

SB0651/889434/1

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL 651
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after the first “of” insert “repealing certain taxes on the purchase, distribution, and collection of natural gas in Garrett County; repealing certain taxes on purchasing natural gas in the county; repealing certain exclusions to the county natural gas tax;”; in line 5, after “municipalities;” insert “repealing certain provisions to provide that the market value of natural gas in the county is the value at the mouth of the well; altering the day that certain taxes shall be paid; altering the frequency with which certain county taxes shall be paid; requiring a producer of natural gas in the county to make a certain report; requiring the Director of Finance to perform certain duties; repealing certain provisions relating to certain evidence in a judicial proceeding relating to failure to pay certain county taxes;”; and in line 6, after “Fund;” insert “repealing certain penalties that are applicable to purchasers of certain natural gas; making conforming changes; repealing certain definitions; altering certain definitions;”.

In line 10, strike “51.02(A)” and substitute “51.01 through 51.07 and 51.99”.

AMENDMENT NO. 2

On page 1, after line 20, insert:

“51.01.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS OF [COLLECTING, DISTRIBUTING OF PRODUCING GAS] GAS PRODUCTION. Applies to any person in the business of [purchasing or producing gas

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for resale to domestic and industrial consumers and includes any person who has voluntarily submitted to the regulations of the Federal Power Commission or the Public Service Commission regulations of the state] **PRODUCING GAS FOR SALE.**

[CARRIER. The owner, operator or manager of any means of transporting gas or any instrumentality that may now be used or come into use for such purpose.]

CASINGHEAD GAS. Any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

CUBIC FOOT OF GAS. The volume of gas expressed in cubic feet and computed at a base pressure of 6.28 ounces per square inch above the average barometric pressure of 14.4 pounds per square inch and a standard base and flowing temperature of 60°F, corrections to be made for pressure according to Boyle's law and for specific gravity according to tests made by the balance method.

[FIRST PURCHASER. Any person purchasing gas from the producer and includes any producer which is a utility retailing gas in Garrett County and any producer who does not sell his or her gas in Garrett County but transports it outside of the county before sale.]

GAS. Natural and casinghead gas or other gas taken from the earth or waters[.], regardless of whether produced from a gas well or from a well also productive of oil, distillate and/or condensate or other product.

[OPERATOR. The person having the active management and operation of the well.]

PERSON. Includes any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and

persons acting under declarations of trust, as well as the trustees acting under such declarations of trust.

PRODUCER. Any person owning, controlling, managing or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters in Garrett County[, and includes any person owning any royalty or other interest in any gas or its value, whether produced by him or her or by some other person on his or her behalf, either by lease, contract or otherwise].

PRODUCTION or TOTAL GAS PRODUCED. The total gross amount of gas produced[, including all royalty or other interest]. The amount for the purpose of the tax imposed by this chapter shall be measured or determined by meter readings showing 100% of the full volume expressed in cubic feet.

REPORT. Any report required to be furnished by this chapter or that may be required by the County Commissioners in the administration of this chapter.

[ROYALTY OWNERS. Includes all persons owning any mineral rights under any producing leasehold within Garrett County, other than the working interest, which working interest is that of the person having the management and operation of the well.

SUBSEQUENT PURCHASER. Any person who purchases gas for any purpose whatsoever when the gas is purchased from any person other than the producer.]

TAXPAYER. Any person subject to the tax herein levied.”.

AMENDMENT NO. 3

On page 1, in line 22, strike “distribution and”; in line 23, strike “collecting, distributing and”.

