CURRENT TAXES AND INCENTIVES AT THE STATE LEVEL FOR OIL AND GAS EXPLORATION AND PRODUCTION IN LOUISIANA AND SURROUNDING STATES

by
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Oil and natural gas exploration and production is a very important industry in many states of the Union. Thus, it comes as no surprise that states have devised many different tax designs for the oil and gas sector, *and* corresponding tax incentives, when production was decreasing. In what follows, we give a birds-eye view of most state taxes that affect the oil and gas industry in Louisiana and a few surrounding states. We also summarize, *a grosso modo,* different tax incentives available for oil and gas exploration and production. This tax and incentives list is neither meant to be exhaustive, nor is it meant to be for tax preparation purposes. Always consult the taxing agencies and tax professionals for specifics on these taxes and incentives. However, the information below is deemed accurate at the moment of this writing.

Louisiana

Corporation Income Tax

Corporations pay tax on net income computed at the following rates:
4% on the first $25,000, 5% on the next $25,000, 6% on the next $50,000, 7% on the next $100,000, and 8% on the excess over $200,000. Louisiana tax law allows for federal income tax deduction.[1, 2]

Corporation Franchise Tax

$1.50 for each $1,000 up to $300,000 of capital employed in Louisiana, and $3 for each $1,000 in excess of $300,000, with a minimum of $10 per year.[3]

Property Taxes at local level

Property taxes at the parish (county) level do tax the equipment for production of oil and gas.[4]

Severance Tax - Oil[5]

- Full rate oil/condensate: 12.5% of value
- Incapable oil rate: 6.25% of value
- Stripper oil rate: 3.125% of value
- Reclaimed oil: 3.125% of value
- Produced water-full rate: 10.0% of value
- Produced water-incapable oil rate: 5.0% of value
- Produced water-stripper oil rate: 2.5% of value

Severance Tax - Gas

A return must be filed by each severer who withholds tax from royalty payments and each purchaser who withholds tax from any amount due a seller or owner if the tax has not yet been paid. The percentages are:

• Full rate (July 1st, 2009 to June 30, 2010):	$0.331 per mcf
• Incapable oil-well gas:	$0.03 per mcf
• Incapabable gas-well gas:	$0.013 per mcf
• Produced water-full rate:	$0.215 per mcf
• Produced water-incapable oil-well gas:	$0.024 per mcf
• Produced water-incapable gas-well gas:	$0.0104 per mcf

Incentives

The state of Louisiana offers a variety of incentives for oil and gas exploration. The list is long and there is no space to mention them all. The highlights are:[6]

- Severance tax suspension on horizontally drilled well.
- Severance tax suspension on inactive wells.
- Severance tax suspension on deep drilled wells, with a true vertical distance of 15,000 feet or more.

Arkansas

Corporation Income Tax

The tax rates on net taxable income are as follows: 1% on the first $3,000, 2% on the next $3,000, 3% on the next $5,000, 5% on the next $14,000, 6% on the next $75,000, and 6.5% on the excess over $100,000. Arkansas tax law does not allow for federal corporate income tax deductibility.[7]

Corporation Franchise Tax

The corporation franchise tax varies depending on the type of corporation. For corporations with stock there is a $150 minimum and then it is 0.3% of the outstanding capital stock. For corporations without stock the franchise tax is $300. For LLCs it is $150. This tax is collected by the Secretary of State of Arkansas, not by the Department of Finance and Administration.[8]

Property taxes at the local level

Counties levy oil and natural gas ad valorem taxes. Rates vary by county. Arkansas counties also levy property taxes on oil and gas exploration and production equipment. As with the oil and natural gas ad valorem taxes, property tax millages vary by county.[9]

Severance Tax - Oil

The severance tax on oil is five percent (5%) of the market value at time and point of severance.[10]

Severance Tax - Gas

Tax is collected from the Operator/Producer on the market value of gas sold. The 1st Purchaser of natural gas is required to receive advanced ascertainment that the Operator/Producer holds an Arkansas Natural Gas Severance Tax Permit. If advanced ascertainment is not received, the 1st Purchaser is required to withhold natural gas severance tax on the gas purchase. The Operator/Producer and 1st Purchaser have monthly reporting responsibilities. The applicable tax rates of 1.25%, 1.5%, and 5.0% are dependent on the well classification by the Arkansas Oil and Gas Commission.[11]

