



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 430**

132nd General Assembly  
(As Introduced)

Rep. Schaffer

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### **BILL SUMMARY**

- Modifies the sales and use tax exemption for property used in producing oil and natural gas.
  - Specifies that property that is approved by the Department of Natural Resources as part of a water pollution control facility qualifies for existing property and sales and use tax exemptions.
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### **CONTENT AND OPERATION**

#### **Sales and use tax exemption for oil and gas production property**

The bill modifies the existing sales and use tax exemption for property used directly in producing oil and natural gas. Existing law exempts the sale or use of tangible personal property used "directly" in the production of crude oil or natural gas.

The bill removes the qualification that property be used "directly" in the production of crude oil or natural gas in order for its sale to be tax-exempt.<sup>1</sup> The bill also adds some definition to what constitutes the "production" of oil and gas by substituting a term – "production operation" – for "production." The bill's effect on the scope of the exemption is not clearly apparent from the statutory language because the scope of the current exemption is determined largely by an administrative rule<sup>2</sup> and prior decisions by courts and the Board of Tax Appeals.

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<sup>1</sup> R.C. 5739.02(B)(42)(a) and (q).

<sup>2</sup> Ohio Administrative Code sec. 5703-9-22.

"Production operation" currently is defined for the purposes of the oil and gas regulation law (R.C. Chapter 1509.). The term broadly refers to "all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources" that are regulated by the Department of Natural Resources, including "operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation [i.e., hydraulic fracturing operations or otherwise enhancing the well's productivity], well site activities, reclamation, and plugging," and specifically the following:

- The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;
- The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities;
- The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities;
- Equipment and facilities at a wellpad or other location that are used for the transportation, handling, recycling, temporary storage, management, processing, or treatment of any equipment, material, and by-products or other substances from an operation at a wellpad that may be used or reused at the same or another operation at a wellpad or that will be disposed of in accordance with applicable laws and rules adopted under them.

For the purposes of the tax exemption, the bill narrows what is considered a production operation relative to the term's existing regulatory law definition by excluding the following:

- (1) Operations, activities, or equipment used in or associated with the exploration and production of any mineral resource other than oil or gas;
- (2) Storing, holding, or blending solutions or chemicals used in well stimulation;

(3) Preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;

(4) Transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;

(5) Gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility.

Accordingly, the bill does not exempt the sale or use of tangible personal property used in any of those excluded activities or operations (although some of that property might qualify for exemption under a separate provision of current law).

Similar to current law, any person that provides production operation services for another party is treated as being engaged in a production operation for the purposes of the exemption, thereby qualifying that person's purchases of such property for the exemption. Likewise, if property is incorporated into real property, it is disqualified from the exemption, as it is under current law.

### **Tax exemptions for water pollution control property**

The bill also specifies that property used to control water pollution may qualify for existing property tax and sales and use tax exemptions even if the Department of Natural Resources is the agency that approves the property as qualifying pollution control property. Current law provides that the Ohio Environmental Protection Agency is qualified to make such approvals, as is "any other governmental agency having authority to approve installation of" water pollution control facilities.<sup>3</sup>

### **Retrospective application**

The bill states that the bill's changes are intended to be "remedial" and to apply both prospectively, and retrospectively to June 30, 2010. That date is the effective date of legislation that first defined "production equipment" for the oil and gas regulation law and otherwise made numerous changes to that law in the wake of the broad emergence of horizontal hydraulic fracturing methods in Ohio (S.B. 165 of the 128th General Assembly).<sup>4</sup> To the extent that the bill's modification of the exemptions broadens their scope, property and transactions that were taxable between June 30, 2010, and the bill's

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<sup>3</sup> R.C. 5709.20(L).

<sup>4</sup> Section 3 of the bill.



effective date presumably would be deemed to be tax-exempt, but the bill does not specifically direct how the tax on past transactions would be resolved.

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## HISTORY

ACTION	DATE
Introduced	11-29-17

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