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On page 2, in lines 1 and 2, strike “and save for commercial purposes”; in line 3, strike “thereof as and”; strike beginning with the comma in line 3 down through “feet” in line 4 and substitute “**AT THE WELLHEAD**”; strike beginning with “(2)” in line 5 down through “purpose.” in line 11; in line 12, strike “(3)” and substitute “(2)”; after line 17, insert:

“(B) The market value of gas produced in Garrett County shall be the value thereof at the mouth of the well[]; however, in case gas is sold for cash only, the tax shall be computed on the producer’s gross cash receipts. In all cases where the whole or a part of the consideration for the sale of gas is a portion of the products extracted from the producer’s gas or a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including any bonus or premium, provided that, notwithstanding any other provision herein to the contrary, where gas is processed for the liquid hydrocarbon content and the residue gas is returned by cycling methods, as distinguished from repressuring or pressure maintenance methods, to some gas-producing formation, the taxable value of such gas shall be 3/5 of the gross value of all liquids extracted, separated and saved from the gas, such value to be determined upon separation and extraction and prior to absorption, refining or procession of such hydrocarbons, and the quantity of the products shall be measured by the total yield of the processing plant from the gas.

(C) The tax hereby levied shall be the liability of the producer and purchaser of gas in the following proportions:

(1) The producer shall be liable for 60% of the tax hereby levied;

(2) The purchaser shall be liable for 40% of the tax hereby levied].

[(D)] (C) The [first purchaser] **PRODUCER** of gas shall pay the total tax on all gas [purchased] **PRODUCED**, making the payments of tax to the County Commissioners of Garrett County by legal tender or cashier’s check payable to the County Commissioners. [The first purchaser shall be entitled to deduct the

proportionate amount of the tax chargeable to the producer and royalty owner from the amount due the producer from whom such gas is purchased, and the producer shall be entitled to deduct the proportionate amount of the tax chargeable to any other producer owning an interest in such gas from the amount due such other producer and shall be entitled to deduct the proportionate amount of the tax chargeable to any royalty owner from the amount due such royalty owner, and such moneys so deducted from payments due producers for the payment of this tax shall be held by the purchaser in trust for the use and benefit of Garrett County and shall not be commingled with any other funds held by the purchaser and shall be remitted to the County Commissioners, together with the purchaser's proportion of the tax, in accordance with the terms and provisions of this chapter.] It shall be the duty of each such [purchaser] **PRODUCER** to keep accurate records of all such gas [purchased] **PRODUCED.**

[(E)] (D) The tax herein levied shall be due and payable at the office of the County Commissioners of Garrett County [on the last day of April, July, October and January] **BY THE 15TH DAY OF EACH MONTH** of each calendar year, based on the amount of gas produced[, saved and collected during the calendar quarter ending on the last day of March, June, September and December, respectively, and on] **IN THE PRECEDING MONTH. ON** or before such date each [purchaser] **PRODUCER** shall make and deliver to the County Commissioners a verified report, on forms prescribed by [them] **THE COUNTY**, showing the gross amount of gas produced [and collected, less the exclusions and at the pressure base set out herein], upon which the tax herein levied accrues, together with details as to the amount of gas, from what leases the gas was produced [and collected], the correct names and addresses of the producer [and purchaser] of the gas and such other information as the County Commissioners may require. In no event shall a producer [or purchaser] be relieved of responsibility for the tax until same shall have been paid[, and provided that in the event the amount of the tax herein levied as the producer's proportion thereof shall be withheld by a purchaser from payments due a producer and the purchaser fails to make payment of the tax to the County Commissioners as provided herein and the producer pays the tax

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himself or herself, the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make such payment, and shall be entitled to reasonable attorney's fees and court costs incurred by legal action].

[(F)] (E) Unless the payment of tax on all gas produced [and collected] during any [quarter] MONTH or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of 10% of the amount of the tax shall be added, and the tax and penalty shall bear interest at the rate of 6% per annum from the date due until the date paid.

[(G)] The producer's proportion of the tax herein levied shall be borne ratably by all interested parties, including royalty interest, lessor's interest or any other interest, whether by lease, contract or otherwise, except the purchaser's interest, and the purchaser is authorized and required to withhold from any payment due any interested parties the proportionate tax due and remit the same as above provided.

(H) The operator of each well from which gas is produced, saved and collected in Garrett County shall also make and deliver to the County Commissioners of Garrett County, on or before the due date of the payments provided above, a report of all gas produced and sold from each well during the preceding quarter, together with details as to amounts of gas, the name or location of the wells, the correct names and addresses of the producer and purchaser of the gas and such other information as the County Commissioners may require.