Incentives

The state of Arkansas offers a series of incentives for certain cases:

- Marginal wells (which produce less than 10 barrels of oil per day) pay 4% of severance tax;
- idle oil wells that are restored and re-established as producing are exempted from severance tax for 10 years;
- idle oil fields that are returned to production are exempted from severance tax;
- enhanced oil recovery projects benefit from a reduction to half the severance tax rate for the incremental volume of oil attributable to the project;
- the incremental production due to the application of new research technologies is exempt from severance tax.[12]

Mississippi

Corporate Income Tax

The rates are 3% on the first $5,000 of taxable income, 4% on the next $5,000 and 5% on the excess over $10,000. There is no deductibility of the federal corporate income tax.[13]

Corporate Franchise Tax

This tax is $2.50 per $1,000, with a minimum of $25, of capital, surplus, undivided profits and true reserves employed in Mississippi.[14]

Property Taxes at the local level

Producing wells are exempt from property tax.[15]

Severance Tax - Oil

The severance tax amounts to 6% of the value of production, at the mouth of the well. The Mississippi Oil and Gas Board levies an oil maintenance tax of 4.4 cents per barrel.[16]

Severance Tax - Gas

A similar tax rate, 6%, applies to natural gas. The Mississippi Oil and Gas Board levies a gasmaintenance tax of 0.005 cents per mcf.[17]

Incentives

The state of Mississippi offers a reduction in the severance tax rate to 3% of the value of oil produced by an enhanced oil recovery method in which carbon dioxide is used when transported by a pipeline to the oil well.[18]

Oklahoma

Corporation Income Tax

The corporation income tax in Oklahoma is 6% of taxable income. There is no deductibility of the federal corporate income tax.[19]

Corporation Franchise Tax

Corporations are taxed $1.25 for each $1,000 of capital invested or used in Oklahoma.[20]

Property Taxes at the local level

Some drilling equipment is subject to personal property tax [or “ad-valorem”, as it is called in Oklahoma], while other equipment is covered by the Gross Production Tax. Once extracted, oil stored for sale, and natural gas in transmission for sale is subject to county property tax.[21]

Severance Tax - Oil

The severance tax [called in Oklahoma “the Gross Production Tax”, GPT] rate is a variable rate that depends on the price of a barrel of oil. The highest rate, 7% of value produced, is applied to prices equal to or exceeding $17 per barrel. Thus, the current tax rate is 7% of the taxable value. There is also a Petroleum Excise Tax on oil, computed as 0.00095 of the taxable value.[22]

Severance Tax - Gas

The severance tax on the production of gas is set on a gliding scale of the price of gas. When the price of natural gas is equal to or exceeds $2.10 per mcf, the tax is 7%. Similarly as with oil, there is also a Petroleum Excise Tax on natural gas, computed as 0.00095 of the taxable value.[23]

Voluntary Contributions

There are two voluntary contributions in Oklahoma payable by the oil and natural gas industries. One is the Oklahoma Energy Resources Board voluntary contribution to fund the agency; it amounts to an assessment of one-tenth of one percent on the sale of oil and natural gas. The other is a voluntary fee that funds the Oklahoma Marginal Well Commission; this fee amounts to $.00015 per mcf of gas and $.0035 per barrel of oil (these are new fees since January 1st, 2008).[24]

Incentives

The state of Oklahoma offers a variety of incentives for exploration and production of oil and gas. Such incentives include:[25]

- Incremental production from approved secondary recovery properties beginning before July 1st, 2009 are exempt from the GPT for 5 years or upon ending the project;
- incremental production from approved tertiary recovery projects begun before July 1st, 2009 is exempt from the GPT for period of 10 years or upon project payback;
- exemption of the GPT for 28 months in the case of deep wells;
- exemption of the GPT for 28 months in the case of new discovery wells.

