

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1370 Session of
2014

INTRODUCED BY STACK, SCHWANK, FONTANA AND FARNESE, JULY 8, 2014

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JULY 8, 2014

AN ACT

1 Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated
2 Statutes, in unconventional gas well fee, providing for State
3 lands unconventional gas well fee; in development, further
4 providing for protection of water supplies and for
5 containment for unconventional wells; providing for green
6 completions; further providing for well reporting
7 requirements, for air containment emissions and for
8 enforcement orders; imposing a tax on the extraction of
9 natural gas; providing for natural gas severance registration
10 certificate, for duties of the Department of Revenue, for tax
11 assessments and tax liens; imposing penalties; providing for
12 service of process, for rulemaking, for cooperation with
13 other governments and for bonds; establishing the Natural Gas
14 Severance Tax Account, the Local Government Services Account
15 and the Oil and Gas Environmental Disaster Recovery Account;
16 and making an appropriation.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. Title 58 of the Pennsylvania Consolidated
20 Statutes is amended by adding a section to read:

21 § 2302.1. State lands unconventional gas well fee.

22 (a) Imposition of fee.--In addition to any fee authorized by
23 this title or other law, a fee is imposed on unconventional gas
24 wells that have been spud on the lands of any State forest or
25 State park.

1 (b) Components.--The fee adopted under subsection (a) is
2 imposed on every producer and shall apply to unconventional gas
3 wells spud on the lands of any State forest or State park
4 regardless of when spudding occurred. The amount of the fee
5 imposed under subsection (a) shall be \$3,000,000.

6 (c) Nonproducing unconventional gas wells.--If a spud
7 unconventional gas well begins paying the fee imposed under this
8 section and is subsequently capped or does not produce natural
9 gas in quantities greater than that of a stripper well within
10 two years after paying the initial fee, then the fee shall be
11 suspended:

12 (1) The fee shall be reinstated for a calendar year
13 during which the unconventional gas well produces natural gas
14 in quantities greater than that of a stripper well.

15 (2) Each calendar year during which a fee is suspended
16 shall not be considered a calendar year following spud for
17 purposes of determining the amount of the fee under
18 subsection (b).

19 (d) Restimulated unconventional gas wells.--

20 (1) An unconventional gas well which after restimulation
21 qualifies as a stripper well shall not be subject to this
22 subsection.

23 (2) The year in which the restimulation occurs shall be
24 considered the first year of spudding for purposes of
25 imposing the fee under this section if:

26 (i) a producer restimulates a previously stimulated
27 unconventional gas well following the tenth year after
28 being spud by:

29 (A) hydraulic fracture treatments;

30 (B) using additional multilateral well bores;

1 (C) drilling deeper into an unconventional
2 formation; or

3 (D) other techniques to expose more of the
4 formation to the well bore; and

5 (ii) the restimulation results in a substantial
6 increase in production.

7 (3) As used in this subsection, the term "substantial
8 increase in production" means an increase in production
9 amounting to more than 90,000 cubic feet of gas per day
10 during a calendar month.

11 (e) Cessation.--Payments of the fee shall cease upon
12 certification to the department by the producer that the
13 unconventional gas well has ceased production and has been
14 plugged according to the regulations established by the
15 department.

16 (f) Vertical unconventional gas well fee.--The fee for a
17 vertical unconventional gas well shall be 20% of the fee
18 established in subsection (a).

19 Section 2. Sections 3218(a) and 3218.2(a) of Title 58 are
20 amended to read:

21 § 3218. Protection of water supplies.

22 (a) General rule.--In addition to the requirements of
23 subsection (c.1), a well operator who affects a public or
24 private water supply by pollution or diminution shall restore or
25 replace the affected supply with an alternate source of water
26 adequate in quantity or quality for the purposes served by the
27 supply. For a private water supply, the well operator shall also
28 be liable to the landowner of the private water supply in an
29 amount equal to twice the decrease in value of the real property
30 as a result of the pollution or diminution. The department shall

1 ensure that the quality of a restored or replaced water supply
2 meets the standards established under the act of May 1, 1984
3 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water
4 Act, or is comparable to the quality of the water supply before
5 it was affected by the operator if that water supply exceeded
6 those standards. The Environmental Quality Board shall
7 promulgate regulations necessary to meet the requirements of
8 this subsection.

9 * * *

10 § 3218.2. Containment for unconventional wells.

11 (a) Sites.--Unconventional well sites shall be designed and
12 constructed to prevent spills to the ground surface or spills
13 off the well site. Containment practices shall meet all of the
14 following:

15 (1) Be instituted on the well site during both drilling
16 and hydraulic fracturing operations.

17 (2) Be sufficiently impervious and able to contain
18 spilled material or waste until it can be removed or treated.

19 (3) Be compatible with the waste material or waste
20 stored or used within the containment.

21 (3.1) Ensure that wastewater that is not fully treated
22 is not stored in open wastewater pits.

23 (3.2) Ensure that wastewater that is not treated to safe
24 drinking water standards is not released into rivers or
25 streams.

26 (4) Additional practices as promulgated in regulation by
27 the Environmental Quality Board.

28 * * *

29 Section 3. Title 58 is amended by adding a section to read:

30 § 3219.2. Green completions.

1 A well operator shall comply with best available control
2 technology in capturing natural gas at the well head after well
3 completion.

4 Section 4. Section 3222(b.1) of Title 58 is amended to read:
5 § 3222. Well reporting requirements.

6 * * *

7 (b.1) Report contents.--

8 (1) The completion report shall contain the operator's
9 stimulation record. The stimulation record shall include all
10 of the following:

11 (i) A descriptive list of the chemical additives in
12 the stimulation fluids, including any acid, biocide,
13 breaker, brine, corrosion inhibitor, crosslinker,
14 demulsifier, friction reducer, gel, iron control, oxygen
15 scavenger, Ph adjusting agent, proppant, scale inhibitor
16 and surfactant.

