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Sever the Severance Tax: Louisiana's Severance Tax on Crude Oil Production

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INTRODUCTION

Louisiana's severance tax, in its current form, is broken. Louisiana Revised Statutes section 47:633 provides an outdated method of valuation that is used by no other state in the Union.[1] When the tax collector comes

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knocking, alleging that an oil producer owes more taxes than what the producer paid, on what basis does one value the oil produced or removed from the ground? What happens when the Louisiana Department of Revenue relies upon a method of valuation for crude oil that courts have found to be outdated,[2] or that is inapplicable because of the geographical location of that specific well?[3] These are just two examples of recent problems resulting from the current language of Louisiana's severance tax statute.[4]

Louisiana drilled its first oil well in Acadia Parish in 1901.[5] More than 200,000 wells soon followed, making Louisiana an important player in the oil production industry.[6] Louisiana, like other states, implemented a tax on oil producers for the removal of oil from the ground, known as a severance tax.[7] When Louisiana first introduced its severance tax in 1910, the rate was set at two-fifths of a cent per barrel of oil produced.[8] The tax rate fluctuated until 1974, when it settled at 12.5 percent of the value of the oil produced, as defined in the Louisiana Administrative Code.[9] Since then, this 12.5 percent tax rate has held steady, and is the rate imposed by the state today.[10]

In its current form, Louisiana's severance tax utilizes, in part, the posted field price method of crude oil valuation to determine the amount of tax owed by oil producers.[11] This is an outdated method of valuation in which oil consumers would essentially advertise the price at which they

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1. LA. REV. STAT. § 47:633 (2018).
2. *See* Avanti Expl., LLC v. Robinson, 268 So. 3d 1093, 1097 (La. Ct. App. 3d Cir. 2019).
3. *See* Robinson v. Mantle Oil & Gas, LLC, 247 So. 3d 738, 745 (La. Ct. App. 1st Cir.), *writ denied*, 252 So. 3d 922 (La. 2018).
4. LA. REV. STAT. § 47:633 (2018).
5. *First Oil Well in Louisiana*, LA. DEP'T OF NAT. RESOURCES, http://www.dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=48 [https://perma.cc/2MJY-485Y] (last visited Jan. 23, 2021).
6. *Id.*
7. *Severance Tax*, BLACK'S LAW DICTIONARY (11th ed. 2019).
8. *Louisiana Severance Tax*, LA. DEP'T OF NAT. RESOURCES, at 3, http://www.dnr.louisiana.gov/assets/TAD/data/severance/la_severance_tax_rates.pdf [https://perma.cc/7RGN-HUM7] (last visited Jan. 23, 2021).
9. *Id.*
10. LA. REV. STAT. § 47:633 (2018).
11. *Id.* The posted field price, which will be further discussed later in this Comment, is a method of oil valuation. This method could be summarized as the price that oil companies are willing to pay for a certain type of crude oil.

would purchase crude oil from a certain well.[12] This method is causing disputes between the Louisiana Department of Revenue and oil producers in the state.[13] These disputes are impacting both the administrability and fairness of the severance tax, in that oil producers and the State are unable to have a uniform way to value the oil that is ultimately being taxed.[14]

While Louisiana's current severance tax statute generates significant amounts of revenue for the state,[15] it is evident that the present form of the statute is causing problems with assigning a value to the oil produced in light of recent cases, such as *Avanti Exploration, LLC v. Robinson* and *Robinson v. Mantle Oil & Gas, LLC*.[16] Further, when compared to the severance tax statutes of other major oil producing states, it becomes apparent that there are problems not only in Louisiana's current method of valuation for crude oil in the severance tax context, but also in the allocation of revenue generated by the severance tax.[17]

Part I of this Comment will first address the issues arising from Louisiana Revised Statutes section 47:633's usage of the posted price method to determine the value of crude oil produced. Part II will compare the Louisiana severance tax to the severance tax statutes in other large oil producing states to provide solutions for improving the severance tax scheme for crude oil production in Louisiana. Part III will discuss the severance tax statutes as they relate to the rate of tax, how the oil is valued, where the tax revenue is eventually allocated, and the other related issues that arise with the severance tax statutes of similarly situated states. Finally, in Part IV, a number of solutions will be proposed on how to address problems stemming from Louisiana's current severance tax statute.

