

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

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 45. Gross Production [AMENDED]

SUMMARY:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Gross Production rules have been made to implement recent legislation. All legislative references are to the 51st Legislature, 1st Regular Session (2007).

The proposed amendments reflect the provisions of House Bill 1718 which clarify qualifying criteria for the rebate of gross production tax on economically at-risk leases and extend the sunset provisions through 2010. The proposed amendments reflect the provisions of Senate Bill 119 which correct eligibility criteria for the exemption of sales tax on electricity used in enhanced recovery methods of oil production. New rules are being promulgated to reflect the provisions of House Bill 1485 which provides for a deduction on the levy of gross production tax for certain non-production related costs associated with the marketing and transportation of natural gas. Other sections are being amended to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes

AUTHORITY:

68 O.S. §§ 203 , 1001(M) and 1001.4(I); Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., March 21, 2008, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, by calling Pat McDonald at (405) 522-3133.

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing are as follows: March 24, 2008, 10:00 a.m. in the 4th floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat McDonald at (405) 522-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors' building must be made through the doors located on the east side of the building. In order to gain access to the 4th floor hearing room, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification. A name badge and floor access card will be issued once registration is completed.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be viewed online at www.oktax.state.ok.us or obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after March 3, 2008, from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison. Phone: 405-522-5519; FAX: 405-522-0063; Email: lhaws@oktax.state.ok.us

SUBCHAPTER 3. PAYMENT; REMITTANCE; REFUNDS

710:45-3-5. Issuance and release of order to stop payment

- (a) The Director of the ~~Audit Compliance~~ Division of the Oklahoma Tax Commission, or a designee, is delegated the duty and authority to issue orders to withhold payment for production and orders releasing payment for production to purchasers of oil and gas produced in Oklahoma.
- (b) Orders to withhold payment for production shall be issued if and when the required reports and/or forms have not been filed or when the Gross Production Tax penalty and interest on any production are unreported, unpaid or delinquent. Orders releasing payment for production shall be issued if and when all required reports have been filed and all tax, penalty and interest accrued have been paid.
- (c) Orders to withhold payment for production and orders to release payment for production shall be upon forms approved by the Commission and shall be issued under facsimile signatures of the Commissioners, attested with the official seal of the Oklahoma Tax Commission affixed thereto. [See: 68 O.S. §1007]

SUBCHAPTER 5. REQUIRED RETURNS AND REPORTS

710:45-5-2. Incomplete monthly production report forms filed shall constitute no report

- (a) Any Monthly Production Report form filed with the Oklahoma Tax Commission shall include the minimum information specified in 68 O.S. §1010 and in 710:45-5-1. Any such required monthly report form that does not include these minimum requirements shall not constitute the mandatory report required by statute.
- (b) Any Gross Production, Petroleum Excise or Conservation Excise Taxes remitted with an incomplete report form shall be accepted as payment of taxes due, and upon receipt of a proper report, the tax payment shall be apportioned.
- (c) Upon receipt of a Monthly Production Report form, which has been approved by the Commission, from a person required to report monthly, which does not include the required information, the Director of the ~~Audit Compliance~~ Division of the Oklahoma Tax Commission, or a designee, shall notify the reporting taxpayer that:
- (1) The monthly report form filed with the Commission does not contain the minimum information required by 68 O.S. §1010 and 710:45-5-1 and such form does not constitute a valid Monthly Production Report;
 - (2) Pursuant to this Section, the person has failed to file a Monthly Production Report;
 - (3) The amount of penalties accrued; and,
 - (4) Any remittance or payment made therewith has been accepted and will be apportioned by the Commission in accordance with the applicable statute. [See: 68 O.S. §1010]

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS

710:45-9-28. Rebates - Refund procedure

- (a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the ~~Audit Compliance~~ Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:
- (1) A copy of the application approved by the Corporation Commission certifying the well as a

horizontally drilled well;

- (2) A copy of an approved OTC Form 320A that shows the date of initial production;
- (3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
- (4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Horizontal Drilling Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES

710:45-9-32. Qualification procedures

The provisions of this Section establish criteria for determining if an operator of an enhanced recovery project has met the required conditions to qualify the incremental production from such project for the exemption from the Gross Production Tax. [See: 68 O.S. § 1001]

(1) **Administrative approval and determination; order.** An operator, seeking an exemption of incremental production from the gross production tax shall make application to the Oklahoma Corporation Commission, as provided in OAC 165:5-7-14, for a determination that such project qualifies, a determination of the starting date, and of the base production amount.

