

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.22.1242 regarding the oil)
and gas privilege and license tax)

To: All Concerned Persons

1. On May 20, 2016, the Board of Oil and Gas Conservation (board) and the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-192 regarding the proposed amendment of the above-stated rule at page 866 of the 2016 Montana Administrative Register, Issue Number 10.

2. The board has amended the above-stated rule as proposed.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Commenter questioned what product price was used as the basis for taxation.

RESPONSE: The board thanks the commenter for the comment. According to ARM 36.22.1242(2), the amendment is based on the market value of each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported.

COMMENT 2: One commenter expressed concern that the tax rate for operators would be tripled.

RESPONSE: The board thanks the commenter for the comment. The amendment of ARM 36.22.1242 affects the portion of the tax directed toward support of board activities. The current tax rate paid by operators and royalty owners is 0.26%, with the difference between the board's rate – currently 0.09% – and the current tax rate 0.26% being distributed to cities, towns, and counties, as required by statute. An increase in the board's rate from 0.09% to 0.3% will result in an increase of the tax rate paid by operators and royalty owners of 0.04%, which is the difference between the current tax rate paid of 0.26% and the amended tax rate paid of 0.3%. The increase in the tax rate paid by operators and royalty owners amounts to a 15.4% increase, not a 300% increase as stated by the commenter.

COMMENT 3: Commenters expressed concern that the rule amendment will have a significant impact on operators.

RESPONSE: The board thanks the commenters for the comments. Adequate funding through the privilege and license tax rate is required to perform the statutory responsibilities of the board and the department. The board recognizes the rule amendment will impact operators and royalty owners, as well as cities, towns, and counties.

COMMENT 4: Commenters stated that with reduced drilling activity in the state the board should reduce expenses as energy companies have.

RESPONSE: The board thanks the commenters for the comments. Along with the increased privilege and license tax the board has chosen to leave one position directly related to permitting activities vacant, will not fill one additional position, has delayed or canceled equipment purchases, and has reduced other optional expenditures. These reductions are equivalent to a 15% to 20% reduction from the budget approved by the legislature. Other fixed costs and transfers from the board's special revenue account by the legislature are not under the board's control.

COMMENT 5: One commenter stated that the funds taken in the last legislative session should not affect the proposed amendment.

RESPONSE: The board thanks the commenter for the comment. Over \$3 million have been transferred from the board's special revenue account during the past and current biennium to fund non-board-related activities. This reduction in reserve funds is the primary reason that ARM 36.22.1242 must be amended at this time.

COMMENT 6: One commenter questioned whether the proposed amendment is necessary.

RESPONSE: The board thanks the commenter for the comment. Reduced distributions from the privilege and license tax due to low oil and gas prices, along with legislative transfers from the board's special revenue account during the remainder of the biennium, require immediate action to avoid a negative balance in the board's special revenue account. The length of time required for the rulemaking process and the delay between the effective date of the tax increase and the receipt of revenue limit the board's flexibility in setting an appropriate tax rate under unstable market conditions. It is expected that rulemaking to reduce the license and privilege tax will be undertaken if product prices stabilize at a higher level and an adequate balance in the board's special revenue account is achieved.

COMMENT 7: One commenter expressed concern that the rule doesn't take into account the impact to reducing the share of taxes to impacted counties, cities, and towns.

RESPONSE: The board thanks the commenter for the comment. The board has considered the impact of this rule amendment on cities, towns, and counties and recognizes that an increase in the privilege and license tax will have a greater overall impact on these groups than it will on operators and royalty owners.

COMMENT 8: One commenter expressed concerns about barriers the amendment will create to development in the state.

RESPONSE: The board thanks the commenter for the comment. The board anticipates lowering the privilege and license tax rate if product prices stabilize at a higher level and an adequate balance in the board's special revenue account is achieved.

COMMENT 9: One commenter supported an increase of the privilege and license tax rate.

RESPONSE: The board thanks the commenter for the comment and support.

/s/ Linda Nelson
LINDA NELSON
Chair, Board of Oil and Gas Conservation

/s/ Rob Stutz
ROB STUTZ
Rule Reviewer

Certified to the Secretary of State August 22, 2016.