12. *See* N. Cent. Airlines, Inc. v. Cont'l Oil Co., 574 F.2d 582, 588 (D.C. Cir. 1978); Avanti Expl., LLC v. Robinson, 268 So. 3d 1093, 1097 (La. Ct. App. 3d Cir. 2019).

13. *Id.*

14. Here, "administrability" refers to the ability of the State to implement the severance tax on crude oil.

15. *State of Louisiana Annual Tax Collection Report, 2017–2018*, LA. DEP'T OF REVENUE, at 50 http://revenue.louisiana.gov/Publications/LDR_Annual_Report(2017-2018)D32.pdf [https://perma.cc/BJ7Y-FKG4]. In 2018, the severance tax on oil produced $292,185,748 in revenue.

16. *See Avanti Expl.*, 268 So. 3d at 1097; Robinson v. Mantle Oil & Gas, LLC, 247 So. 3d 738, 745 (La. Ct. App. 1st Cir.), *writ denied*, 252 So. 3d 922 (La. 2018).

17. *Compare* LA. REV. STAT. § 47:645(A) (2018) *with* TEX. TAX CODE ANN. § 202.353 (West 2018).

I. BACKGROUND

A. What Are Severance Taxes?

A severance tax is a form of excise tax assessed by states when a natural resource, such as oil, is severed from the earth.[18] The Supreme Court of the United States has defined an excise tax as a tax that is "levied upon the use or transfer of property even though it might be measured by the property's value."[19] For the purposes of this discussion, a severance tax may be levied upon the production of crude oil when it is severed from the ground. Severance taxes may also be referred to as production taxes in some jurisdictions.[20]

Severance taxes are based upon either a unit or an ad valorem measurement.[21] In the oil context, a unit tax is a set rate per barrel of oil produced.[22] An ad valorem tax is a tax that is based upon the value of the thing that is produced.[23] For oil, an example of an ad valorem tax is a percentage of the value of the oil produced over a certain amount of time, or sold at a market.[24]

There are multiple policy arguments behind the implementation of severance taxes on the removal of natural resources. For instance, some believe that the removal of natural resources, such as drilling for oil or mining for coal, causes a detriment to the community that is hosting that removal activity.[25] The severance taxes levied against individuals removing those resources in turn reimburse those host communities.[26] Another argument is rather simple: Levying a severance tax is a good source of revenue for states that are rich in natural resources.[27]

Severance taxes have long been the subject of United States Supreme Court scrutiny.[28] In *Commonwealth Edison v. Montana*, a Montana

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18. Nancy E. Shurtz, *State Taxation of Energy Resources: Are Consuming States Getting Burned?*, 36 VAND. L. REV. 55, 58 (1983).
19. United States v. Wells Fargo Bank, 485 U.S. 351, 355 (1988).
20. ALASKA STAT. § 43.55.011 (2018).
21. John S. Lowe, *Severance Taxes as an Issue of Energy Sectionalism*, 5 ENERGY L.J. 357, 360 (1984).
22. *Id.*
23. Wyo. State Tax Comm'n v. BHP Petroleum Co., 856 P.2d 428, 434 (Wyo. 1993).
24. LA. REV. STAT. § 47:633 (2018).
25. Lowe, *supra* note 21, at 360.
26. *Id.*
27. John R. Sagan, Note, *Severance Taxes and the Commerce Clause: Commonwealth Edison v. Montana*, 1983 WIS. L. REV. 427, 431 (1983).
28. *See* Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981).

severance tax levied on coal was challenged on constitutional grounds.[29] Coal producers in Montana argued that the state's severance tax discriminated against interstate commerce because the majority of the coal produced in Montana was shipped out of the state.[30] The producers argued that the tax burden was shifted primarily to citizens outside of Montana, thus violating the Commerce Clause.[31] However, since Montana's severance tax was assessed at the same rate regardless of the destination of the coal produced, the Supreme Court determined that the tax did not discriminate against interstate commerce.[32]

States that produce relatively large amounts of oil, such as Louisiana, all have mechanisms to tax the production of crude oil that is being severed from land in their jurisdiction. While the rates of tax may vary, and the way the oil is valued may vary, the production of crude oil is consistently being taxed.[33] The fact that these states all levy a severance tax indicates that severance taxes, while controversial, are here to stay.