(I) The tax imposed is in lieu of all other taxes upon the gas, the property rights attached thereto or inherent therein and the values created thereby, and upon all leases or rights to develop and operate any lands for gas, the values created thereby and the property right attached thereto or inherent therein.]

51.03.

[(A)] When it shall appear that a taxpayer to whom the provisions of this chapter shall apply has erroneously paid more taxes than were due during any taxpaying period on account of a mistake either of fact or of law, it shall be the duty of the [County Treasurer] **DIRECTOR OF FINANCE**, upon order of the County Commissioners, to credit the total amount of taxes due by the taxpayer for the current period with the total amount of taxes so erroneously paid or to make refund in a proper case.

[(B) The tax levied shall be paid by the first purchaser purchasing gas from the producer, who shall make deduction as aforesaid; provided, however, that the failure of the first purchaser to pay the tax shall not relieve any subsequent purchaser from the payment of same where the first purchaser does not account for and pay the tax, and it shall be the duty of every person purchasing gas produced in Garrett County to satisfy himself, herself or itself that the tax on the gas has been or will be paid by the persons primarily liable therefor.]

51.04.

The County Commissioners may, through the County Auditors or other auditors and/or other technical assistants employed for the purpose of verifying reports and investigating the affairs of producers [and/or purchasers], determine whether the tax is being properly reported and paid. They shall have the power to enter upon the premises necessary in determining the correct tax liability and to examine or cause to be examined any books or records of any person subject to a tax under this chapter and to secure any other information directly or indirectly concerned in the enforcement of this chapter and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this chapter, which shall have full force and effect of law.

51.05.

If the County Commissioners are satisfied that the values used in computing the tax do not represent the **WHOLESALE** market value of the gas at the mouth of the well, they shall forthwith so notify the taxpayers concerned, and it shall be the duty of the County Commissioners to set a date for a hearing thereon, giving each taxpayer concerned not less than 10 days written notice thereof, and to call before them by proper process such persons as in their judgment may know the **WHOLESALE** market value of the gas at the mouth of the well, who shall testify under oath as to the **WHOLESALE** market value thereof. Each taxpayer shall have the right to be heard and present evidence. The County Commissioners, after hearing the evidence, shall fix the **WHOLESALE** market value of the gas at the mouth of the well by written findings in accordance with the evidence so introduced, and their findings in such case or cases shall be final, unless the taxpayer concerned shall pay the tax herein levied upon the **WHOLESALE** market value so fixed by the County Commissioners under protest within 60 days after the taxpayer has been notified in writing of the findings, or in the event the taxpayer does not pay the tax based on the values so determined by the County Commissioners within 60 days after having been notified of the findings. The findings of the County Commissioners shall be final, unless the taxpayer shall, within 60 days, appeal to the Circuit Court of Garrett County. Upon the appeal, the trial shall be de novo, but the findings of the County Commissioners shall be taken as prima facie evidence of the **WHOLESALE** market value of the gas at the mouth of the well, and the burden of proof shall rest upon the taxpayer to establish a lower **WHOLESALE** market value.

51.06.

In the event of any person engaged in the business of producing [or purchasing] any gas in Garrett County shall become delinquent in the payment of the proper taxes herein imposed or fails to file required reports with the County Commissioners, the County Commissioners shall have the right to enjoin any such person who is at fault from producing gas until the delinquent tax is paid or the reports are filed.

51.07.