17 (ii) The trade name, vendor and a brief descriptor
18 of the intended use or function of each chemical additive
19 in the stimulation fluid.

20 (iii) A list of the chemicals intentionally added to
21 the stimulation fluid, by name and chemical abstract
22 service number.

23 (iv) The maximum concentration, in percent by mass,
24 of each chemical intentionally added to the stimulation
25 fluid.

26 (v) The total volume of the base fluid.

27 (vi) A list of water sources used under the approved
28 water management plan and the volume of water used.

29 (vii) The pump rates and pressure used in the well.

30 (viii) The total volume of recycled water used.

1 (2) The well record shall identify all of the following:

2 (i) Whether methane was encountered in other than a
3 target formation.

4 (ii) The country of origin and manufacture of
5 tubular steel products used in the construction of the
6 well.

7 (3) The contents of the report shall be published on the
8 department's publicly accessible Internet website.

9 * * *

10 Section 5. Section 3227 of Title 58 is amended by adding
11 subsections to read:

12 § 3227. Air contaminant emissions.

13 * * *

14 (e) Limitations on flaring of natural gas wells.--

15 (1) An operator shall direct all pipeline - quality gas
16 during well completion of developmental wells, and
17 recompletion or workover of any well into a pipeline for
18 sales.

19 (2) Any gas not captured and put in the sales pipeline
20 may not be vented and must be flared in accordance with best
21 available control technology.

22 (3) Acceptable reasons for sending gas to a flare and
23 not directing gas into the sales line include:

24 (i) Low content of flammable gas. Such low-
25 flammability gas must be directed through a flare, past a
26 continuous flame, to insure combustion begins when gas
27 composition becomes flammable.

28 (ii) Safety reasons.

29 (4) Circumstances unacceptable for sending gas to flare,
30 instead of directing it into a sales line, are:

1 (i) Beginning June 1, 2015, a lack of pipeline
2 connection except for wells that are designated as either
3 exploratory or extension wells using United States
4 Securities and Exchange Commission definitions. An
5 operator shall minimize flaring and maximize the use of
6 reduced emissions completions on exploratory or extension
7 wells, where possible.

8 (ii) Inadequate water disposal capacity.

9 (iii) Undersized flow back equipment, lack of flow
10 back equipment or lack of equipment operating personnel.

11 (5) Any upset or unexpected condition that leads to
12 flaring of gas, instead of directing it into a sales line,
13 shall be documented and records maintained by the operator,
14 including a description of the condition, the location, date
15 and quantity of gas flared.

16 (f) Compressor engine and air emission requirements.--An
17 operator shall use best available control technology for
18 compressor engine and air emissions.

19 Section 6. Section 3253 of Title 58 is amended to read:

20 § 3253. Enforcement orders.

21 (a) General rule.--Except as modified by subsections (b),
22 (c) and (d), inspectors and the department may issue orders
23 necessary to aid in enforcement of this chapter. An order issued
24 under this chapter shall take effect upon notice, unless the
25 order specifies otherwise. The power of inspectors and the
26 department to issue an order under this chapter is in addition
27 to any other remedy available to inspectors and the department
28 under this chapter or under any other law.

29 (b) Suspension and revocation.--

30 (1) The inspectors and department may suspend or revoke

1 a well permit or well registration for any well:

2 (i) in continuing violation of any of the following:

3 (A) This chapter.

4 (B) The act of June 22, 1937 (P.L.1987, No.394),
5 known as The Clean Streams Law.

6 (C) The act of July 7, 1980 (P.L.380, No.97),
7 known as the Solid Waste Management Act.

8 (D) Any other statute administered by the
9 department;

10 and

11 (ii) the likely result of a violation is an unsafe
12 operation or environmental damage.

13 (2) A suspension order of an inspector or the department
14 shall automatically terminate if the violation upon which it
15 is based is corrected by the operator to the satisfaction of
16 the inspector or department in order to bring the well into
17 compliance with this chapter.

18 (c) Written notice.--Prior to suspension or revocation of a
19 well permit or registration, the inspector or department shall
20 serve written notice on the well operator or its agent, stating
21 specifically the statutory provision, regulation or other reason
22 relied upon, along with factual circumstances surrounding the
23 alleged violation. If the inspector or department suspends or
24 revokes the permit or registration, the inspector or department
25 may order the operator to cap the well if the likely result of
26 the violation is an unsafe operation or environmental damage.

27 (d) Immediate orders.--An order of an inspector or the
28 department requiring immediate cessation of drilling operations
29 shall be effective only if authorized by the inspector or the
30 secretary or a designee.

(e) Grievances.--A person aggrieved by an inspector or a
department order issued under this section shall have the right,
within 30 days of receipt of the notice, to appeal to the
Environmental Hearing Board.

Section 7. Title 58 is amended by adding a chapter to read:

CHAPTER 37

NATURAL GAS EXTRACTION TAX

Sec.

3701. Short title of chapter.

3702. Definitions.

3703. Imposition of tax.

3703.1. Natural gas base rate adjustment.

3704. Return and payment.

3705. Natural gas extraction tax registration.

3705.1 Meters.

3706. Assessments.

3707. Time for assessment.

3708. Extension of assessment period.

3709. Reassessments.

3710. Interest.

3711. Penalties.

3712. Criminal acts.

3713. Abatement of additions or penalties.

3714. Bulk and auction sales.

3715. Collection upon failure to request reassessment, review
or appeal.

3716. Tax liens.

3717. Tax suit reciprocity.

3718. Service.

3719. Refunds.

1 3720. Refund petition.
2 3721. Rules and regulations.
3 3722. Recordkeeping.
4 3723. Examinations.
5 3724. Unauthorized disclosure.
6 3725. Cooperation with other governments.
7 3726. Bonds.
8 3727. Accounts established.
9 3728. Transfers and distributions.
10 3729. Appropriation.
11 § 3701. Short title of chapter.

12 This chapter shall be known and may be cited as the Natural
13 Gas Extraction Tax Act.

14 § 3702. Definitions.