B. The Louisiana Severance Tax

Article VII of the Louisiana Constitution states that "[t]axes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance."[34] Since the Louisiana Constitution is not self-executing, the severance tax is imposed by Louisiana Revised Statutes section 47:633.[35] The current severance tax on oil in Louisiana is an ad valorem tax assessed at 12.5 percent of the value of the oil when it is produced.[36] Value of oil is based upon either the "gross receipts" or "the posted field price."[37] Further, Louisiana Revised Statutes section 47:633 states that if there is no arms-length transaction or a posted field price available, the value of the oil will be the gross income resulting from that oil, as determined by Louisiana Revised Statutes section 47:158(c).[38]

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29. *See id.* at 612.
30. *Id.* at 617.
31. U.S. CONST. art. I, § 8, cl. 3.; *id.* at 617–18.
32. *Commonwealth Edison Co.*, 453 U.S. at 617.
33. *Compare* TEX. TAX CODE ANN. § 202.052(a) (West 2018), *WITH* LA. REV. STAT. § 47:633 (2018).
34. LA. CONST. art. VII, pt. I, § 4.
35. LA. REV. STAT. § 47:633 (2018).
36. *Id.* § 47:633(7)(a).
37. *Id.* Both "gross receipts" and "posted field price" will be further elaborated below.
38. *Id.*

In addition to the tax on oil produced by a standard oil well found in subparagraph (7)(a) of Louisiana Revised Statutes section 47:633, there are a number of exceptions that are dependent upon the type of well within the same statute.[39] These exceptions are based upon the average number of barrels of oil produced per day, measured across a month.[40] If a well produces less than an average of 25 barrels of oil per day during a month, the tax rate will be half of the standard rate, or 6.25 percent.[41] If a well is not capable of producing more than an average of 10 barrels per day during a month, the tax rate is further reduced to a quarter of the standard rate, or 3.125 percent.[42] In addition, section 47:633 provides that when the average value of crude oil is less than $20 per barrel in a month, wells that produce less than an average of 10 barrels of oil per day during that month are exempt from the severance tax altogether.[43]

C. Arm's Length Transactions vs. Non-Arm's Length Transactions

Spot market prices are the prices paid in arm's length transactions.[44] According to the Louisiana Administrative Code, an arm's length transaction is one that is made "between independent and nonaffiliated parties with opposing economic interests."[45] *Avanti Exploration, LLC v. Robinson* provides an example of an arm's length transaction.[46] The oil producer, Avanti Exploration, contracted to sell crude oil to an oil consumer, Phillips 66.[47] When there is an arm's length transaction in Louisiana, the total amount of payments to the oil producer for fulfillment of the contract, or gross receipts, are used to calculate the value of the oil for severance tax purposes.[48]

In contrast, non-arm's length transactions are those that are made "between subsidiaries and/or related parties and/or affiliates."[49] Non-arm's length transactions are slightly more confusing than arm's length transactions, and have more nuanced valuation rules. Where a transaction

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39. *Id.* § 47:633(7)(b),(c).
40. *Id.*
41. *Id.* § 47:633(7)(b).
42. *Id.* § 47:633(7)(c)(i)(aa).
43. *Id.* § 47:633(7)(c)(i)(bb).
44. A spot market is "a market . . . in which payment or delivery is immediate." *Market, spot market*, BLACK'S LAW DICTIONARY (11th ed. 2019).
45. LA. ADMIN. CODE tit. 61, pt. 1, § 2903(A)(c) (2020).
46. Avanti Expl. LLC, v. Robinson, 268 So. 3d 1093 (La. Ct. App. 3d Cir. 2019).
47. *See id.* at 1097.
48. *Id.*
49. LA. ADMIN. CODE tit. 61, pt. 1, § 2903(A)(d) (2020).

occurs between subsidiaries or related parties, a non-arm's length transaction has occurred. For example, when an oil company owns a refinery, and that refinery purchases crude oil from one of its owner's subsidiaries, that would be a non-arm's length transaction.

