

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION**

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 9. Exemptions and Exclusions
- Part 17. Economically At-Risk Leases
- 710:45-9-81. Definitions [AMENDED]
- 710:45-9-82. Exemption period [AMENDED]
- 710:45-9-83. Certification [AMENDED]
- 710:45-9-84. Refund procedure [AMENDED]

AUTHORITY:

68 O.S. §§ 203 and 1001.3a; Oklahoma Tax Commission

DATES:

Adoption:

August 23, 2016 (Commission Order No. 2016-08-23-07)

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2017, unless superseded by another rule or disapproval by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Amendments to Section 1001.3a of Title 68 were enacted into law pursuant to SB 1577 authored by Senate President Pro Tempore Bingman of the Senate and Speaker Hickman of the House, and signed by the Governor on May 25, 2016. The statutory language took effect on July 1, 2016. Therefore, an emergency exists in which emergency rules need to be put in effect in order for the Oklahoma Tax Commission to implement these new provisions in the law.

ANALYSIS:

The law provides that beginning on or after January 1, 2015, "economically at-risk oil or gas lease" means any oil or gas lease with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty (60) MCF of natural gas per day or less operated at a net loss or a net profit, after a deduction of certain costs, which is less than the total gross production tax remitted for such lease during the previous calendar year. The total amount of claims to be paid for such leases shall not exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000).

CONTACT PERSON:

Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR:

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 17. ECONOMICALLY AT-RISK LEASES

710:45-9-81. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Economically at risk oil or gas lease" Prior to calendar year 2015, economically at-risk lease means any lease operated at a net loss or a net profit which is less than the total gross production tax remitted for such lease during the previous tax reporting year. Beginning with calendar year 2015, and each year thereafter, economically at-risk lease means any oil or gas lease with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty (60) MCF of natural gas per day or less. The "average production volume" shall be determined based upon the Oklahoma Corporation Commission well classification, wherein only the primary product shall be used to determine the "average production volume." For example, only production from wells classified as oil wells shall be considered to determine average daily production of oil and no production of natural gas from these oil wells shall be used to determine if the lease meets the definition. The lease in its entirety must be operated at a net loss or at a net profit which is less than the total gross production tax remitted for all products for such lease during the qualifying calendar year.

"Lease" means a spaced unit, a separately metered formation within the spaced unit, or each tract within a Corporation Commission approved unitization, or a lease which, for tax reporting purposes, has been assigned a production unit number. A lease may contain one or more wells which have identical interest and payout.

710:45-9-82. Exemption period

The exemption for economically at risk oil and gas leases is limited to calendar years 2005 through 2020, with each year being claimed separately. No claims for rebates regarding the economically at risk leases shall be permitted after December 31, 2015 for production periods occurring between calendar years 2005 through 2013. No claims for rebates regarding the economically at risk leases for production periods occurring between calendar years 2014 through ~~2020~~2015 shall be claimed or paid more than eighteen (18) months after the date that the refund is first available. Claims for rebates regarding economically at risk leases for production periods ending on or before December 31, 2015 shall not be claimed until after July 1 of the year following the year of production. Claims for rebates regarding economically at risk leases for production periods occurring in calendar years 2016 through 2020 shall be claimed prior to July 1 of the year following the year of production. Any claims for refunds received on or after July 1 of each year will not be accepted by the Tax Commission.

710:45-9-83. Certification

(a) **General provisions.** This Section establishes criteria for determining whether an operator of an economically at risk oil lease has met the required conditions to apply for an exemption from gross production tax levied on such and establishes a procedure for the issuance of the refund.

(b) **Application to Oklahoma Tax Commission; determination; approval.** Any operator who desires to make application to have a lease certified as being economically at risk shall complete the appropriate OTC Form in its entirety and file it with the Commission. The application must be ~~notarized and~~ properly signed by the operator.

(c) **Formula used to determine if lease is economically at risk.** The application sets out the

formula used to determine if a lease is economically at risk. This entails subtracting from the gross revenue from each lease for the previous calendar year, any severance taxes, royalty payments, and lease operating expenses, including expendable workover and recompletion costs for the previous calendar year, and overhead costs up to the maximum overhead percentage allowed by the Council of Petroleum Accountants Societies (COPAS). For purposes of this calculation, depreciation, depletion, and intangible drilling costs shall **not** be included in lease operating expenses.

(d) **Commission may require additional information.** For audit purposes, the Commission may require additional information, such as copies of the ~~operators~~ operator's Federal Income Tax Return, joint interest billings, or other documentation regarding lease production or expenses.

~~(e) **Letter of determination issued by Commission.** Within sixty days from the date the application is filed, the Commission shall make its determination and shall issue, either an approval letter or denial letter, to the lease operator. If the exemption is denied, an explanation for the denial will be provided. The applicant may file an appeal under provisions of 68 O.S. §227, 228 and the Rules of this Commission.~~

710:45-9-84. Refund procedure

(a) **Issuance of refund.** Upon certification by the Commission, a refund of the gross production taxes paid in the previous calendar year for the lease shall be issued after July 1 of the subsequent year, to the well operator or a designee.

(b) **Limitation of refund.** For oil and natural gas produced from qualifying economically at risk leases in calendar years 2015 through 2020, the total amount of refunds to be paid, as provided for in 68 O.S. § 1001.3a, shall not exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) for all products combined. If the amount of claims exceeds Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund that may be claimed by any taxpayer of a qualifying lease, so that the maximum amount authorized is not exceeded.

(c) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit, signed by the ~~be~~ operator must be submitted to the Commission authorizing the designee to receive the refund.

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
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ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to, **CHAPTER 45. GROSS PRODUCTION** which were adopted by the Oklahoma Tax Commission on August 23, 2016, under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S. §§ 250 et seq.

I, the undersigned, do hereby attest that such rules were adopted in substantial compliance with the Administrative Procedures Act.



Lisa R. Haws OBA#12695
Tax Policy Analyst
Tax Policy Division
Oklahoma Tax Commission
August 24, 2016

2016-08-23-07

TRANSMITTAL SHEET

NAME OF AGENCY: Oklahoma Tax Commission

TYPE OF DOCUMENT: Adoption of emergency rules

LIAISON VERIFICATION:

I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the APA and the rules of the Secretary of State. Additional information may be obtained by contacting me at (405) 521-3133.



Lisa R. Haws OBA#12695

Tax Policy Analyst

Tax Policy Division

August 24, 2016, 2016