## **HOUSE BILL No. 2114**

## By Committee on Agriculture

1-31

AN ACT concerning severance tax; relating to counties; county option to impose tax, limestone, requirements.

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Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in sections 1 though 12, and amendment thereto:

- (a) "Director" means the director of taxation.
- (b) "Person" means any natural person, firm, co-partnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number.
- (c) "Producer" means any person owning, controlling, managing or leasing any limestone mine, and any person who serves in any manner any beneficial interest in any limestone produced, whether severed by such person or some other person on their behalf, either by lease, contract or otherwise, including a royalty owner.
- (d) "Remove" or "removal" means the physical transportation of limestone off the lease or production unit or from the mine where severed.
  - (e) "Secretary" means the secretary of revenue.
- (f) "Severed" or "severing" or "severance" means the physical removal of limestone from the earth.
- (g) "Taxpayer" means any person liable for the taxes imposed by this act.
- Sec. 2. On and after January 1, 2020, the board of county commissioners of any county is hereby authorized to adopt a resolution imposing a tax for the benefit of such county upon the severance of limestone from the earth, in such county, for sale, transport, storage, profit or commercial use. The rate of such tax shall be \$1 per ton of limestone severed from the earth and such tax shall be paid by the producer. Such tax shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax.
- Sec. 3. The tax imposed by section 2, and amendments thereto, shall be upon the severing of limestone in this state, regardless of the place of sale of such limestone or to whom sold or by whom used, or the fact that the delivery thereof may be made to points outside the state. The tax imposed by section 2, and amendments thereto, shall be in addition to all taxes imposed upon real or personal property by the state of Kansas or by any taxing subdivision thereof.

Sec. 4. (a) The tax imposed under the provisions of section 2, and amendments thereto, shall be due and payable on or before the 20<sup>th</sup> day of the second month following the end of the month in which the limestone is removed from the lease or production unit or mine. The producer of a limestone mine shall collect the total amount of tax due and shall remit the same to the director.

- (b) The state shall have a lien on all the limestone severed in this state in the hands of any producer or the first or any subsequent purchaser thereof to secure the payment of the tax. In the event any person required to pay the tax fails to do so, the director shall proceed against such person to collect the tax in the manner provided by K.S.A. 79-3235, and amendments thereto.
- (c) Penalty and interest for late payment of tax shall be imposed in accordance with section 9, and amendments thereto.
- Sec. 5. (a) A return shall be made to the director upon forms prescribed and furnished by the director, on or before the 20<sup>th</sup> day of the second month following the end of every calendar month in which limestone is removed from a lease or production unit or mine. The producer shall make the return showing the gross quantity of limestone removed during such month for which the return is filed and a full description of the property from which the limestone was severed.
- (b) Each monthly return shall be filed on separate forms as to the county and lease, production unit or mine. All such monthly returns shall be signed by the producer or a duly authorized agent thereof.
- (c) A penalty for the late filing of a return shall be imposed in accordance with section 9, and amendments thereto.
- Sec. 6. When the title to any limestone severed from the earth is in dispute and the purchaser of such limestone is withholding payments on account of litigation, or for any other reason, such purchaser is hereby authorized, empowered and required to deduct from the gross amount thus held the amount of the tax imposed and to make remittance thereof to the director as provided in this act.
- Sec. 7. When requested by the director, all transporters of limestone out of, within or across the state of Kansas shall be required to furnish to the director such information relative to the transportation of such limestone as the director may require. The director shall have authority to inspect bills of lading, waybills, meter or other charts, documents, books and records as they may relate to the transportation of limestone in the hands of each transporter. The director shall further be empowered to demand the production of such bills of lading, waybills, charts, documents, books and records relating to the transportation of limestone at any point in the state of Kansas, which may be designated, except that in the case of common carriers using bills of lading or waybills prescribed or approved

 by the surface transportation board, such common carrier shall only be required to keep the usual records at offices in the state where such records are usually kept.