When a non-arm's length transaction is involved, the Louisiana Administrative Code provides a lengthy, somewhat confusing set of considerations to take into account in order to derive the value for the crude oil production to be taxed.[50] The factors are: (1) "the gross receipts of all things of value received directly or indirectly by the producer;"[51] (2) if the producer is affiliated with the entity that purchases the oil, the gross receipts from other arm's length transactions involving the purchase of similar quality oil in the same field;[52] (3) what other independent entities are paying for oil of similar quality;[53] and (4) "other relevant information," including information regarding "the unique circumstances of the producer's operations, product, or market."[54]

1. Gross Receipts

While the severance tax is imposed by the Louisiana Revised Statutes, the Louisiana Administrative Code provides a number of definitions for the terms used within the severance tax statute.[55] Reference to these statutory definitions is necessary to arrive at the proper value of the oil that will serve as the tax base. The Louisiana Administrative Code has two different options for determining value based upon gross receipts: (1) arm's length transactions,[56] and (2) non-arm's length transactions.[57] For arm's length transactions, gross receipts are equal to "the total amount of payment received from the first purchaser."[58] For non-arm's length transactions, gross receipts are the total amount of payment "received from the first purchaser or transferred from the first purchaser by recognized accounting methodology."[59]

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50. *Id.* § 2903.
51. *Id.* § 2903(A)(f)(i).
52. *Id.* § 2903(A)(f)(ii).
53. *Id.* § 2903(A)(f)(iii).
54. *Id.* § 2903(A)(f)(iv).
55. *Id.* § 2903(A).
56. *Id.* § 2903(A)(c).
57. *Id.* § 2903(A)(d).
58. *Id.* § 2903(A)(c).
59. *Id.* § 2903(A)(d).

2. Posted Field Price

When determining the value of oil using the posted field price, the Louisiana Administrative Code states that "[t]he posted field price is the actual price of crude petroleum advertised for a field."[60] Further, the Louisiana Administrative Code states that the posted field price is "a statement of crude oil prices circulated among buyers and sellers of crude petroleum and is generally known by buyers and sellers within the field as being the posted price."[61] For people who do not work in the oil industry, this explanation does not provide a clear way of determining what exactly the posted price is under the current statute. This could be a source of confusion for both courts and practitioners who are not well-versed in these concepts, leading to litigation and running the risk of unfair tax treatment of oil producers in Louisiana.

D. What is the Posted Field Price?

The posted field price is not necessarily equal to the market price.[62] The posted field price was initially the "physical placement at a public location of a written statement, or 'price bulletin,' which listed the current price at which an oil company would purchase a barrel of a specific grade of crude oil."[63] This means that oil companies would post a list of prices that they were willing to pay for crude oil at that time. As described by the United States Court of Appeals for the District of Columbia Circuit, "[t]he posted price at any particular time is the offeror's best estimate of the lowest price that may be offered that will buy the quantities of crude oil needed by him."[64] Since oil is not a homogeneous commodity,[65] the posted

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60. *Id.* § 2903(A)(a)(ii).
61. *Id.* § 2903(A)(b).
62. *See* Gary B. Conine, *Crude Oil Royalty Valuation: The Growing Controversy Over Posted Prices and Market Value*, 43 ROCKY MTN. MIN. L. INST. § 18.01, § 18.01, at 18-4 (1997).
63. N. Cent. Airlines, Inc. v. Cont'l Oil Co., 574 F.2d 582, 588 (D.C. Cir. 1978).
64. *Id.*
65. Here, a "homogeneous commodity" means something like a fungible good, or one that can be easily substituted for another. When one references "crude oil," typically a general, fungible quality is assumed. Basically, that crude oil is crude oil is crude oil. However, this does not take the different grades, or in other words the varying quality, of crude oil into account. In this context, the term "grades" refers to the classification of crude oil produced, such as Louisiana Light Sweet (LLS) and West Texas Intermediate (WTI), among others. *See generally*

price takes factors into account to determine the value of the oil such as varying quality and gravity measurements.[66] As a result, the market price provided by a commodities marketplace is not an exact substitute for the posted price.[67]

