

HOUSE BILL No. 2114

By Committee on Agriculture

1-31

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

3
4 *Be it enacted by the Legislature of the State of Kansas:*

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

6 (a) "Director" means the director of taxation.

7 (b) "Person" means any natural person, firm, co-partnership, joint
8 venture, association, corporation, estate, trust or any other group or
9 combination acting as a unit, and the plural as well as the singular number.

10 (c) "Producer" means any person owning, controlling, managing or
11 leasing any limestone mine, and any person who serves in any manner any
12 beneficial interest in any limestone produced, whether severed by such
13 person or some other person on their behalf, either by lease, contract or
14 otherwise, including a royalty owner.

15 (d) "Remove" or "removal" means the physical transportation of
16 limestone off the lease or production unit or from the mine where severed.

17 (e) "Secretary" means the secretary of revenue.

18 (f) "Severed" or "severing" or "severance" means the physical
19 removal of limestone from the earth.

20 (g) "Taxpayer" means any person liable for the taxes imposed by this
21 act.

22 Sec. 2. On and after January 1, 2020, the board of county
23 commissioners of any county is hereby authorized to adopt a resolution
24 imposing a tax for the benefit of such county upon the severance of
25 limestone from the earth, in such county, for sale, transport, storage, profit
26 or commercial use. The rate of such tax shall be \$1 per ton of limestone
27 severed from the earth and such tax shall be paid by the producer. Such tax
28 shall continue in effect until repealed in the manner provided herein for the
29 adoption and approval of such tax.

30 Sec. 3. The tax imposed by section 2, and amendments thereto, shall
31 be upon the severing of limestone in this state, regardless of the place of
32 sale of such limestone or to whom sold or by whom used, or the fact that
33 the delivery thereof may be made to points outside the state. The tax
34 imposed by section 2, and amendments thereto, shall be in addition to all
35 taxes imposed upon real or personal property by the state of Kansas or by
36 any taxing subdivision thereof.

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

7 (b) The state shall have a lien on all the limestone severed in this state
8 in the hands of any producer or the first or any subsequent purchaser
9 thereof to secure the payment of the tax. In the event any person required
10 to pay the tax fails to do so, the director shall proceed against such person
11 to collect the tax in the manner provided by K.S.A. 79-3235, and
12 amendments thereto.

13 (c) Penalty and interest for late payment of tax shall be imposed in
14 accordance with section 9, and amendments thereto.

15 Sec. 5. (a) A return shall be made to the director upon forms
16 prescribed and furnished by the director, on or before the 20th day of the
17 second month following the end of every calendar month in which
18 limestone is removed from a lease or production unit or mine. The
19 producer shall make the return showing the gross quantity of limestone
20 removed during such month for which the return is filed and a full
21 description of the property from which the limestone was severed.

22 (b) Each monthly return shall be filed on separate forms as to the
23 county and lease, production unit or mine. All such monthly returns shall
24 be signed by the producer or a duly authorized agent thereof.

25 (c) A penalty for the late filing of a return shall be imposed in
26 accordance with section 9, and amendments thereto.

27 Sec. 6. When the title to any limestone severed from the earth is in
28 dispute and the purchaser of such limestone is withholding payments on
29 account of litigation, or for any other reason, such purchaser is hereby
30 authorized, empowered and required to deduct from the gross amount thus
31 held the amount of the tax imposed and to make remittance thereof to the
32 director as provided in this act.

33 Sec. 7. When requested by the director, all transporters of limestone
34 out of, within or across the state of Kansas shall be required to furnish to
35 the director such information relative to the transportation of such
36 limestone as the director may require. The director shall have authority to
37 inspect bills of lading, waybills, meter or other charts, documents, books
38 and records as they may relate to the transportation of limestone in the
39 hands of each transporter. The director shall further be empowered to
40 demand the production of such bills of lading, waybills, charts, documents,
41 books and records relating to the transportation of limestone at any point
42 in the state of Kansas, which may be designated, except that in the case of
43 common carriers using bills of lading or waybills prescribed or approved

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

4 Sec. 8. The director shall have the power to require any producer or
5 person purchasing any limestone severed from the earth to furnish any
6 additional information deemed to be necessary for the purpose of
7 computing the amount of the tax, and for such purpose, to examine any
8 other charts, books, records and all files of such person, and for such
9 purpose, the director shall have the power to issue subpoenas and examine
10 witnesses under oath, and if any witness shall fail or refuse to appear at the
11 request of the director, or refuses access to books, records and files, the
12 district court of the proper county, or the judge thereof, on application of
13 the director, shall compel obedience by proceedings for contempt, as in the
14 case of disobedience of the requirements of a subpoena issued from such
15 court or a refusal to testify.