(A) If the application is approved, a copy shall be forwarded to the operator.

- (B) To obtain the tax exemption, the operator shall forward a copy of the approved application to the Oklahoma Tax Commission, together with any other data required by that agency.
- (2) **Tax Commission approval of exemption.** An operator desiring an exemption from the gross production tax shall make application by letter to the ~~Audit~~ Compliance Division, Oklahoma Tax Commission. Such application shall be accompanied by:
- (A) A copy of the approved application by the Corporation Commission containing a determination of the project beginning date, base production amount and project payback;
 - (B) The ratio of working interest/royalty interest in the well. Only the incremental production attributable to the working interest owners shall be exempted from the gross production tax. For purposes of this exemption, overriding royalty shall be included in working interest;
 - (C) A schedule of production, by month, of the gross amounts of crude oil or other liquid hydrocarbons produced, and the gross values thereof, from the project beginning date until the date application is made to the Tax Commission; and,
 - (D) OTC Form 320A, 320C, and 320U, as are necessary, to set up the OTC Production Units, to request merge numbers, and to show the entity who will remit taxes.

PART 9. PRODUCTION ENHANCEMENT PROJECTS

710:45-9-43. Rebates - Refund procedure

- (a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the ~~Audit~~ Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:
- (1) A copy of the application approved by the Corporation Commission certifying the well as production enhanced;
 - (2) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
 - (3) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.
- (b) **No time limitation on rebate for prior periods.** Approval of a "Production Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.
- (c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.
- (d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.
- (1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the

refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

710:45-9-53. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the ~~Audit~~ Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

- (1) A copy of the application approved by the Corporation Commission certifying the well as an inactive well for which production has been reestablished;
- (2) A copy of an approved OTC Form 320C that shows the date of the reestablishment of production of oil and/or gas;
- (3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
- (4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Reestablished Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

- (1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

- (2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.
- (e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.
- (f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.
- (g) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 13. DEEP WELLS

710:45-9-62.1. Rebates - Refund procedure

- (a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the ~~Audit~~ Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:
- (1) A copy of an application approved by the Corporation Commission certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in *OAC 165:10-21-45*;
 - (2) A copy of an approved OTC Form 320A that shows date of first sale of production;
 - (3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
 - (4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.
- (b) **No time limitation on rebate for prior periods.** Approval of a "Deep Well Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.
- (c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.
- (d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.
- (1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.
 - (2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund

amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available. Claims for refund for deep wells spud on/or after July 1, 2005 which are completed at a depth of fifteen thousand (15,000) feet or greater and certified by the Oklahoma Corporation Commission must be filed with the Tax Commission no later than six (6) months after the first day of the fiscal year in which the refund is initially available.

(g) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 15. NEW DISCOVERY WELLS

710:45-9-73. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

- (1) A copy of the application approved by the Corporation Commission certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and July 1, 2009;
- (2) A copy of an approved OTC Form 320A that shows date of first sale of production;
- (3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
- (4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "New Discovery Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund

amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

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" 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.

"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.

~~"Oil lease" means a lease containing one or more wells which have identical interest and payout and which are either:~~

~~(A) — Classified by the Oklahoma Corporation Commission as an oil well, OR~~

~~(B) — The ratio of gas to oil produced from the lease is equal to or less than fifteen thousand (15,000) cubic feet of gas for each one (1) barrel of oil produced.~~

~~Note: The economically at risk rebate applicable to calendar years 1997 and 1998 only pertains to a qualified oil lease. The economically at risk rebate applicable to calendar years 2005, 2006 and 2007 pertains to both qualified oil and gas leases.~~

710:45-9-82. Exemption period

The exemption for economically at risk oil leases is limited to calendar years 1997 and 1998. The exemption for economically at risk oil and gas leases is limited to calendar years 2005, 2006 and 2007 through 2010.