While the posted field price may provide the most accurate price for crude oil that is produced at a specific oil well, the posted field price method is not commonly used to perform valuations of oil for tax purposes today.[68] In fact, Louisiana is the only state in the Union that has a provision in its severance tax statute referencing posted field price.[69] Use of the posted price method of oil valuation started to decline in the early 1970s, when members of the Organization of Petroleum Exporting Countries (OPEC) began to challenge that the posted price did not accurately represent the value of oil.[70] In the 1980s, the owners of royalty interests also began to question the validity of posted prices of oil regarding how accurate those prices were in determining the value of a non-arm's length transaction.[71] Combined with the fact that oil being sold at spot markets was being sold for higher prices, the industry began to shy away from using the posted field price for valuing oil transactions.[72] Further, oil producers and buyers began relying more on prices coming from market centers rather than utilizing posted prices.[73]

E. Louisiana Crude Oil Production and the Varying Grades of Crude Oil

Grades of crude oil refer to the quality of the crude oil being produced.[74] The grade assigned to the crude oil produced by an individual well is based on the quality of the oil being pumped from the ground.[75] The price of crude oil is also dependent on the varying qualities, the better

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Daniel F. Riemer, *The Evolution of Spot Market Premiums*, *in* Federal and Indian Oil and Gas Royalty Valuation and Management Book 1, at 3B (2004).

66. *See* Conine, *supra* note 62, § 18.01, at 18-4. Gravity refers to the density of oil.

67. *See id.*

68. *See* Avanti Expl., LLC v. Robinson, 268 So. 3d 1093, 1097 (La. Ct. App. 3d Cir. 2019).

69. LA. REV. STAT. § 47:633 (2018).

70. David Darouse & Deborah Gibbs Tschudy, *Proposed Federal Crude Oil Valuation Regulations*, *in* FEDERAL & INDIAN OIL & GAS ROYALTY VALUATION AND MANAGEMENT II, at 8A-1, 8A-2 (Rocky Mtn. Min. Law Found. 1998).

71. *Id.* at 8A-12.

72. *Id.* at 8A-12.

73. *Id*. at 8A-13.

74. Riemer, *supra* note 65.

75. *Id.*

the quality the higher the price.[76] Generally, crude oil will be either: (1) sweet, meaning it has a low sulfur content, or (2) sour, meaning it has a high sulfur content.[77] In addition, the density, or gravity, of the crude oil is taken into account.[78] Heavy crude oil has a higher gravity or density, while light crude oil has a lower gravity or density.[79] Generally, crude oil classified as light sweet typically yields a higher price than oil classified as heavy sour.[80]

The variation in value is a result of the capabilities of refineries that process the oil.[81] Some refineries are better suited to process light sweet crude, and thus that grade will have a higher price because of the higher demand.[82] In Louisiana alone, there are six grades of crude oil "traded at major market centers."[83] The most widely quoted of those six grades is Light Louisiana Sweet (LLS) at St. James, Louisiana.[84] In addition, there is a grade for Heavy Louisiana Sweet (HLS) at Empire, Louisiana.[85]

Two companies, S+P Global Platts (Platts) and Argus are the most prevalent sources for assessing the prices of each grade of crude oil and for accounting the differential between that grade and the West Texas Intermediate (WTI) price.[86] These prices are compiled into reports that are updated and sent to subscribers each trading day.[87] These reports provide the prices for the various grades of oil produced, given at a price per barrel rate, effective on the date that the report is published.[88] The Louisiana

76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. The grades are: Light Louisiana Sweet, Heavy Louisiana Sweet, Mars, Poseidon, Eugene Island, and Bonito. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *See* S&P GLOBAL PLATTS, PLATTS ASSESSMENTS METHODOLOGY GUIDE 2 (Apr. 2020), https://www.spglobal.com/platts/plattscontent/_assets/_files/en/our-methodology/methodology-specifications/platts-assessments-methodology-guide.pdf [https://perma.cc/7ZD3-UUPT]. Trading days are Monday through Friday, excluding holidays. *See also Argus Crude Methodology and Specifications Guide*, ARGUS MEDIA (Jan. 2021), https://www.argusmedia.com/-/media/Files/methodology/argus-crude.ashx [https://perma.cc/792T-PHC6].
88. *See, e.g.*, *Oilgram Price Report*, S&P GLOBAL PLATTS (Aug. 6, 2018), https://www.spglobal.com/platts/plattscontent/_assets/_files/en/productsservices