15 The following words and phrases when used in this chapter
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Accredited laboratory." A facility engaged in the testing
19 and calibration of scientific measurement devices and certified
20 by the Department of Environmental Protection as having met the
21 department's standards for accreditation.

22 "Association." A partnership, limited partnership or any
23 other form of unincorporated enterprise owned or conducted by
24 two or more persons.

25 "Base rate adjustment index." The amount calculated under
26 section 3703(b) (relating to imposition of tax) by which the
27 rate of the tax imposed under section 3703(a) is adjusted
28 annually.

29 "Corporation." A corporation, joint stock association,
30 limited liability company, business trust or any other

incorporated enterprise organized under the laws of this Commonwealth, the United States or any other state, territory or foreign country or dependency.

"Department." The Department of Revenue of the Commonwealth.

"Fund." The Natural Gas Extraction Tax Fund established under section 3727 (relating to accounts established).

"Meter." A device to measure the passage of volumes of gases or liquids past a certain point.

"Municipality." A city, borough, incorporated town or township.

"Natural gas." A fossil fuel consisting of a mixture of hydrocarbon gases, primarily methane, possibly including ethane, propane, butane, pentane, carbon dioxide, oxygen, nitrogen and hydrogen sulfide and other gas species. The term includes natural gas from oil fields known as associated gas or casing head gas, natural gas fields known as nonassociated gas, coal beds, shale beds and other formations. The term does not include "coalbed methane" which, for the purpose of this chapter, shall mean gas which can be produced from coal beds, coal seams, mined out areas or gob wells.

"Nonproducing site." A point of severance that is not capable of producing natural gas in paying quantities.

"Paying quantities." Profit to the producer, however small, over the producer's current operating expenses.

"Person." A natural person or a corporation, fiduciary, association or other entity, including the Commonwealth, its political subdivisions, instrumentalities and authorities. When the term is used in a clause prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term shall include the members, as applied to an association, and the

officers, as applied to a corporation.

"Producer." A person who engages or continues within this Commonwealth in the business of severing natural gas for sale, profit or commercial use. The term does not include a person who severs natural gas from a storage field.

"Producing site." A point of severance capable of producing natural gas in paying quantities.

"Reporting period." A period of three successive calendar months beginning with the first day of July and ending on the 30th day of September and each succeeding three successive calendar months.

"Secretary." The Secretary of Revenue of the Commonwealth.

"Sever," "severing" or "severance." The extraction or other removal of natural gas from the soil or water of this Commonwealth.

"Storage field." A natural formation or other site that is used to store natural gas that did not originate from and has been injected into the formation or site.

"Stripper well." A producing site or a nonproducing site that is not capable of producing and does not produce more than 60,000 cubic feet of natural gas per day.

"Tax." The tax imposed under this chapter.

"Taxpayer." A person subject to the tax imposed by this chapter.

"Unit." A thousand cubic feet of natural gas measured at the wellhead at a temperature of 60 degrees Fahrenheit and an absolute pressure of 14.73 pounds per square inch in accordance with American Gas Association Standards and according to Boyle's Law for the measurement of gas under varying pressures with deviations as follows:

1 (1) The average absolute atmospheric pressure shall be
2 assumed to be 14.4 pounds to the square inch, regardless of
3 elevation or location of point of delivery above sea level or
4 variations in atmospheric pressure from time to time.

5 (2) The temperature of the gas passing the meters shall
6 be determined by the continuous use of a recording
7 thermometer installed to properly record the temperature of
8 gas flowing through the meters. The arithmetic average of the
9 temperature recorded each 24-hour day shall be used in
10 computing gas volumes. If a recording thermometer is not
11 installed, or if installed and not operating properly, an
12 average flowing temperature of 60 degrees Fahrenheit shall be
13 used in computing gas volume.

14 (3) The specific gravity of the gas shall be determined
15 annually by tests made by the use of an Edwards or Acme
16 gravity balance, or at intervals as found necessary in
17 practice. Specific gravity determinations shall be used in
18 computing gas volumes.

19 (4) The deviation of the natural gas from Boyle's Law
20 shall be determined by annual tests or at other shorter
21 intervals as found necessary in practice. The apparatus and
22 method used in making the test shall be in accordance with
23 recommendations of the National Bureau of Standards or Report
24 No. 3 of the Gas Measurement Committee of the American Gas
25 Association, or amendments thereto. The results of the tests
26 shall be used in computing the volume of gas delivered under
27 this chapter.

28 "Wellhead meter." A meter placed at a producing or
29 nonproducing site to measure the volume of natural gas severed
30 for which a wellhead meter certification has been issued.

1 "Wellhead meter certification." A report issued by an
2 accredited laboratory certifying the accuracy of a wellhead
3 meter.

4 § 3703. Imposition of tax.

5 (a) Establishment.--A natural gas extraction tax is levied
6 on every producer.

7 (a.1) Stripper wells.--The tax shall not be imposed on units
8 severed from a stripper well unless the following are true:

9 (1) The stripper well is one of multiple producing sites
10 or nonproducing sites, the combined volumes of gas produced
11 by all of which sites are measured by a single wellhead meter
12 as provided in section 3705.1 (relating to meters).

13 (2) The combined volumes of gas produced by all the
14 producing sites or nonproducing sites described in paragraph
15 (1) is more than 60,000 cubic feet of natural gas per day.

16 (a.2) Exemptions.--The tax shall not be imposed on the
17 following:

18 (1) units severed, sold and delivered by a producer at
19 or within five miles of the producing site for the processing
20 or manufacture of tangible personal property, as defined
21 under section 201 of the act of March 4, 1971 (P.L.6, No.2),
22 known as the Tax Reform Code of 1971, within this
23 Commonwealth; or

24 (2) units provided free of charge to the owner of the
25 surface under which the gas is severed if the surface owner
26 is the end user of the gas.

27 (b) Rate.--Subject to the provisions of section 3703.1, the
28 rate shall be 35¢ per unit severed at the wellhead.

29 § 3703.1. Natural gas base rate adjustment.