Texas

Corporate Income Tax

Texas does not have a "corporate income tax" per se, but does have a so-called "franchise tax" imposed on each taxable entity chartered/organized in Texas or doing business in Texas. This tax has been revamped substantially, and new rules apply since January 1st, 2008. The rate for most taxable entities is 1% [for some entities it is 0.5%] of the "margin". The margin is defined as the lesser of three calculations: i) total revenue minus cost of goods sold; ii) total revenue minus compensation; iii) total revenue times 0.7.[26]

Property Taxes at the local level

Texas counties do levy local property taxes on the estimated present value of minerals in the ground as well as structures and equipment used to produce oil and natural gas.[27]

Severance Tax - Oil

The severance tax [in Texas it is called the "Oil Production Tax"] is 4.6% of the market value of oil produced. There is a regulatory tax of $0.001875 per barrel produced, and a regulatory oil field clean-up fee of $0.00675 per barrel produced.[28]

Severance Tax - Gas

The severance tax [Gas Production Tax] is 7.5% of the market value of gas produced. The oil field clean-up fee on gas is one-fifteenth of one percent per mcf of gas produced.[29]

Incentives

The state of Texas offers a variety of incentives for oil and gas production.[30]

- High cost gas incentive – there is a 100% reduction for up to 120 months or until cumulative value of exemption equals 50% of drilling and completion cost;
- flared casinghead gas – if an operator markets casinghead gas that had previously been released to the air for 12 months or more, the operator may receive a severance tax exemption for that gas for the life of the oil well;

- two year inactive oil wells – any oil or gas well that has not produced in more than one month in the last 24 months is eligible for a 10-year severance tax exemption upon a return to beneficial production;
- marginal gas wells – the Railroad Commission of Texas can exempt marginal gas wells from otherwise applicable production limitations if the wells are located in gas fields without special field rules;
- enhanced oil recovery – severance tax is reduced by 50% for oil production from new enhanced oil recovery projects.

Louisiana

[1] See: http://www.rev.state.la.us/sections/business/corp.aspx.

[2] A good resource for state corporate income taxation is the Tax Foundation's "State Corporate Income Tax Rates" publication. It is at: http://www.taxfoundation.org/taxdata/show/230.html. Several of the rates we took from this publication.

[3] See: http://www.rev.state.la.us/sections/business/corp.aspx.

[4] Property tax rates are set by each parish (county). Unfortunately, there is no on-line resource for the assessments in each parish. However, the Louisiana Tax Commission [which can be found at http://www.latax.state.la.us/], has biennial reports that detail the millage rates for each parish.

[5] Detailed information can be found at:
http://dnr.louisiana.gov/sec/execdiv/techasmt/facts_figures/la_severance_tax_2008_2009.pdf.

[6] Detailed information can be found at:
http://dnr.louisiana.gov/sec/execdiv/techasmt/facts_figures/la_severance_tax_2008_2009.pdf.

Arkansas

[7] See the Tax Foundation webpage on state corporate income taxes, http://www.taxfoundation.org/taxdata/show/230.html.
The amount of tax payments can be seen as well at:
http://www.arkansas.gov/dfa/income_tax/documents/Corporate_Booklet_2008.pdf.

[8] The reference is: http://www.sos.arkansas.gov/corp_ucc_franchise_tax.html.

[9] Source: oral communication from functionaries at the Economic Analysis and Tax Research Division of the Director's Office of the Arkansas Department of Finance and Administration,
http://www.arkansas.gov/dfa/directors_office/do_about.html#2.

[10] This can be looked up at: http://www.arkansas.gov/dfa/excise_tax_v2/et_mt_descriptions.html#14#14.

[11] The source for this information is: http://www.arkansas.gov/dfa/excise_tax_v2/et_mt_descriptions.html#14#14.

[12] A good source for state incentives in the following publication by the Interstate Oil and Gas Compact Commission:
http://iogcc.myshopify.com/products/investments-in-energy-security-state-incentives-to-maximize-oil-and-gas-recovery-2007.

Mississippi

[13] The source is the Tax Foundation webpage on state corporate income taxes and the Mississippi State Tax Commission, which can be found at: http://www.mstc.state.ms.us/taxareas/corp/main.htm.

[14] The source is the same as in the previous footnote.