Department of Revenue has used Platts reports in proceedings where the amount of severance tax owed is disputed.[89]

F. What Are Spot Markets?

Spot markets are markets where payment for the commodity being purchased is immediate.[90] The transactions occurring at a spot market are typically unique transactions that are not associated with a long-term contract.[91] The prices that are paid for the crude oil by consumers in these individual transactions are then assessed by third-party analytics agencies which in turn publish a "daily spot price assessment."[92] These spot price assessments are very important to the crude oil market, as they serve as the basis for the prices contained within long-term contracts.[93]

Spot market prices are associated with futures contracts for crude oil.[94] Futures contracts are agreements to purchase or sell a certain asset, such as crude oil, at a predetermined price at a set date in the future.[95] Futures contracts are traded on commodities markets, such as the New York Mercantile Exchange (NYMEX).[96]

Spot market prices can also be referred to as prices that are assessed for market center transactions.[97] These market centers are typically associated with a certain grade of crude oil that is produced in the geographical area near that market center.[98] In the United States, the most commonly-cited oil grade is WTI at Cushing, Oklahoma.[99] This grade of oil serves as the basis for the futures trades on the NYMEX.[100]

/market-reports/oilgram-proce-report-060818.pdf [https://perma.cc/D3LF-7FTL]. This sample report provided by S&P Global Platts on its website indicates that it was sent to Platts subscribers on Monday, August 6, 2018, containing prices that were effective on Friday, August 3, 2018.

89. *See* Robinson v. Mantle Oil & Gas, LLC, 247 So. 3d 738, 745 (La. Ct. App. 1st Cir.), *writ denied*, 252 So. 3d 922 (La. 2018).

90. *Market, spot market*, BLACK'S LAW DICTIONARY (11th ed. 2019).

91. *Spot Market*, MCKINSEY & CO., https://www.mckinseyenergyinsights.com/resources/refinery-reference-desk/spot-market/ [https://perma.cc/VUA5-NGAK] (last visited Jan. 23, 2021).

92. *Id.*

93. *Id.*

94. Riemer, *supra* note 65.

95. *Futures Contract*, BLACK'S LAW DICTIONARY (11th ed. 2019).

96. Riemer, *supra* note 65.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

II. HOW THE POSTED PRICE LANGUAGE IS CAUSING PROBLEMS

The posted field price has fallen out of favor in the oil industry,[101] and as a result, language referencing posted price should be omitted from Louisiana Revised Statutes section 47:633. Two recent cases, *Avanti Exploration* and *Mantle Oil and Gas*, have dealt with the Louisiana severance tax, specifically with the "posted price" language used in section 47:633.[102]

In *Avanti Exploration, L.L.C. v. Robinson*, the Louisiana Third Circuit Court of Appeal found that neither the oil producer involved nor the Louisiana Department of Revenue utilized the posted field price in determining a tax deficiency.[103] Further, the Third Circuit indicated that "there was no traditional posted price in the field, . . . a practice that has been in disuse for many years."[104] Here, the "posted price" language was not used by either party, and the "posted price" language was essentially ignored by the Third Circuit. This shows that there are issues with the usefulness of the "posted price" language as it is currently used in Louisiana's severance tax statute.

Robinson v. Mantle Oil & Gas, LLC is another case centering around a dispute over the amount of severance tax owed.[105] In *Mantle Oil*, the Louisiana Department of Revenue alleged that the oil producer owed more severance tax than what was paid, basing its argument on the fact that for some periods of time, the field price was higher than the gross receipts provided.[106] However, the Louisiana First Circuit Court of Appeal determined that the Louisiana Department of Revenue failed to establish a posted price.[107] The First Circuit went so far as to say that there "was no posted price" for the field that produced the oil in question.[108] Because of this, the Louisiana Department of Revenue was told that the initial measurement of the value of the oil in question—the gross receipts provided by the producer—was the proper method of valuation for the severance taxes, basically sending all the parties involved back to square