30 (a) Annual adjustment.--The rate of tax imposed under

section 3703 (relating to imposition of tax) shall be adjusted annually by the amount of the base rate adjustment index as calculated under subsection (c), provided that the tax rate shall never be less than 35¢ per unit severed. The adjusted tax rate shall be effective for the next year.

(b) Determination of adjustment.--On or before April 30 of each year following the effective date of this section, the secretary shall calculate and determine the amount of the base rate adjustment index.

(c) Calculation of adjustment.--The base rate adjustment index shall be determined as follows:

(1) If 5% of the average of New York Mercantile Exchange (NYMEX) Henry Hub settled price on the last trading day of the month, as reported by the Wall Street Journal for the previous 12-month period ending March 31, is less than 35¢, the base rate adjustment index shall be zero and the adjusted tax rate shall be 35¢.

(2) If 5% of the average of the New York Mercantile Exchange (NYMEX) Henry Hub settled price on the last trading day of the month, as reported by the Wall Street Journal for the previous 12-month period ending March 31, is greater than 35¢, the base rate adjustment index shall be 50% of the difference between 5% of the average of the NYMEX Henry Hub settled price on the last trading day of the month, as reported in the Wall Street Journal for the previous 12-month period ending March 31, and 35¢. The adjusted tax rate shall be the resulting base rate adjustment index plus 35¢.

(d) Publication of adjustment.--The secretary shall forward the amount of the base rate adjustment index and the adjusted tax rate, as determined under subsection (c), to the Legislative

Reference Bureau for publication in the Pennsylvania Bulletin by
May 1 of each year and shall simultaneously provide the
information to producers as required by written notice. Failure
of the amount of the base rate adjustment index and the adjusted
tax rate to be published or provided to producers as required by
this subsection shall not affect the effectiveness of the
adjusted tax rate under subsection (b).

(e) Discontinuance of data.--If publication of the NYMEX
Henry Hub average monthly gas price data is discontinued, the
tax rate then in effect shall not be adjusted until a comparable
method for determining the base rate adjustment index is adopted
by the General Assembly in legislation.

(f) Other adjustments.--If the base data of the NYMEX Henry
Hub average monthly gas price is substantially revised, the
secretary shall, when determining the amount of the base rate
adjustment index under subsection (c), make appropriate changes
to ensure that the base rate adjustment index is reasonably
consistent with the result which would have been attained had
such substantial revision not been made. If the secretary is
unable to make reasonable changes sufficient to ensure a
consistent result, the tax rate then in effect shall not be
adjusted until a comparable method for determining the base rate
adjustment index is adopted by the General Assembly in
legislation.

(g) Application of rate determinations.--The provisions of
this section shall affect only the determination of the rate of
the tax on the severance units of natural gas imposed in section
3703. The provisions of this section are not intended, nor shall
they be construed, to affect any other determination whatsoever,
including, but not limited to, the determination of royalty due

under mineral leases. Notwithstanding any other provision of law, the tax imposed by this chapter shall not reduce any royalty payments due under mineral leases and the producer may not recover any portion of the tax paid from the royalty owner through other means of deduction or reallocation, notwithstanding any provision in the lease, contract or agreement.

§ 3704. Return and payment.

(a) Requirement.--Every producer is required to file a return with the department, on a form to be prescribed by the department, which shall include all of the following:

(1) The number of severed natural gas units for each reporting period.

(2) The number of producing sites in each county and municipality.

(3) The amount of tax due under section 3703 (relating to imposition of tax).

(b) Filing.--The return required by subsection (a) shall be filed with the department within 50 days following the end of a reporting period.

(c) Deadline.--The tax imposed under section 3703 is due on the day the return is required to be filed and becomes delinquent if not remitted to the department by that date.

§ 3705. Natural gas extraction tax registration.

(a) Application.--Before a producer extracts natural gas in this Commonwealth, the producer shall apply to the department for a natural gas extraction tax registration certificate.

(a.1) Application fee.--The department may charge an application fee to cover the administrative costs associated with the application and registration process. If the department

1 charges an application fee, the department shall not issue a
2 registration certificate until the producer has paid the
3 application fee.

4 (a.2) Declaration.--The producer shall include in its
5 application a declaration of all producing sites and
6 nonproducing sites used by the producer for the severance of
7 natural gas. The declaration shall include copies of wellhead
8 meter certifications for each site. The producer is required to
9 update the declaration when the producer adds or removes a
10 producing site or nonproducing site in this Commonwealth or when
11 there is a change in the status of a producing site or
12 nonproducing site or when the producer uses a different
13 accredited laboratory to issue a wellhead meter certification.
14 The producer shall update the declaration within 30 days after a
15 calendar month in which a change to the declaration occurs.

16 (b) Issuance.--Except as provided in subsection (c), after
17 the receipt of an application, the department shall issue a
18 registration certificate under subsection (a). The registration
19 certificate shall be nonassignable. All registrants shall be
20 required to renew their registration certificates and wellhead
21 meter certifications on a staggered renewal system established
22 by the department. After the initial staggered renewal period, a
23 registration certificate or a wellhead meter certification
24 issued shall be valid for a period of five years.

25 (c) Refusal, suspension or revocation.--The department may
26 refuse to issue, suspend or revoke a registration certificate if
27 the applicant or registrant has not filed required State tax
28 reports and paid State taxes not subject to a timely perfected
29 administrative or judicial appeal or subject to a duly
30 authorized deferred payment plan. The department shall notify

1 the applicant or registrant of any refusal, suspension or
2 revocation. The notice shall contain a statement that the
3 refusal, suspension or revocation may be made public. The notice
4 shall be made by first class mail. An applicant or registrant
5 aggrieved by the determination of the department may file an
6 appeal under the provisions for administrative appeals in the
7 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
8 of 1971. In the case of a suspension or revocation which is
9 appealed, the registration certificate shall remain valid
10 pending a final outcome of the appeals process. Notwithstanding
11 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the
12 Tax Reform Code of 1971 or any other provision of law, if no
13 appeal is taken or if an appeal is taken and denied at the
14 conclusion of the appeal process the department may disclose, by
15 publication or otherwise, the identity of a producer and the
16 fact that the producer's registration certificate has been
17 refused, suspended or revoked under this subsection. Disclosure
18 may include the basis for refusal, suspension or revocation.

