plus all the taxable value of
9 nontax nonlevy revenue for the support of schools, other
10 than Public Law 81-874 funds, divided by 1,000, with the
11 quotient divided by the total county elementary ANB count or
12 the total county high school ANB count used to calculate the
13 elementary school districts' and high school districts'
14 current year foundation program amounts. The taxable value
15 of nonlevy revenue for the purpose of computing guaranteed
16 tax base aid for schools is the amount of nontax nonlevy
17 revenue received by a district in the previous year,
18 including for fiscal year 1991 the revenue received in
19 fiscal year 1990 from the net proceeds taxation of oil and
20 natural gas and including for fiscal year 1992 and
21 thereafter the local government severance tax, divided by
22 the number of mills levied by the district in the previous
23 year, multiplied by 1,000,--divided--by--1,000,--with--the
24 quotient--divided--by--the--total--county--elementary--ANB--count--or
25 the--total--county--high--school--ANB--count--used--to--calculate--the

1 elementary--school--districts'--and--high--school-districts'
2 current-year-foundation-program-amounts.

3 (2) "District mill value per ANB" means the current
4 taxable valuation of all property in the district plus the
5 taxable value of oil and gas net proceeds determined under
6 15-23-607(4) and the taxable value of coal gross proceeds
7 determined under 15-23-703(3) plus all the taxable value of
8 nontax nonlevy revenue for the support of schools, other
9 than Public Law 81-874 funds, divided by 1,000, with the
10 quotient divided by the total county elementary ANB count or
11 the total county high school ANB count used to calculate the
12 elementary school districts' and high school districts'
13 current year foundation program amounts. The taxable value
14 of nonlevy revenue for the purpose of computing guaranteed
15 tax base aid for schools is the amount of nontax nonlevy
16 revenue received by a district in the previous year,
17 including for fiscal year 1991 the revenue received in
18 fiscal year 1990 from the net proceeds taxation of oil and
19 natural gas and including for fiscal year 1992 and
20 thereafter the local government severance tax, divided by
21 the number of mills levied by the district in the previous
22 year, multiplied by 1,000,--divided--by--1,000,--with--the
23 quotient--divided--by--the--ANB--count--of--the--district--used--to
24 calculate--the--district's--current--year--foundation--program
25 scheduled amount.

(3) "Guaranteed overschedule general fund budget" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 135% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the current taxable valuation of all property in the state plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) and the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nontax nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nontax nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal

year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts."

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 8. Retroactive applicability. (1) [Sections 2 and 4] apply retroactively, within the meaning of 1-2-109, to all local government severance taxes on oil and natural gas produced after December 31, 1988.

(2) [Section 1] applies retroactively, within the meaning of 1-2-109, to all net proceeds taxes on oil and natural gas produced after March 31, 1990.

-End-