PART 19. PRODUCTION USING THREE DIMENSIONAL SEISMIC SHOOTS

710:45-9-93. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the ~~Audit~~ Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was commenced after July 1, 2000, and prior to July 1, 2009; that it is located within the boundaries of a three-dimensional

seismic shoot and was drilled based on such technology; and indicating whether the seismic shoot was shot either prior to, or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas, or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Three-Dimensional Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 21. MARKETING COSTS DEDUCTION

710:45-9-100. Scope of Part 21

Producers of natural gas and casinghead gas who incur certain marketing costs of the gas produced may deduct such costs from the gross value when computing the gross value subject to gross production tax.

710:45-9-101. Definitions

"Marketing costs" are non-production related costs incurred by the producer to enable the transport of gas from the well to the market, including costs for compressing, dehydrating and sweetening the gas sold; and delivering the gas to the purchaser. Appendix A of this Chapter

provides a list of costs by category, identifying which costs are allowable as marketing costs. Whether the cost is deductible or not will often depend upon exactly how the item is used. If the cost is deductible, it must then be determined whether the item should be expensed or depreciated.

“Marketing facilities” include but are not limited to flow lines or gathering systems from the separator to the purchaser’s transmission line, compressor stations, dehydration units, line heaters (after the separator) and sweetening facilities.

710:45-9-102. Qualifying criteria

Qualified deductions of marketing costs must meet the following criteria:

- (1) They shall not include any costs incurred in the production of gas, oil or condensate or in the separation there from of any product subject to gross production tax.
- (2) Taxes shall be computed on gross proceeds, including tax reimbursement, less the cost of gathering, compressing and treating the gas sold;

710:45-9-103. Calculation of marketing costs

Marketing costs are determined by adding:

- (1) Charges for depreciation of the marketing facility being used, provided that, if the facility is rented, the actual rental fee is added;
- (2) A return on the producer-owned investment equal to six percent (6%) per year on the average depreciable balance;
- (3) Costs of direct or allocated labor associated with the marketing facility;
- (4) Costs of materials, supplies, maintenance, repairs, and fuel associated with the marketing facility; and
- (5) Ad valorem taxes paid on the marketing facility.

710:45-9-104. Depreciation and return on investment

(a) Depreciation shall be determined by subtracting the salvage value from the purchase price and multiplying the difference by the number of years of useful life.

Example of calculation:

<u>Purchase price</u>	<u>\$ 100,000</u>
<u>Minus salvage value</u>	<u>\$ 10,000</u>
<u>Equals</u>	<u>\$ 90,000</u>
<u>Divided by useful life</u>	<u>÷ 10</u>
<u>Equals depreciation per year</u>	<u>\$ 9,000</u>

(b) Return on investment shall be determined by adding the undepreciated balance at the beginning of the year with the undepreciated balance at the end of the year, dividing the sum by 2, subtracting the salvage value from the quotient, multiplying the difference by 6% to get the return on investment per year.

Example of return on investment calculation:

<u>Undepreciated balance at beginning of year</u>	<u>\$ 100,000</u>
<u>Add undepreciated balance at year end</u>	<u>\$ 91,000</u>
	<u>\$ 191,000</u>
<u>Divide by 2</u>	<u>÷ 2</u>
	<u>\$ 95,500</u>
<u>Less salvage value</u>	<u>\$ 10,000</u>
	<u>\$ 85,500</u>
<u>Multiply by 6% rate</u>	<u>\$.06</u>
<u>Return on investment per year</u>	<u>\$ 5,130</u>

(c) Ten years useful life and a depreciation rate of 10% per year are normally used. However, a different term can be used if the situation calls for it, based upon documentation in the taxpayer's records. Useful life must be the lesser of the expected life of the equipment, or the life of the field. Straight line depreciation is the preferred and recommended depreciation method. If another method is used, the taxpayer should be ready to support why that particular method is appropriate for the situation. If fully depreciated equipment continues in use by the taxpayer, they can continue to deduct the return on investment amount on the salvage value.

710:45-9-105. Reporting requirements

(a) The remitter of gross production tax shall enter the cost deduction taken for each lease, each month, as a code 9 exemption on the monthly gross production tax report. The deduction must be computed on the basis of the cost per MCF of handling the gas sold. The total amount of annual depreciation, ad valorem taxes and other allowed costs for the year divided by the number of MCF handled through the system during that year equals the cost allowed per MCF sold.

