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Sam Brownback, Governor

January 31, 2013

House Taxation Committee

Testimony in Support of House Bill 2058

Presented by Michael Hale, Legal Services Attorney

Chairman Richard Carlson and Members of the Committee:

The Department of Revenue respectfully submits the following in support of House Bill 2058:

The severance tax is imposed on the severance of gas from the earth. KSA 79-4217(a). At the time it is severed, gas is a raw, unrefined substance that consists of numerous components. On certain wells, the gas that flows from the wellhead includes helium and may also include methane, ethane, propane, butane and other gases.

The Department has always interpreted the Severance Tax Act to impose tax on helium and all other components that are severed from the earth and its interpretation is set forth in a Revenue Ruling that was issued in 1998. This bill would amend the definition of "gas" to read as follows:

(c) "Gas" means natural gas, *and all other raw, unrefined gas or gases, all constituent parts of any such gas or gases and refined products derived from any such gas or gases, including, but not limited to, methane, ethane, propane, butane and helium,* taken from below the surface of the earth or water in this state, regardless of whether from a gas well or from a well also productive of oil or any other product.

This amendment would clarify that the legislature has always intended to tax helium and all other components of gas that is severed from the earth and also confirm the Department has correctly interpreted and administered the law by imposing and collecting tax on helium.

The Department's position is supported by the decision in *Northern Natural Gas Co. v. Grounds*, 441 F.2d 704 (10th Cir. 1971), which is cited in the Department's Revenue Ruling.

Recently, a class action suit was filed in Seward County Kansas. The suit requests refunds of allegedly illegal mineral severance taxes remitted to the Department on helium. The essence of the claim is that since helium is not a hydrocarbon and is likewise not specifically listed as

taxable, any taxes remitted to the Department are illegal, and therefore the Department should be forced to disgorge these payments.

The Department believes that it has properly interpreted and applied the Act in a manner that comports with the legislature's original intent to tax, among other things, all gases brought up from below the surface of the earth or water. The proposed legislation only seeks to clarify that the original meaning of gas includes *all* gases, refined or unrefined, and their constituent parts including helium, butane, ethane, and so on.

Since the Department believes that the original intent of the legislature was that helium is subject to the Mineral Severance Tax, the proposed amendment also seeks to eliminate any claims for refund based on the contention that, since helium is not a hydrocarbon and is not specifically listed as taxable, any mineral severance taxes remitted to the Department over the past twenty plus years were illegally assessed.

The retroactive elimination of any claims for refund based on helium allegedly not being taxable is, the Department believes, a reasonable exercise of legislative prerogative because: 1) this amendment does not seek to reach back in time and assess a wholly new tax, but instead seeks to confirm that the taxes remitted for years are proper; 2) to the Department's knowledge, no one has acted in reliance on an expectation that their activity (extracting helium) was not taxable; instead, mineral severance taxes on helium extraction have been remitted for years, and the Department is not aware of anyone who is not remitting taxes on extracted helium; and 3) enactment of this amendment is a prompt and appropriate response to the class action case filed in mid-2011, which, if successful, would cause a significant negative fiscal impact on the State severance tax revenues, both for refunds for past periods and going forward. As the fiscal note points out, if 5% of severance tax revenues on natural gas are attributable to helium, this could represent about \$55 million in severance tax revenues collected since 1995 and potentially at risk for refund claims, plus interest.

MEMORANDUM

To: Mr. Steve Anderson, Director
Division of Budget

From: Kansas Department of Revenue

Date: 02/20/2012

Subject: House Bill 2481
Amended by House Committee

Brief of Bill

House Bill 2481, as amended by house committee, amends K.S.A. 79-4216 to define gas to mean, natural gas and all other raw, unrefined gas or gases, all constituent parts of and such gas or gases, including methane, ethane, propane, butane and helium.

Section 2 amends K.S.A. 79-4226 to provide that no refund of mineral severance tax shall be allowed for any claim *that has been or may be filed on or after July 1, 1983*, alleging that any constituent part of gas and any refined products derived from such gas is not taxable under K.S.A. 79-4216 et seq.

The effective date of this bill is on publication in the statute book.

Fiscal Impact

Passage of this bill will not impact state general fund revenues, but will minimize the potential risk of payment of substantial refunds for previously paid severance tax on helium, plus interest, should the courts disagree with the Department's interpretation that helium is subject to severance tax.

Natural gas mineral tax collections since 1995 total about \$1.1 billion. If helium represents about 5% of that total, mineral tax collections from helium would be about \$55.0 million since calendar year 1995. The state general fund would have received about \$51.2 million, or 93%, and the counties would have received \$3.8 million, or 7%, of the total collected.

Administrative Impact

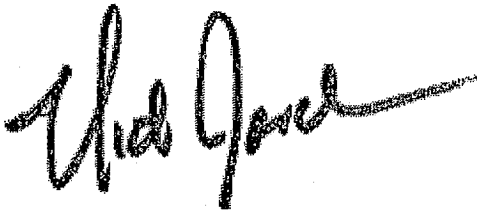
No Impact

Administrative Problems and Comments

Taxpayer/Customer Impact

Legal Impact

Approved By:

A handwritten signature in black ink, appearing to read "Nick Jordan", with a long horizontal flourish extending to the right.

Nick Jordan
Secretary of Revenue