19 (d) Violation.--A person severing natural gas in this
20 Commonwealth without holding a valid registration certificate
21 under subsection (b) shall be guilty of a summary offense and
22 shall, upon conviction, be sentenced to pay a fine of not less
23 than \$300 nor more than \$1,500. In the event the person
24 convicted defaults, he shall be sentenced to imprisonment for
25 not less than five days nor more than 30 days. The penalties
26 imposed by this subsection shall be in addition to any other
27 penalties imposed by this chapter. For purposes of this
28 subsection, the severing of natural gas during any calendar day
29 shall constitute a separate violation. The secretary may
30 designate employees of the department to enforce the provisions

1 of this subsection. The employees shall exhibit proof of and be
2 within the scope of the designation when instituting proceedings
3 as provided by the Pennsylvania Rules of Criminal Procedure.

4 (e) Failure to obtain registration certificate.--Failure to
5 obtain or hold a valid registration certificate does not relieve
6 a person from liability for the tax imposed by this chapter.

7 § 3705.1. Meters.

8 (a) General rule.--Except as provided in subsection (b), a
9 producer shall provide for and maintain a discrete wellhead
10 meter where natural gas is severed. A producer shall ensure that
11 the meters are maintained according to industry standards. Any
12 wellhead meter installed after the effective date of this
13 section shall be a digital meter.

14 (b) Exception.--If a producer has multiple producing sites
15 or nonproducing sites, the combined volumes of gas produced by
16 all of which sites are measured by a single wellhead meter, the
17 producer shall not be required to provide for a discrete
18 wellhead meter at any of those producing sites or nonproducing
19 sites that is also a stripper well.

20 § 3706. Assessments.

21 (a) Authorization and requirement.--The department is
22 authorized and shall make the inquiries, determinations and
23 assessments of the natural gas extraction tax, including
24 interest, additions and penalties imposed under this chapter.

25 (b) Notice.--The notice of assessment and demand for payment
26 shall be mailed to the taxpayer. The notice shall set forth the
27 basis of the assessment. The department shall send the notice of
28 assessment to the taxpayer at its registered address via
29 certified mail if the assessment increases the taxpayer's tax
30 liability by \$300. Otherwise, the notice of assessment may be

1 sent via regular mail.

2 § 3707. Time for assessment.

3 (a) Requirement.--An assessment as provided under section
4 3706 (relating to assessments) shall be made within three years
5 after the date when the return provided for by section 3704
6 (relating to return and payment) is filed or the end of the year
7 in which the tax liability arises, whichever shall occur last.
8 For the purposes of this subsection and subsection (b), a return
9 filed before the last day prescribed for the filing period shall
10 be considered as filed on the last day.

11 (b) Exception.--If the taxpayer underpays the correct amount
12 of the tax due by 25% or more, the tax may be assessed within
13 six years after the date the return was filed.

14 (c) Intent to evade.--Where no return is filed or where the
15 taxpayer files a false or fraudulent return with intent to evade
16 the tax imposed by this chapter, the assessment may be made at
17 any time.

18 (d) Erroneous credit or refund.--Within three years of the
19 granting of a refund or credit or within the period in which an
20 assessment or reassessment may have been issued by the
21 department for the taxable period for which the refund was
22 granted, whichever period shall last occur, the department may
23 issue an assessment to recover a refund or credit made or
24 allowed erroneously.

25 § 3708. Extension of assessment period.

26 Notwithstanding the provisions of this chapter, the
27 assessment period may be extended in the event a taxpayer has
28 provided written consent before the expiration of the period
29 provided in section 3707 (relating to time for assessment) for a
30 tax assessment. The amount of tax due may be assessed at any

1 time within the extended period. The period may be extended
2 further by subsequent written consents made before the
3 expiration of the extended period.

4 § 3709. Reassessments.

5 A taxpayer against whom an assessment is made may petition
6 the department for a reassessment under Article XXVII of the act
7 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
8 1971.

9 § 3710. Interest.

10 The department shall assess interest on any delinquent tax at
11 the rate prescribed under section 806 of the act of April 9,
12 1929 (P.L.343, No.176), known as The Fiscal Code.

13 § 3711. Penalties.

14 The department shall enforce the following penalties:

15 (1) A penalty against a producer without a natural gas
16 extraction tax registration certificate. The penalty shall be
17 \$1 for every unit severed without a valid registration
18 certificate. The department may assess this penalty
19 separately from or in conjunction with any assessment of the
20 natural gas extraction tax.

21 (2) A penalty against a producer for failure to timely
22 file a return as required under section 3704 (relating to
23 return and payment). The penalty shall be 5% of the tax
24 liability to be reported on the return for each day beyond
25 the due date that the return is not filed.

26 (3) In addition to the penalty under paragraph (2), a
27 penalty against the producer for a willful failure to timely
28 file a return. The penalty shall be 200% of the tax liability
29 required to be reported on the return.

30 (4) A penalty against a producer for failure to timely

1 pay the tax as required by section 3704(c). The penalty shall
2 be 5% of the amount of tax due for each day beyond the
3 payment date that the tax is not paid.

4 § 3712. Criminal acts.

5 (a) Fraudulent return.--Any person with intent to defraud
6 the Commonwealth, who willfully makes or causes to be made a
7 return required by this chapter which is false, is guilty of a
8 misdemeanor and shall, upon conviction, be sentenced to pay a
9 fine of not more than \$2,000 or to imprisonment for not more
10 than three years, or both.