(b) Inasmuch as cost deductions are to be reported on a monthly basis during the year the costs are being incurred, estimates of costs should be made as accurately as possible. If the costs reported are within 25% of the actual costs incurred, the amounts reported for the succeeding year may be adjusted upward or downward to compensate for the error. Should the error be more than 25%, amended reports must be made and accompanied by either payment of additional tax, penalty and interest or a claim for refund. Cost deductions and adjustments reported shall never be allowed to result in a minus taxable value nor in a taxable value greater than the gross proceeds. Records of all expenditures must be maintained for examination by the Tax Commission.

APPENDIX A. MARKETING COSTS [NEW]

Item	Allowable	Disallowed	Comments
WELLHEAD AND DOWNHOLE EQUIPMENT/OPERATIONS			These items all relate to either the drilling of the well or well servicing activities. None are deductible as marketing costs.
Acidizing		X	
Casing		X	
Cementing		X	
Drill Pipe		X	
Fishing/fishing tools		X	
Fracturing		X	
Hot oiling/hot oil treatment		X	
Injecting baroid		X	
Logging		X	
Packers/setting packers		X	
Paraffin removal		X	
Perforating		X	
Swabbing		X	

Tubing		X	
Well Service		X	
Wire line service		X	

Item	Allowable	Disallowed	Comments
PRODUCTION EQUIPMENT/OPERATIONS			These items are all involved with the production of oil and gas, not marketing the gas. Therefore, none are allowable as marketing costs.
Christmas tree		X	
Compressors: wellhead/suction/vacuum		X	This type of compressor sits on top of the well bore and is used to suction out the oil and gas.
Corrosion inhibiting chemicals	*	X	Most of these chemicals are used downhole and are not allowable. If the chemical is used in pipelines that are part of the marketing function, that portion may be allowed.*
Downhole separation		X	
Electricity to run pumping unit		X	
Lease use gas to run pumping unit		X	
Pumping unit		X	
Replacement valves/parts for Christmas tree		X	
Rods/ pulling rods		X	
Submersible pumps		X	
Tanks		X	
Tank and Vessel cleaning		X	

Item	Allowable	Disallowed	Comments
LEASE EQUIPMENT AFTER THE WELLHEAD			

Air compressors used to start lease equipment		X	Not allowable unless used to start equipment that otherwise qualifies as marketing equipment.
Break out of heater and removal; set new heater and start hook-up.		X	Not allowable unless this refers to a qualifying line heater.
Cathodic protection		X	
Chrome/stainless steel piping for handling gas with high H ₂ S content.	X*		*Depends on if the piping qualifies as allowable, based on location of the piping and its function. The "chrome/stainless steel" element is irrelevant.
Clean contacts on coffering	X		See "coffering for compressor"
Coffing for compressor building	X		Coffing is used like a crane to lift and move the compressor.
Compressor installation charges	X		If compressor is owned, may be included in depreciable base.
Compressors/parts and service for compressors - gas lift systems		X	
Compressors/parts and service for compressors - to return gas to leases		X	
Compressors/parts and service for compressors - to get gas up to required sales pressure. Compressors owned rather than rented.	X		If compressors perform a dual purpose, the costs can be allocated between allowable and not allowable marketing costs. Must be depreciated over useful life, and return on investment may be calculated.
Compressors - rented sales compressors	X		Deducted as a monthly expense.
Compressors- at central facility (compressor stations)	X		Same as above for all compressors.
Compressors- transmission line		X	Not allowable unless it occurs before the sale has been made.

Compression charge on settlement statement	X*		*Allowable if not already deducted from the reported price.
Compressor fuel for gas lift compressors		X	
Concrete slab for compressor	X		If compressor is owned, cost of slab may be included in depreciable base.
Concrete pad around compressor to collect oil and drainage, to reduce environmental clean-up in the future.		X	
Cost reimbursement from gas purchaser for compression		X	Should be included in gross taxable value, and actual marketing costs deducted
Dehydrators	X		Takes the water content out of the gas stream.
Demulsification chemicals		X	Used to break down oil emulsions, usually in a heater treater.
Fence around compressor		X	
Filters	X*		*Allowable if used on a piece of equipment that qualifies as a marketing cost deduction.
Fin Fans	X		Used to cool the gas after it has been compressed.
Flow lines from separator to purchaser's transmission line	X		
Glycol for use in dehydrators	X		See "dehydrators"
Heater treater		X	Used to treat oil, not gas.
Hydrogen sulfide monitoring		X	
Insurance on compressor		X	
LACT Units		X	These measure crude oil being sold.
Lease separators		X	
Line heaters	X*		*Allowable if the heater is located after the separator. Not allowable if heater is located before the first separator.
Methanol for gas line	X		Used in preventing freeze-ups.
Oil/condensate storage tanks		X	

