ASSEMBLY BILL No. 1604

Introduced by Assembly Member Nava
(Coauthors: Assembly Members Ammiano, Chesbro, Huffman, Jones, Monning, and Salas)

January 5, 2010

An act to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

legislative counsel's digest

AB 1604, as introduced, Nava. Taxation: Oil Industry Fair Share Act.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax on and after January 1, 2011, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at the rate of 10% of the gross value of each barrel of oil severed. The tax would be administered by the Department of Conservation and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the department to deposit all revenues collected pursuant to these provisions into the General Fund.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ⅔ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Part 21 (commencing with Section 42001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. OIL INDUSTRY FAIR SHARE ACT

42001. This part shall be known and may be cited as the Oil Industry Fair Share Act.

42002. For purposes of this part, the following definitions shall apply:

(a) "Barrel of oil" means 42 United States gallons of 231 cubic inches per gallon computed at a temperature of 60 degrees Fahrenheit.

(b) "Department" means the Department of Conservation.

(c) "Gross value" means the sale price at the mouth of the well in the case of oil, including any bonus, premium, or other thing of value paid for the oil. If there is no sale at the time of severance, "gross value" means the sale price when the oil is sold, including any bonus, premium, or other thing of value paid for the oil. If oil is exchanged for something other than cash, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the department shall determine the value of the oil subject to the tax based on the cash price paid to producers for like quality oil in the vicinity of the well.

(d) "Oil" means petroleum, or other crude oil, condensate, casing head gasoline, or other mineral oil that is mined, produced, or withdrawn from below the surface of the soil or water in this state.

(e) "Producer" means any person or entity that takes oil from the earth or water in this state in any manner; any person that owns, controls, manages, or leases any oil well in the earth or water of this state; any person that produces or extracts in any manner any oil by taking it from the earth or water in this state; any person that acquires the severed oil from a person or agency exempt from property taxation under the United States Constitution or other laws of the United States or under the California Constitution or other laws of the State of California; and any person that owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on the person's behalf by lease, contract, or other arrangement.

(f) "Production" means the total gross amount of oil produced, including the gross amount attributable to a royalty or other interest.

(g) "Severed" or "severing" means the extraction or withdrawing from below the surface of the earth or water of any oil, regardless of whether the extraction or withdrawal shall be by natural flow, mechanical flow, forced flow, pumping, or any other means employed to get the oil from below the surface of the earth or water, and shall include the extraction or withdrawal by any means whatsoever of oil upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface.

(h) "Stripper well" means a well that has been certified by the department as an oil well incapable of producing an average of more than 10 barrels of oil per day during the entire taxable month. Once a well has been certified as a stripper well, that stripper well shall remain certified as a stripper well until the well produces an average of more than 10 barrels of oil per day during an entire taxable month.

42003. On and after January 1, 2011, for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, a tax is hereby imposed upon all producers at the rate of 10 percent of the gross value of each barrel of oil severed. The tax shall be applied equally to all portions of the gross value of each barrel of oil severed.

42004. Except as otherwise provided in this part, the tax shall be upon the entire production in this state, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the state.

42005. The tax imposed by this part shall be in addition to any ad valorem taxes imposed by the state, or any of its political subdivisions, or any local business license taxes that may be incurred as a privilege of severing oil from the earth or water or doing business in that locality. There shall be no exemption from the payment of an ad valorem tax related to equipment, material, or property by reason of the payment of the gross severance tax pursuant to this part.

42006. The tax imposed by this part shall not be passed through to consumers by way of higher prices for oil, natural gas, gasoline, diesel, or other oil or gas consumable byproducts, such as propane and heating oil. The department may monitor and investigate any instance where producers or purchasers of the oil or gas have attempted to gouge consumers by using the tax as a pretext to materially raise the price of oil, natural gas, gasoline, diesel, or other oil or gas consumable byproducts, such as propane and heating oil.

42007. Two or more producers that are corporations and are owned or controlled directly or indirectly, as defined in Section 25105, by the same interests shall be considered as a single producer for purposes of application of the tax prescribed in this part.

42008. (a) There shall be exempted from the imposition of the tax imposed pursuant to this part oil produced by a stripper well in which the average value of oil as of January 1 of the prior year is less than thirty dollars ($30) per barrel.

(b) For oil produced in this state from a well that qualifies under Section 3251 of the Public Resources Code or which has been inactive for a period of at least the preceding five consecutive years, the imposition of the tax imposed pursuant to this part shall be reduced to zero for a period of 10 years.

(c) There shall be exempted from the imposition of the tax imposed pursuant to this part all oil owned or produced by the state and any political subdivision's (including any local public entity (as defined by Section 900.4 of the Government Code)) proprietary share of oil produced under any unit, cooperative, or other pooling agreement.

42009. The tax imposed by this part is due and payable to the department quarterly on or before the last day of the month next succeeding each calendar quarter.

42010. (a) Any person that fails to pay any tax within the time required shall pay, in addition to the amount of tax owed, interest at the rate of $1\frac{1}{2}$ percent per month, or fraction thereof, from the date on which the tax became due and payable to and including the date of payment.

(b) Every payment on a delinquent tax owed pursuant to this part shall be applied as follows:

(1) First, to any interest due on the tax.

(2) Second, to any penalty imposed by this part.

(3) Third to the balance, if any, of the tax due.

42011. Each producer shall prepare and file with the department a return in the form prescribed by the department containing information as the department deems necessary or appropriate for the proper administration of this part. The return shall be filed on or before the last day of the calendar month following the calendar quarter to which it relates, together with a remittance payable to the department for the amount of tax due for that period.

42012. The department may prescribe those forms and reporting requirements as necessary to implement the tax, including, but not limited to, information regarding the location of the well by county, the gross amount of oil produced, the quantity sold and the selling price, the prevailing market price of oil, and the amount of tax due.

42013. The department shall administer and collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2). For purposes of this part, the references in the Fee Collection Procedures Law to “fee” shall include the tax imposed by this part, to “feepayer” shall include a person required to pay the tax imposed by this part, and to “board” shall mean the Department of Conservation.

42014. The department may prescribe, adopt, and enforce emergency regulations relating to the administration and enforcement of this part. Any emergency regulations prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law, and shall remain in effect until revised by the director.

42015. The department shall deposit all taxes, penalties, and interest collected pursuant to this part in the General Fund.

42016. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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