[(A) (1) If any purchaser of natural and/or casinghead gas fails or refuses to pay any tax, penalty or interest within the time and manner provided by this chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of the claim in any judicial proceedings, any report filed in the office of the County Commissioners by such purchaser or producer or representative of the purchaser or producer or a copy thereof certified to by the County Commissioners showing the amount of gas produced on which tax, penalties or interest have not been paid or any audit made by the County Commissioners or their representatives from the books of the purchaser when filed and sworn to by such representative as being made from the records of the purchaser shall be admissible in evidence in the proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of the report or audit may be shown, and provided further that the report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the County Commissioners shall file suit or claim for taxes provided for in the foregoing and attach or file as an exhibit any report or audit of the purchaser or producer and an affidavit made by the County Commissioners or their representative that the taxes shown to be due by the report or audit are past due and unpaid and that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by law, the audit or report shall be taken as prima facie evidence thereof.]

[(B)] (A) (1) On notice from the County Commissioners, it shall be unlawful for any person to produce or remove any natural [and/or casinghead] gas from any lease in Garrett County whenever the [owner or operator of the lease] **PRODUCER** has failed to file reports as required under the provisions of this chapter.

(2) Whenever any lease producing natural [and/or casinghead] gas changes hands [or any purchaser of gas transfers his or her interest], it shall be the duty of the [owner or operator of the lease and any such purchaser of gas] **PRODUCER** to note on his or her last report that the lease or interest has been sold or transferred,

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showing the effective date of the change and the name and address of the individual, firm, association, joint-stock company, syndicate, copartnership, corporation, agency or receiver who will operate the lease or who bought the interest and will be responsible for the filing of reports provided for in this chapter. It further shall be the duty of the new [owner or operator of the lease or interest] **PRODUCER** to note on his or her first report that the lease or interest has been acquired, showing the effective date of the change and the name and address of the individual, firm, association, joint-stock company, syndicate, copartnership, corporation, agency or receiver formerly owning and/or operating the lease or interest.”.

AMENDMENT NO. 4

On page 3, after line 5, insert:

“51.99.

(A) Any person, firm, association or corporation, whose failure, omission, default or violation it may be, shall be subject to a penalty of not less than \$100 nor more than \$1,000 for failure or omission to keep the records required herein or for the violation of any of the other provisions hereof, and each day’s violation shall constitute a separate offense. Garrett County shall have a prior lien for all delinquent taxes, penalties and interests on all property and equipment used by the [purchaser] **PRODUCER** of gas in the business of [purchasing] **PRODUCING** gas, and if any [purchaser] **PRODUCER** of gas shall fail to remit the proper taxes, penalties and interest due, or any of them, the County Commissioners may employ auditors or other persons to ascertain the correct amount due, and the [purchaser] **PRODUCER** of gas shall be liable, as additional penalty, for the reasonable expenses of the reasonable value of such services of representatives of the County Commissioners incurred in such investigation and audit[, provided that all funds collected for audits and examinations shall be placed in a Natural Gas Audit Fund of Garrett County and shall constitute a revolving fund which may be used from time to time by the County Commissioners in making such audits in addition to the general appropriation made for such purposes, and all of the funds to be placed in the Fund are appropriated for

such purpose]. The County Commissioners of Garrett County are authorized to collect all delinquent taxes, penalties and other amounts due and to enforce all liens under this law by civil suit.

(B) (1) Whoever shall, as a producer [or purchaser] or as agent or representative of a producer [or purchaser], knowingly make any false entries or fail to make any proper entries in the books required by this chapter with the intent to defraud Garrett County, or whoever, as such, shall knowingly make a false or incomplete report as required by the provisions of this chapter, or whoever, as such, shall knowingly fail or refuse to make the report required to be made, or whoever, as such, shall destroy, mutilate or secrete any of the records required to be kept by the provisions of this chapter, or whoever, as such, shall hide or secrete with the intent to defraud any of the property upon which a lien is created hereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum of not less than \$100 nor more than \$1,000, or be confined in the county jail for not more than 12 months, or be punishable by both such fine and imprisonment.

(2) In addition thereto, the producer [or purchaser] or agent thereof shall forfeit to Garrett County, for any offense or the violation of any of the provisions hereof or any rule or regulation, a penalty of \$1,000 for each such offense, to be recovered by Garrett County in a civil suit. The penalties prescribed in this section, both criminal and civil, are in addition to any and all other penalties prescribed in this chapter.”.