Painting dehydrator and sales compressor building	X		
Painting separators		X	
Paint storage tanks to prevent rusting		X	
Pig socks used around oil storage tanks & compressor		X	Used to clean oil spills.
Pigs and pigging equipment		X	
Pipeline between wellhead and separator		X	
Pipeline between wellhead and central separation facility		X	
Pipeline between wellhead and sales line if there is no lease separation and no separation prior to sale.	*	*	*Allocate costs of this line between gas and condensate. Marketing costs are allowable on portion of line allocated to gas, and not allowable on the portion allocated to condensate.
Pipeline between wellhead and plant if there is no lease separation and gas is going full well stream to the plant for processing	*	*	*Allocate costs of this line between gas and condensate. Marketing costs are allowable on portion of line allocated to gas, and not allowable on the portion allocated to condensate.
Pipeline after first separator	X		Between separator and sales line.
Purchase and installation of compressor to increase capacity due to tight sands drilling program		X	A vacuum type compressor being used to increase production.
Removal of contaminated soil, back-fill new dirt		X	
Repair handrails on vessels at tank battery		X	
Repair water leg on heater treater		X	
Security alarm on compressor		X	Not necessary and essential.
Separators at central facility		X	
Shed/cover over sales compressor	X		
Skid mounting of sales compressor	X		Skid mounting of gas lift compressor not

			allowable.
Stack packs/ production units		X	Basically separators that contain a heat source. There may also be lease use gas consumed on these.
Sweetening chemicals	X		Used to remove hydrogen sulfide from gas.
Vapor recovery units		X	Recovering additional vapors is a production function, not marketing.

Item	Allowable	Disallowed	Comments
OTHER LEASE RELATED ITEMS			
Ad valorem taxes	X*		*Allowable on value of marketing equipment only. If there is no breakdown between marketing equipment vs other equipment, taxes are not allowable.
Building or trailer rental		X	
Cattle guards around lease equipment or on lease roads		X	
Clean out dumpsters, trash barrels at lease facility		X	
Cleaning agents	X*		*Deductibility depends on purpose for which they are being used. Costs are allowable if used on allowable marketing equipment.
Construction/installation of lease road		X	
Cost to acquire pipeline right of way		X	
Fence around lease facility		X	
Fire ant treatment around lease, including compressor		X	
Fire extinguishers		X	
Heat sensing devices on leases		X	

Hydrostatic testing	X*		*Usually refers to testing pressure and amount of water in pipelines. Deductibility depends on which pipelines are being tested. Testing after separation is allowable.
Miscellaneous parts, valves, fittings, plugs, duct tape, lubricants, tools, etc.	X*		*Deductibility depends on purpose for which they are being used. Costs are allowable if used on allowable marketing equipment.
Motor freight & hauling	X*		*Deductibility depends on purpose of freight and hauling. Costs are allowable if for allowable marketing equipment.
Mowing, weeding around lease equipment		X	
Mowing, weeding pipeline right of way		X	
Repairing fire wall		X	
Repair and maintenance on lease roads		X	
Salt water disposal expenses, including wells or hauling		X	

Item	Allowable	Disallowed	Comments
LABOR EXPENSES			
Cellular phone in pumper's truck, radios, CBs, etc.	X*		*Include in overhead. Allow at 6% rate.