11 (b) Other crimes.--

12 (1) Except as otherwise provided by subsection (a), a
13 person is guilty of a misdemeanor and shall, upon conviction,
14 be sentenced to pay a fine of not more than \$1,000 and costs
15 of prosecution or to imprisonment for not more than one year,
16 or both, for any of the following:

17 (i) Willfully failing to timely remit the tax to the
18 department.

19 (ii) Willfully failing or neglecting to timely file
20 a return or report required by this chapter.

21 (iii) Refusing to timely pay a tax, penalty or
22 interest imposed or provided for by this chapter.

23 (iv) Willfully failing to preserve its books, papers
24 and records as directed by the department.

25 (v) Refusing to permit the department or its
26 authorized agents to examine its books, records or
27 papers.

28 (vi) Knowingly make any incomplete, false or
29 fraudulent return or report.

30 (vii) Preventing or attempting to prevent the full

1 disclosure of the amount of natural gas extraction tax
2 due.

3 (viii) Providing any person with a false statement
4 as to the payment of natural gas extraction tax with
5 respect to any pertinent facts.

6 (ix) Making, uttering or issuing a false or
7 fraudulent statement.

8 (2) The penalties imposed by this section shall be in
9 addition to other penalties imposed by this chapter.

10 § 3713. Abatement of additions or penalties.

11 Upon the filing of a petition for reassessment or a petition
12 for refund by a taxpayer as provided under this chapter,
13 additions or penalties imposed upon the taxpayer by this chapter
14 may be waived or abated in whole or in part where the petitioner
15 establishes that he acted in good faith, without negligence and
16 with no intent to defraud.

17 § 3714. Bulk and auction sales.

18 A person that sells or causes to be sold at auction, or that
19 sells or transfers in bulk, 51% or more of a stock of goods,
20 wares or merchandise of any kind, fixtures, machinery,
21 equipment, buildings or real estate involved in a business for
22 which the person holds a registration certificate or is required
23 to obtain a registration certificate under the provisions of
24 this chapter shall be subject to the provisions of section 1403
25 of the act of April 9, 1929 (P.L.343, No.176), known as The
26 Fiscal Code.

27 § 3715. Collection upon failure to request reassessment, review
28 or appeal.

29 (a) Power of department.--The department may collect the tax
30 imposed under this chapter:

1 (1) If an assessment of the tax is not paid within 30
2 days after notice to the taxpayer when no petition for
3 reassessment has been filed.

4 (2) Within 60 days of the reassessment, if no petition
5 for review has been filed.

6 (3) If no appeal has been made, within 30 days of:

7 (i) the Board of Finance and Revenue's decision of a
8 petition for review; or

9 (ii) the expiration of the board's time for acting
10 upon the petition.

11 (4) In all cases of judicial sales, receiverships,
12 assignments or bankruptcies.

13 (b) Prohibition.--In a case for the collection of taxes
14 under subsection (a), the taxpayer against whom they were
15 assessed shall not be permitted to set up a ground of defense
16 that might have been determined by the department, the Board of
17 Finance and Revenue or the courts, provided that the defense of
18 failure of the department to mail notice of assessment or
19 reassessment to the taxpayer and the defense of payment of
20 assessment or reassessment may be raised in proceedings for
21 collection by a motion to stay the proceedings.

22 § 3716. Tax liens.

23 (a) Lien imposed.--If any taxpayer neglects or refuses to
24 pay the tax imposed under this chapter for which the taxpayer is
25 liable under this chapter after demand, the amount, including
26 interest, addition or penalty, together with additional costs
27 that may accrue, shall be a lien in favor of the Commonwealth
28 upon the real and personal property of the taxpayer but only
29 after the same has been entered and docketed of record by the
30 prothonotary of the county where the property is situated. The

1 department may, at any time, transmit to the prothonotaries of
2 the respective counties certified copies of all liens imposed by
3 this section. It shall be the duty of the prothonotary receiving
4 the lien to enter and docket the same of record to the office of
5 the prothonotary. The lien shall be indexed as judgments are now
6 indexed. No prothonotary shall require as a condition precedent
7 to the entry of the lien the payment of costs incidental to its
8 entry.

9 (b) Priority of lien and effect on judicial sale.--Except
10 for the costs of the sale and the writ upon which the sale was
11 made and real estate taxes and municipal claims against the
12 property, a lien imposed under this section shall have priority
13 from the date of its recording and shall be fully paid and
14 satisfied out of the proceeds of any judicial sale of property
15 subject to the lien, before any other obligation, judgment,
16 claim, lien or estate to which the property may subsequently
17 become subject, but shall be subordinate to mortgages and other
18 liens existing and duly recorded or entered of record prior to
19 the recording of the lien.

20 (c) No discharge by sale on junior lien.--In the case of a
21 judicial sale of property subject to a lien imposed under this
22 section, upon a lien or claim over which the lien imposed under
23 this section has priority, the sale shall discharge the lien
24 imposed under this section to the extent only that the proceeds
25 are applied to its payment, and the lien shall continue in full
26 force and effect as to the balance remaining unpaid. There shall
27 be no inquisition or condemnation upon any judicial sale of real
28 estate made by the Commonwealth under the provisions of this
29 chapter. The lien shall continue as provided in the act of April
30 9, 1929 (P.L.343, No.176), known as The Fiscal Code, and a writ

of execution may directly issue upon the lien without the
issuance and prosecution to judgment of a writ of scire facias,
provided that not less than ten days before issuance of any
execution on the lien, notice of the filing and the effect of
the lien shall be sent by registered mail to the taxpayer at its
last known post office address, provided further that the lien
shall have no effect upon any stock of goods, wares or
merchandise regularly sold or leased in the ordinary course of
business by the taxpayer against whom the lien has been entered,
unless and until a writ of execution has been issued and a levy
made upon said stock of goods, wares and merchandise.

(d) Duty of prothonotary.--Any willful failure of any
prothonotary to carry out any duty imposed upon him by this
section shall be a misdemeanor. Upon conviction, he shall be
sentenced to pay a fine of not more than \$1,000 and costs of
prosecution or to imprisonment for not more than one year, or
both.