- Sec. 8. The director shall have the power to require any producer or person purchasing any limestone severed from the earth to furnish any additional information deemed to be necessary for the purpose of computing the amount of the tax, and for such purpose, to examine any other charts, books, records and all files of such person, and for such purpose, the director shall have the power to issue subpoenas and examine witnesses under oath, and if any witness shall fail or refuse to appear at the request of the director, or refuses access to books, records and files, the district court of the proper county, or the judge thereof, on application of the director, shall compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify.
- Sec. 9. (a) If the tax imposed under section 2, and amendments thereto, is determined and assessed by the director, and such tax is unpaid: (1) Not due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, interest on such taxes shall be added at the rate per month prescribed by K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid; (2) due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, but without intent to defraud, a penalty of 10% of the amount of such taxes shall be added, together with interest at the rate per month prescribed by K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid; or (3) due to fraud with intent to evade the tax imposed by this act, there shall be added a penalty of 50% of the amount of such tax, together with interest at the rate per month prescribed by K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.
- (b) If any person fails or refuses to make any return, when required to do so under the provisions of this act, such person shall be subject to a penalty of \$25 per day for each return that such person fails or refuses to file.
- (c) Whenever, in the judgment of the director, the failure of any person to comply with the provisions of subsection (a)(1), (a)(2) or (b), was due to reasonable cause, the director may, in the exercise of discretion, waive or reduce any of the penalties upon making a record of the reason therefor.
- (d) In addition to all other penalties herein provided, any person who fails to make a return, or to pay any tax herein provided, or who makes a false or fraudulent return, or fails to keep any books or records prescribed by this act, or who intentionally violates any rules and regulations

promulgated by the secretary for the enforcement and administration of this act, or who aids and abets another in attempting to evade the payment of any tax imposed by this act, or who violates any other provisions of this act, shall be guilty of a class C misdemeanor upon conviction.

- (e) The director of taxation shall examine all returns filed under the provisions of this act, and shall issue notices and final determinations of tax liability in the manner prescribed by K.S.A. 79-3226, and amendments thereto, relating to income taxes.
- Sec. 10. (a) Every producer shall make and keep a complete and accurate record in the form required by the director showing the gross quantity of limestone severed and removed from each lease, production unit or mine, the names of the purchasers of such products, the price paid and the date of purchase. Such records shall at all times during business hours of the day be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year to which the records pertain. Such records shall be preserved during the entire period during while they are subject to inspection by the director, unless the director in writing previously authorized their disposal.
- (b) The amount of taxes imposed by this act is to be assessed within three years after the return is filed. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be commenced at any time, within two years from the discovery of such fraud. The provisions of K.S.A. 79-3226, and amendments thereto, relating to procedures for contesting a proposed assessment of additional tax or the denial of a refund shall apply as if set forth in this section. No refund shall be allowed by the director after three years from the date the return was filed, or one year after the assessment is made, whichever is the later date, unless before the expiration of such period, a claim therefor is filed by the taxpayer. No suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing a claim with the director.
- (c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the periods of limitations. The periods so agreed upon may be extended by subsequent agreements in writing made before the expiration of the periods previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.
  - Sec. 11. (a) All revenue collected or received by the director from the

tax imposed by this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit to the limestone severance fund. On July 1, 2020, and quarterly thereafter, the director shall distribute all moneys credited to such fund to the county in such amount in which taxes were levied under section 2, and amendments thereto, for the severing and producing of limestone from property within the county, in the proportion that the taxes levied upon production in each county bears to the total of all of such taxes levied in all of such counties. Such distribution shall be based on returns filed, with any adjustments or corrections made by the director of taxation.

- (b) There is hereby established in the state treasury the limestone severance fund, which shall be administered by the director. All expenditures from the limestone severance fund shall be distributed pursuant to this act. All expenditures from the limestone severance fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports in favor of each county issued pursuant to vouchers approved by the director or the designee of the director. Upon receipt of such warrant, the treasurer of the county shall credit the same to the county general fund.
- Sec. 12. The secretary is hereby authorized to adopt such rules and regulations as may be necessary to administer and enforce the provisions of sections 1 through 11, and amendments thereto.
- Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.