Company labor expenses if there is contract labor on the same lease		X	Company labor should not be allowed when the company has hired contractors to work on the marketing equipment. The contract labor expenses can be claimed on marketing equipment. If the contractors work only on specific equipment, i.e., the compressor, then an appropriate percentage of company labor can be allowed for time spent working on other marketing equipment.
Contract labor	X*		See "Company labor expenses"
Cost to operate district office building, warehouses, shops, garages, etc.		X	
Cost of secretary in district office		X	Does not work on equipment which is physically handling gas.
Field supervisor cost	X*		*Include in overhead and allow at 6% rate.
Gauger salaries	X		Gaugers normally refer to employees who measure volumes in storage tanks. If this is the case, the gauger's salary would not be deductible. However, the use of this term differs from company to company. Some gaugers are actually doing the work of a pumper. The determining factor as it relates to marketing costs is exactly what the job duties entail.
Hand tools used by pumper/gauger		X	
Meals/food expenses for pumper/gauger	X*		*Include in overhead and allow at 6% rate.
Meals/food expenses for other district office personnel		X	

Pumper/gauger benefit costs	X*		*Allow the same percentage as for pumper's salary and benefits.
Pumper salaries/benefits	X*		*The percentage of salary attributable to pumper's time spent working on marketing equipment is allowable. The percentage of salary attributable to other duties, i.e. production, is not allowable.
			A standard percentage is often used, i.e., 50% of the salary charged to gas wells and 25% charged to oil wells. Each situation should be evaluated independently to determine appropriate percentages.
			If the only meter on the lease is an allowable marketing meter, and no other marketing equipment, only 10% of the salary is deductible.
Safety clothing/equipment		X	Required by OSHA or EPA
Thawing gas lines	X*		*Allowable if the lines being thawed are after initial separation.
Transportation expenses for pumpers/gaugers (trucks)	X*		*Include in overhead and allow at the 6% rate.

Item	Allowable	Disallowed	Comments
METERS			
Gas analysis expenses	X		To make sure contract requirements are met.

Meters - sales	X		Meter on which payment is based. If sales meter is owned by producer, the cost of the meter (depreciation plus monthly maintenance expense) is deductible.
Meter- allocation meter	X		Allowable if more than one well or lease is paid from a single purchaser meter. If the sales meter is owned by the purchaser, the producer is allowed to take the cost of lease allocation meters (since we require lease level reporting).
Meters- check		X	Used to verify sales volumes; usually located next to the purchaser's sales meter.
Meter to measure lease use gas		X	
Meter calibration services	X*		*For sales or allocation meters only.
Pens for meters: graphic red pen, graphic green pen, black static pen	X		Allowable if used in an allowable meter only.

Item	Allowable	Disallowed	Comments
ELECTRICITY			
Central separation/compression facility	X*		*Partially allowable. Allocate electricity costs based on how much is used in each function of the facility.
District office building		X	
Electronic gate		X	
Gas lift compressor		X	
Gas sales compressor		X	
Generators	X*		*Depends upon use. If used for allowable equipment, it is allowable.

Lease security light		X	
Maintenance shop		X	
Oil pumps		X	
Pumping unit		X	
Storage building		X	

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 45 Gross Production Tax

RULE IMPACT STATEMENT: This statement is provided in conjunction with the following rulemaking action(s):

- 710:45-3-5. Issuance and release of order to stop payment [AMENDED]**
- 710:45-5-2. Incomplete monthly production report forms filed shall constitute no report [AMENDED]**
- 710:45-9-28. Rebates – Refund procedure [AMENDED]**
- 710:45-9-32. Qualification procedures [AMENDED]**
- 710:45-9-43. Rebates – Refund procedure [AMENDED]**
- 710:45-9-53. Rebates – Refund procedure [AMENDED]**
- 710:45-9-62.1. Rebates – Refund procedure [AMENDED]**

710:45-9-73. Rebates – Refund procedure [AMENDED]

710:45-9-93. Rebates – Refund procedure [AMENDED]