(e) Priority.--Except as provided in this chapter, the
distribution, voluntary or compulsory, in receivership,
bankruptcy or otherwise of the property or estate of any person,
all taxes imposed by this chapter which are due and unpaid and
are not collectible under the provisions of section 225 of the
act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
of 1971, shall be paid from the first money available for
distribution in priority to all other claims and liens, except
as the laws of the United States may give priority to a claim to
the Federal Government. A person charged with the administration
or distribution of the property or estate who violates the
provisions of this section shall be personally liable for the
taxes imposed by this chapter which are accrued and unpaid and

chargeable against the person whose property or estate is being
administered or distributed.

(f) Other remedies.--Subject to the limitations contained in
this chapter as to the assessment of taxes, nothing contained in
this section shall be construed to restrict, prohibit or limit
the use by the department in collecting taxes due and payable of
another remedy or procedure available at law or equity for the
collection of debts.

§ 3717. Tax suit reciprocity.

The courts of this Commonwealth shall recognize and enforce
liabilities for natural gas extraction taxes lawfully imposed by
any other state, provided that the other state recognizes and
enforces the tax set forth in this chapter.

§ 3718. Service.

A producer is deemed to have appointed the Secretary of the
Commonwealth its agent for the acceptance of service of process
or notice in a proceeding for the enforcement of the civil
provisions of this chapter and service made upon the Secretary
of the Commonwealth as agent shall be of the same legal force
and validity as if the service had been personally made upon the
producer. Where service cannot be made upon the producer in the
manner provided by other laws of this Commonwealth relating to
service of process, service may be made upon the Secretary of
the Commonwealth. In that case, a copy of the process or notice
shall be personally served upon any agent or representative of
the producer who may be found within this Commonwealth or, where
no agent or representative may be found, a copy of the process
or notice shall be sent via registered mail to the producer at
the last known address of its principal place of business, home
office or residence.

1 § 3719. Refunds.

2 Under Article XXVII of the act of March 4, 1971 (P.L.6,
3 No.2), known as the Tax Reform Code of 1971, the department
4 shall refund all taxes, interest and penalties paid to the
5 Commonwealth under the provisions of this chapter to which the
6 Commonwealth is not rightfully entitled. The refunds shall be
7 made to the person or the person's heirs, successors, assigns or
8 other personal representatives who paid the tax, provided that
9 no refund shall be made under this section regarding a payment
10 made by reason of an assessment where a taxpayer has filed a
11 petition for reassessment under section 2702 of the Tax Reform
12 Code of 1971 to the extent the petition is adverse to the
13 taxpayer by a decision which is no longer subject to further
14 review or appeal. Nothing in this chapter shall prohibit a
15 taxpayer who has filed a timely petition for reassessment from
16 amending it to a petition for refund where the petitioner paid
17 the tax assessed.

18 § 3720. Refund petition.

19 (a) General rule.--Except as provided for in subsection (b),
20 the refund or credit of tax, interest or penalty provided for by
21 section 3719 (relating to refunds) shall be made only where the
22 person who has paid the tax files a petition for refund with the
23 department under Article XXVII of the act of March 4, 1971
24 (P.L.6, No.2), known as the Tax Reform Code of 1971, within the
25 time limits of section 3003.1 of the Tax Reform Code of 1971.

26 (b) Natural gas extraction tax.--A refund or credit of tax,
27 interest or penalty paid as a result of an assessment made by
28 the department under section 3705 (relating to natural gas
29 extraction tax registration), shall be made only where the
30 person who has paid the tax files with the department a petition

1 for a refund with the department under Article XXVII within the
2 time limits of section 3003.1 of the Tax Reform Code of 1971.
3 The filing of a petition for refund, under the provisions of
4 this subsection, shall not affect the abatement of interest,
5 additions or penalties to which the person may be entitled by
6 reason of his payment of the assessment.

7 § 3721. Rules and regulations.

8 The department is charged with the enforcement of the
9 provisions of this chapter and is authorized and empowered to
10 prescribe, adopt, promulgate and enforce rules and regulations
11 not inconsistent with the provisions of this chapter relating to
12 any matter or thing pertaining to the administration and
13 enforcement of the provisions of this chapter and the collection
14 of taxes, penalties and interest imposed by this chapter. The
15 department may prescribe the extent, if any, to which any of the
16 rules and regulations shall be applied without retroactive
17 effect.

18 § 3722. Recordkeeping.

19 (a) General rule.--Every person liable for any tax imposed
20 by this chapter, or for the collection of such tax, shall keep
21 records, including those enumerated in subsection (b), render
22 statements, make returns and comply with the rules and
23 regulations as the department may prescribe regarding matters
24 pertinent to the person's business. Whenever it is necessary,
25 the department may require a person, by notice served upon the
26 person or by regulations, to make returns, render statements or
27 keep records as the department deems sufficient to show whether
28 or not a person is liable to pay tax under this chapter.

29 (a.1) Records.--Records to be maintained are:

30 (1) Wellhead meter charts for each reporting period and

1 the meter calibration and maintenance records. If turbine
2 meters are in use, the maintenance records will be made
3 available to the department upon request.

4 (2) Records, statements and other instruments furnished
5 to a producer by a person to whom the producer delivers for
6 sale, transport or delivery of natural gas.

7 (3) Records, statements and other instruments as the
8 department may prescribe by regulation.

9 (b) Records of nonresidents.--A nonresident who does
10 business in this Commonwealth as a producer shall keep adequate
11 records of the business and of the tax due as a result. The
12 records shall be retained within this Commonwealth unless
13 retention outside this Commonwealth is authorized by the
14 department. The department may require a taxpayer who desires to
15 retain records outside this Commonwealth to assume reasonable
16 out-of-State audit expenses.

17 (c) Keeping of separate records.--A producer who is engaged
18 in another business or businesses which do not involve the
19 severing of natural gas taxable under this chapter, shall keep
20 separate books and records of the businesses so as to show the
21 taxable severing of natural gas under this chapter separately
22 from other business activities not taxable hereunder. If any
23 person fails to keep separate books and records, the person
24 shall be liable for a penalty equaling 100% of tax due under
25 this chapter for the period where separate records were not
26 maintained.