[15] The Mississippi State Code, in Title 27 Chapter 31 states:
§ 27-31-19. Oil, gas and other petroleum products refined in state.
There shall be exempt from all ad valorem taxes now levied or hereafter levied by the State of Mississippi, or any county, municipality, levee district, school, or any other taxing district within the state, all oil, gas, and petroleum products, whether produced within or without the state, which oil, gas or petroleum products are owned by a person, firm, or corporation operating a refinery for the refining of oil, gas or petroleum products in the state, and either (1) are in transit to or situated at such a refinery for refining thereat; (2) are in the process of being refined at such a refinery; or (3) have been refined at such refinery and are still owned by or in the hands of the refiner. Such exemption shall also extend to such oil, gas and petroleum products owned by any corporation controlled by, under common control with, or controlling such a refiner; provided, however, that the exemption afforded by this section shall not extend to those finished petroleum products incident to regular, normal, and customary marketing operations held in marketing bulk plants or retail service stations.

Sources: Codes, 1942, § 9702.5; Laws, 1961, 2nd Ex. ch. 6, eff on passage (approved October 20, 1961). The Mississippi State Tax Commission has the Mississippi State Code on-line at: http://www.mstc.state.ms.us/taxareas/property/main.htm.

[16] The severance tax rate can be looked up at: http://www.mstc.state.ms.us/taxareas/misc/oilgasgn.htm. The source for the maintenance taxes the Mississippi Oil and Gas Board charges is the publication by the Interstate Oil and Gas Compact Commission, "Summary of State Statutes and Regulations for Oil and Gas Production" [this publication is not on-line].

[17] The source for this is the same as in the previous footnote.

[18] See the Interstate Oil and Gas Compact Commission: http://iogcc.myshopify.com/products/investments-in-energy-security-state-incentives-to-maximize-oil-and-gas-recovery-2007.

Oklahoma

[19] See the Tax Foundation webpage on state corporate income taxes, http://www.taxfoundation.org/taxdata/show/230.html, or the Oklahoma Corporate Income Tax Return Form 512, line 2, at: http://www.tax.ok.gov/it2008/512-PKT-08-W.pdf.

[20] The source is the Oklahoma Tax Commission: http://www.tax.ok.gov/bt7.html.

[21] Information about this was given to the author by functionaries of the Oklahoma Tax Commission. Some information is available at: http://www.tax.ok.gov/adv1.html.

[22] The source is the Oklahoma Tax Commission: http://www.tax.ok.gov/gp2.html. The source for the excise tax is the publication by the Interstate Oil and Gas Compact Commission, "Summary of State Statutes and Regulations for Oil and Gas Production" [this publication is not on-line].

[23] Same source as in the previous footnote.

[24] The voluntary contributions fund the Oklahoma Energy Resources Board. You can look up the contributions at: http://www.oerb.com/Default.aspx?tabid=146. The voluntary fee for the Oklahoma Marginal Well Commission can be looked up at: http://www.marginalwells.com.

[25] See the Interstate Oil and Gas Compact Commission: http://iogcc.myshopify.com/products/investments-in-energy-security-state-incentives-to-maximize-oil-and-gas-recovery-2007.

Texas

[26] Rate for the Corporate Franchise Tax can be looked up at: http://www.window.state.tx.us/taxinfo/franchise/rates.html.

[27] Oral communication with Mr. John Kennedy, Senior Analyst, of the Texas Taxpayer and Research Association, which can be found at: http://www.ttara.org/Default.aspx.

[28] Information can be found at: http://www.window.state.tx.us/taxinfo/crude/index.html. Information on the regulatory tax and regulatory clean up fee can be found in the publication by the Interstate Oil and Gas Compact Commission, "Summary of State Statutes and Regulations for Oil and Gas Production" [this publication is not on-line].

[29] Information can be found at: http://www.window.state.tx.us/taxinfo/nat_gas/index.html. The source for the oil clean-up fee on gas is the publication by the Interstate Oil and Gas Compact Commission, "Summary of State Statutes and Regulations for Oil and Gas Production" [this publication is not on-line].

[30] Information can be found in the publication by the Interstate Oil and Gas Compact Commission, "Summary of State Statutes and Regulations for Oil and Gas Production" [this publication is not on-line], or see the Interstate Oil and Gas Compact Commission on state tax incentives: http://www.iogcc.state.ok.us/PDFS/2007-Incentives-publication.pdf. ■

LOUISIANA DEPARTMENT OF NATURAL RESOURCES
TECHNOLOGY ASSESSMENT DIVISION
2008 LOUISIANA ENERGY FACTS ANNUAL

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