16 Sec. 9. (a) If the tax imposed under section 2, and amendments
17 thereto, is determined and assessed by the director, and such tax is unpaid:
18 (1) Not due to negligence or to intentional disregard of this act or rules and
19 regulations promulgated by the secretary, interest on such taxes shall be
20 added at the rate per month prescribed by K.S.A. 79-2968, and
21 amendments thereto, from the date the tax was due until paid; (2) due to
22 negligence or to intentional disregard of this act or rules and regulations
23 promulgated by the secretary, but without intent to defraud, a penalty of
24 10% of the amount of such taxes shall be added, together with interest at
25 the rate per month prescribed by K.S.A. 79-2968, and amendments thereto,
26 from the date the tax was due until paid; or (3) due to fraud with intent to
27 evade the tax imposed by this act, there shall be added a penalty of 50% of
28 the amount of such tax, together with interest at the rate per month
29 prescribed by K.S.A. 79-2968, and amendments thereto, from the date the
30 tax was due until paid.

31 (b) If any person fails or refuses to make any return, when required to
32 do so under the provisions of this act, such person shall be subject to a
33 penalty of \$25 per day for each return that such person fails or refuses to
34 file.

35 (c) Whenever, in the judgment of the director, the failure of any
36 person to comply with the provisions of subsection (a)(1), (a)(2) or (b),
37 was due to reasonable cause, the director may, in the exercise of discretion,
38 waive or reduce any of the penalties upon making a record of the reason
39 therefor.

40 (d) In addition to all other penalties herein provided, any person who
41 fails to make a return, or to pay any tax herein provided, or who makes a
42 false or fraudulent return, or fails to keep any books or records prescribed
43 by this act, or who intentionally violates any rules and regulations

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

5 (e) The director of taxation shall examine all returns filed under the
6 provisions of this act, and shall issue notices and final determinations of
7 tax liability in the manner prescribed by K.S.A. 79-3226, and amendments
8 thereto, relating to income taxes.

9 Sec. 10. (a) Every producer shall make and keep a complete and
10 accurate record in the form required by the director showing the gross
11 quantity of limestone severed and removed from each lease, production
12 unit or mine, the names of the purchasers of such products, the price paid
13 and the date of purchase. Such records shall at all times during business
14 hours of the day be available for and subject to inspection by the director,
15 or the director's duly authorized agents and employees, for a period of
16 three years from the last day of the calendar year to which the records
17 pertain. Such records shall be preserved during the entire period during
18 while they are subject to inspection by the director, unless the director in
19 writing previously authorized their disposal.

20 (b) The amount of taxes imposed by this act is to be assessed within
21 three years after the return is filed. In the case of a false or fraudulent
22 return with intent to evade tax, the tax may be assessed or a proceeding in
23 court for collection of such tax may be commenced at any time, within two
24 years from the discovery of such fraud. The provisions of K.S.A. 79-3226,
25 and amendments thereto, relating to procedures for contesting a proposed
26 assessment of additional tax or the denial of a refund shall apply as if set
27 forth in this section. No refund shall be allowed by the director after three
28 years from the date the return was filed, or one year after the assessment is
29 made, whichever is the later date, unless before the expiration of such
30 period, a claim therefor is filed by the taxpayer. No suit or action to
31 recover on any claim for refund shall be commenced until after the
32 expiration of six months from the date of filing a claim with the director.

33 (c) Before the expiration of time prescribed in this section for the
34 assessment of additional tax or the filing of a claim for refund, the director
35 is hereby authorized to enter into an agreement in writing with the
36 taxpayer consenting to the extension of the periods of limitations for the
37 assessment of tax or for the filing of a claim for refund, at any time prior to
38 the expiration of the periods of limitations. The periods so agreed upon
39 may be extended by subsequent agreements in writing made before the
40 expiration of the periods previously agreed upon. In consideration of such
41 agreement or agreements, interest due in excess of 48 months on any
42 additional tax shall be waived.

43 Sec. 11. (a) All revenue collected or received by the director from the

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

13 (b) There is hereby established in the state treasury the limestone
14 severance fund, which shall be administered by the director. All
15 expenditures from the limestone severance fund shall be distributed
16 pursuant to this act. All expenditures from the limestone severance fund
17 shall be made in accordance with appropriation acts upon warrants of the
18 director of accounts and reports in favor of each county issued pursuant to
19 vouchers approved by the director or the designee of the director. Upon
20 receipt of such warrant, the treasurer of the county shall credit the same to
21 the county general fund.

22 Sec. 12. The secretary is hereby authorized to adopt such rules and
23 regulations as may be necessary to administer and enforce the provisions
24 of sections 1 through 11, and amendments thereto.

25 Sec. 13. This act shall take effect and be in force from and after its
26 publication in the statute book.