27 § 3723. Examinations.

28 The department or any of its authorized agents are authorized
29 to examine the books, papers and records of any taxpayer in
30 order to verify the accuracy and completeness of any return made

1 or, if no return was made, to ascertain and assess the tax
2 imposed by this chapter. The department may require the
3 preservation of all books, papers and records for any period
4 deemed proper by it but not to exceed three years from the end
5 of the calendar year to which the records relate. Every taxpayer
6 is required to give to the department or its agent the means,
7 facilities and opportunity for examinations and investigation
8 under this section. The department is further authorized to
9 examine any person, under oath, concerning the taxable severing
10 of natural gas by any taxpayer or concerning any other matter
11 relating to the enforcement or administration of this chapter,
12 and to this end may compel the production of books, papers and
13 records and the attendance of all persons whether as parties or
14 witnesses whom it believes to have knowledge of relevant
15 matters. The procedure for the hearings or examinations shall be
16 the same as that provided by the act of April 9, 1929 (P.L.343,
17 No.176), known as The Fiscal Code.

18 § 3724. Unauthorized disclosure.

19 Any information gained by the department as a result of any
20 return, examination, investigation, hearing or verification
21 required or authorized by this chapter shall be confidential
22 except for official purposes and except in accordance with
23 proper judicial order or as otherwise provided by law, and any
24 person unlawfully divulging the information shall be guilty of a
25 misdemeanor and shall, upon conviction, be sentenced to pay a
26 fine of not more than \$1000 and costs of prosecution or to
27 imprisonment for not more than one year, or both.

28 § 3725. Cooperation with other governments.

29 Notwithstanding the provisions of section 3717 (relating to
30 tax suit reciprocity), the department may permit the

Commissioner of the Internal Revenue Service of the United States, the proper officer of any state or the authorized representative of either of them to inspect the tax returns of any taxpayer, or may furnish to the commissioner or officer or to either of their authorized representative an abstract of the return of any taxpayer, or supply him with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the laws of the United States or another state grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

§ 3726. Bonds.

(a) Taxpayer to file bond.--The department may require a nonresident natural person or any foreign corporation, association, fiduciary or other entity, not authorized to do business within this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by section 3703 (relating to imposition of tax), to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in amounts as it may fix, to secure the payment of any tax or penalties due or which may become due from a nonresident natural person, corporation, association, fiduciary or other entity whenever it deems it necessary to protect the revenues obtained under this chapter. The department may also require a bond of a person petitioning the department for reassessment in the case of any assessment over \$500 or where, in its opinion, the ultimate collection is in jeopardy. For a period of three years, the department may

1 require a bond of any person who has, on three or more occasions
2 within a 12-month period, either filed a return or made payment
3 to the department more than 30 days late. In the event the
4 department determines a taxpayer is required to file a bond, it
5 shall give notice to the taxpayer specifying the amount of the
6 bond required. The taxpayer shall file the bond within five days
7 after notice is given by the department unless, within five
8 days, the taxpayer shall request in writing a hearing before the
9 secretary or his representative. At the hearing, the necessity,
10 propriety and amount of the bond shall be determined by the
11 secretary or the secretary's representative. The determination
12 shall be final and the taxpayer shall comply with it within 15
13 days after notice is mailed to the taxpayer.

14 (b) Securities in lieu of bond.--In lieu of the bond
15 required by this section securities approved by the department
16 or cash in a prescribed amount may be deposited. The securities
17 or cash shall be kept in the custody of the department. The
18 department may apply the securities or cash to the tax imposed
19 by this chapter and interest or penalties due without notice to
20 the depositor. The securities may be sold by the department to
21 pay the tax and/or interest or penalties due at public or
22 private sale upon five days' written notice to the depositor.

23 (c) Failure to file bond.--The department may file a lien
24 under section 3716 (relating to tax liens) against any taxpayer
25 who fails to file a bond when required to do so under this
26 section. All funds received upon execution of the judgment on
27 the lien shall be refunded to the taxpayer with 3% interest,
28 should a final determination be made that it does not owe any
29 payment to the department.

30 § 3727. Accounts established.

1 (a) Natural Gas Extraction Tax Account.--

2 (1) The Natural Gas Extraction Tax Account is
3 established as a restricted account within the General Fund.

4 (2) The proceeds of the tax imposed under section 3703
5 (relating to imposition of tax), penalties and interest
6 imposed under this chapter, less the amounts appropriated
7 under section 3729 (relating to appropriation), shall be
8 deposited into the account.

9 (3) After making the transfers and distributions
10 required under section 3728 (relating to transfers and
11 distributions), the money in the account shall be distributed
12 for education funding as provided by law.

13 (b) Local Government Services Account.--

14 (1) The Local Government Services Account is established
15 as a restricted account within the General Fund.

16 (2) The allocation under section 3728(1) shall be
17 deposited into the Local Government Services Account and
18 shall be distributed as provided by law.

19 § 3728. Transfers and distributions.

20 The State Treasurer shall make the following transfers and
21 distributions of the money in the Natural Gas Extraction Tax
22 Account established under section 3727(a) (relating to accounts
23 established) on the first business day of July each fiscal year:

24 (1) Fifteen percent of the account shall be transferred
25 to the Local Government Services Account established in
26 section 3727(b).

27 (2) Fifteen percent of the account shall be transferred
28 to the Environmental Stewardship Fund.

29 (3) The balance of the account shall be first used for
30 the purposes specified in section 3729 (relating to

1 appropriation) and then for the purpose specified in section
2 3727(a)(3).

3 § 3729. Appropriation.

4 The amount of the proceeds from the tax imposed by this
5 chapter as shall be necessary for the payment of refunds,
6 enforcement or administration under this chapter is hereby
7 appropriated for such purposes.

8 Section 8. This act shall take effect in 60 days.