

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1755

Amendment Number: H1

Bill Subtitle: TO AMEND THE LAW GOVERNING THE TAX TREATMENT OF PRODUCING MINERALS; AND TO DEFINE AND SET THE TAX TREATMENT FOR OIL WELLS AND PRODUCTION EQUIPMENT.

Basic Change :

**Sponsors: Reps. Jean, Barker, and Fielding
Sens. T. Garner and Beckham**

House Amendment No. 1 --- HB1755-H1 (engrossed 03/31/21) changes the effective date of HB1755. HB1755 is effective for assessment years beginning on and after January 1, 2022.

Original Bill --- HB1755 amends § 26-26-1110(a) regarding the assessment of mineral rights for property tax purposes. County assessors are responsible for assessing producing mineral interests in their county. HB1755 amends assessment standards for the valuation of oil wells and production equipment for property tax assessments by:

- Mandating that production equipment, defined as "piping and other equipment of an oil well from the bottom of the casing to and including the sales valve at the tank battery" be assessed as real property;
- Requiring the assessment of production equipment at a value of one dollar (\$1.00) per foot;
- Prohibiting taxation of oil well casings that have been rendered inoperable as a result of a cement or mechanical plug;
- Requiring uniform expense deductions per barrel of oil, regardless of the average daily production, when calculating the working interest value of an oil well; and
- Limiting production increases for oil wells being valued as newly discovered property to production from a newly producing geographic zone or horizon.

Revenue Impact :

Undetermined revenue loss to collections of property taxes. Property taxes generally are utilized to fund public schools and local governments.

Taxpayer Impact :

HB1755 will provide new procedures for assessment of mineral interests.

Resources Required :

None.

Time Required :

None.

Procedural Changes :

ACD guidelines would need to be updated along with software that the county assessors use in their

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offices.

Other Comments :

None.

Legal Analysis :

Original Bill --- Under Ark. Const. Art. 16, § 5, all property shall be taxed according to its value, and no one species of property for which a tax may be collected shall be taxed higher than another species of property of equal value. HB1755 will set the value of oil wells and production equipment, and that species of property would no longer be taxed according to its value.

HB1755 may be subject to a constitutional challenge by prohibiting taxation of the oil well casings rendered inoperable by a plug. Article 16, § 5(a) of the Arkansas Constitution requires that all real and personal property be subject to property tax, if not exempted by the Constitution. Article 16, § 5(b) specifically lists classifications of real property that are exempt from taxation. It is not clear that the legal authority exists to create additional exemptions from property tax via an amendment to the Arkansas Code.

HB1755 may be subject to a separate constitutional challenge by setting the valuation of production equipment at a single rate of "one dollar (\$1.00) per foot" as real property. Under Article 16, § 15, commercial real property shall be valued at its commercial productivity or use. Article 16, § 5(a) prohibits changing this method of valuation. It is not clear that an amendment to the Arkansas Code may set the single rate of valuation for production equipment as real property that is not based on the commercial productivity or use standard in Article 16, § 15. Additionally, the use of "per foot" on Page 2, Line 20 would benefit from clarification. It is not clear whether this is a valuation per linear foot, vertical foot, or square foot when assessing value of the oil well production equipment.

HB1755 may also be subject to legal challenge as a violation of the separation of powers doctrine and exceeding legislative authority to prescribe the duties of the county assessors, a constitutional office, Article 7, § 46. County assessors are the "primary valuer" of property for taxation purposes under the Arkansas Constitution. *Ark. Tax Comm. v. Ashby*, 217 Ark. 759, 766, 233 S.W.2d 361, 364 (1950). The General Assembly has plenary power to prescribe the manner in which property shall be assessed and to direct the assessors how to assess property for taxation, but the General Assembly cannot dictate the value of property for taxation, a duty the constitution vests with the assessor. *Id.* The office of county assessor "cannot be abolished nor made a sinecure and an entirely different scheme adopted" by the General Assembly. *Id.* HB1755 leaves no discretion to county assessors on how to assess producing oil wells and producing equipment and may impair the county assessor's duty as the primary valuer of property for tax purposes.

Under Amendment 79, the taxable value of real property can only increase ten percent (10%) per year until the property reaches the full assessed value. The ten percent (10%) cap does not apply to newly discovered property. Production increases from existing oil wells are historically treated as newly discovered property not subject to the limitation. The bill's requirement that only oil attributable to new

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production from a newly producing geographic zone or horizon may be treated as newly discovered property may result in oil wells not being taxed at their true market rate.

HB1755 may require a three-fourths ($\frac{3}{4}$) super majority to adopt the methods and procedures of valuation for property tax under Ark. Constitution Article 16, § 5.