- (a.) **Purpose of the Proposed Rule:** This rulemaking action is being undertaken to correct scrivener's errors and reflect recent internal changes within the Tax Commission.
- (b.) **Classes Affected:** All taxpayers are affected by these rule changes.
- (c.) **Persons Benefited:** All taxpayers will benefit from these rule changes.
- (d.) **Probable Economic Impact:**
1. **On Affected Classes:** The rule will not have an effect apart from the one the underlying statute will have on the affected classes.
 2. **On Political Subdivision:** These rules will not have an effect apart from the impact the underlying statute will have on the affected classes.
 3. **Fees:** This rulemaking action does not levy, implement, or increase an existing fee.
- (e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.
- (f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.
- (g.) **Small Business Impact:** With reference to Sections 303(A) (4) and 303(B) (6) of the Title 75 of the Oklahoma Statutes, it is believed that the proposed rule will have no adverse impact upon small business.
- (h.) **Alternative Methods and Costs of Compliance:** The purposes of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods. No formalized compliance cost minimization measures have been previously pursued.
- (i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, safety and the environment. The rule is not being implemented to reduce risks.
- (j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.
- (k.) **Date:** February 5, 2008 **Date Modified:**
- (l.) **Prepared By:** Lisa Haws **Phone Number:** 521-3133

**OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 45 Gross Production Tax**

RULE IMPACT STATEMENT: This statement is provided in conjunction with the following rulemaking action(s):

- 710:45-9-100. Scope of Part 21 [NEW]
- 710:45-9-101. Definitions [NEW]
- 710:45-9-102. Qualifying criteria [NEW]
- 710:45-9-103. Calculation of marketing costs [NEW]
- 710:45-9-104. Depreciation and return on investment [NEW]
- 710:45-9-105. Reporting requirements [NEW]
- Appendix A. Marketing costs [NEW]

- (a.) **Purpose of the Proposed Rule:** This rulemaking action is being taken to implement the provisions of Section 3 of House Bill 1485 which provides for a deduction of certain marketing costs associated with the production and sale of casinghead and natural gas.
- (b.) **Classes Affected:** Producers of casinghead and natural gas.
- (c.) **Persons Benefited:** Producers of gas, working and royalty interest owners.
- (d.) **Probable Economic Impact:**
 - 1. **On Affected Classes:** The rule will not have an effect apart from the one the underlying statute will have on the affected classes.
 - 2. **On Political Subdivision:** These rules will not have an effect apart from the impact the underlying statute will have on the affected classes.
 - 3. **Fees:** This rulemaking action does not levy, implement, or increase an existing fee.
- (e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.
- (f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.
- (g.) **Small Business Impact:** With reference to Sections 303(A) (4) and 303(B) (6) of the Title 75 of the Oklahoma Statutes, it is believed that the proposed rule will have no adverse impact upon small business.
- (h.) **Alternative Methods and Costs of Compliance:** The purposes of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods. No formalized compliance cost minimization measures have been previously pursued.
- (i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, safety and the environment. The rule is not being implemented to reduce risks.
- (j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.
- (k.) **Date:** February 5, 2008 **Date Modified:**
- (l.) **Prepared By:** Mark Hendrix **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 45 Gross Production Tax

RULE IMPACT STATEMENT: This statement is provided in conjunction with the following rulemaking action(s):

710:45-9-81. Definitions [AMENDED]

710:45-9-82. Exemption period [AMENDED]

- (a.) **Purpose of the Proposed Rule:** This rulemaking action is being taken to implement the provisions of Section 2 of House Bill 1718 which provides for an exemption of gross production tax levied upon certain economically at-risk leases.
- (b.) **Classes Affected:** Producers of oil, condensate, casinghead gas and natural gas.
- (c.) **Persons Benefited:** Producers of gas, working and royalty interest owners.
- (d.) **Probable Economic Impact:**
1. **On Affected Classes:** The rule will not have an effect apart from the one the underlying statute will have on the affected classes.
 2. **On Political Subdivision:** These rules will not have an effect apart from the impact the underlying statute will have on the affected classes.
 3. **Fees:** This rulemaking action does not levy, implement, or increase an existing fee.
- (e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.
- (f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.
- (g.) **Small Business Impact:** With reference to Sections 303(A) (4) and 303(B) (6) of the Title 75 of the Oklahoma Statutes, it is believed that the proposed rule will have no adverse impact upon small business.
- (h.) **Alternative Methods and Costs of Compliance:** The purposes of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods. No formalized compliance cost minimization measures have been previously pursued.
- (i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, safety and the environment. The rule is not being implemented to reduce risks.
- (j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.
- (k.) **Date:** February 5, 2008 **Date Modified:**

(1.) **Prepared By:** Mark Hendrix **Phone Number:** 521-3133