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101. *See* Avanti Expl., LLC v. Robinson, 268 So. 3d 1093, 1097 (La. Ct. App. 3d Cir. 2019).
102. *See id.*; Robinson v. Mantle Oil & Gas, LLC, 247 So. 3d 738, 745 (La. Ct. App. 1st Cir.), *writ denied*, 252 So. 3d 922 (La. 2018).
103. *Avanti Expl.*, 268 So. 3d at 1097.
104. *Id.*
105. *See Mantle Oil & Gas*, 247 So. 3d at 745.
106. *Id.*
107. *Id.* at 746.
108. *Id.*

one.[109] The First Circuit's decision indicates that there is a problem with the "posted price" language in Louisiana Revised Statutes 47:633, a problem that is ultimately resulting in pointless litigation. Because of these decisions from the First and Third Circuits, it is clear that a number of changes need to be made to Louisiana's severance tax statute.

As the Louisiana Third Circuit Court of Appeal explained in the aforementioned case of *Avanti Exploration v. Robinson*, using the posted price as a method of valuation is "a practice that has been in disuse for many years."[110] Further, in the Louisiana First Circuit Court of Appeal case, *Robinson v. Mantle Oil & Gas, LLC*, the Louisiana Department of Revenue attempted to use a price from a Platts report in order to prove that more severance taxes were owed by the producer.[111] However, because the price quoted from Platts came from an oil field "approximately 130 miles away from where the well was located," the court determined that the price from Platts could not be used because there was not a posted field price for the specific well in question.[112]

One fact from *Mantle Oil* that may seem confusing on its face is that the Louisiana Department of Revenue had access to gross receipts recording the transactions in question. However, the Department attempted to use the posted price data instead.[113] The court explained that the Department of Revenue only attempted to use this posted price as a substitute for the gross receipts for the two months in which the given price in the Platts reports was higher than the price from the gross receipts.[114] This indicates that the Department of Revenue was attempting to use this posted field price in order to follow the "shall be the higher of" either the gross receipts or posted field price language in the severance tax statute.[115]

The problem with this assertion by the Department of Revenue in *Mantle Oil*, however, is that the price quoted was the "Platts US Crude Wire-Oil index at LLS Oil Spot at St. James Terminal."[116] As such, this was a spot market price for LLS crude oil, not a posted field price. As explained earlier, the posted price is a sort of advertisement that "list[s]

109. *See id.*

110. Avanti Expl., LLC v. Robinson, 268 So. 3d 1093, 1097 (La. Ct. App. 3d Cir. 2019).

111. *Mantle Oil & Gas*, 247 So. 3d at 745. As discussed earlier, S&P Global Platts, or Platts, is one of the two main entities that compile and produce daily reports of spot market prices.

112. *Id.* at 745–46.

113. *Id.* at 745.

114. *Id.*

115. LA. REV. STAT. § 47:633(7)(a) (2018).

116. *Mantle Oil & Gas*, 247 So. 3d at 745.

the current price at which an oil company would purchase a barrel of a specific grade of crude oil."[117] The price used in *Mantle Oil* is a price assessed from a market center transaction.[118] Therefore, it is a spot market price and not a posted price.

A sample Platts crude oil price report from 2018 lists both spot market prices and posted prices for LLS crude oil.[119] In this sample report, the value of LLS is listed as between $71.58 to $71.60 per barrel for September, and between $71.68 to $71.70 per barrel for October for the Platts crude price assessment.[120] While the report does provide posted prices that match the "posted price" term as defined earlier, only seven companies are listed.[121] Of those seven companies, only five are listed as purchasing LLS.[122] The prices listed for each company vary from $63.50 per barrel to $66.89 per barrel.[123] The combination of different companies and different prices listed makes it difficult to determine what exactly "the" posted price is, as Louisiana Revised Statutes section 47:633 requires.[124] Further, it is fair to assume that more than just seven oil consumers purchase crude oil, especially since ExxonMobil, one of the largest energy companies in the world, was not one of the companies listed in the posted prices section of the price report, despite operating a Baton Rouge oil refinery.[125]

The fact that each report contains multiple companies with different posted prices indicates that there cannot be a single posted price, despite the language of Louisiana Revised Statutes section 47:633 utilizing the singular "the" before "posted price."[126] Further, when one turns to the Louisiana Administrative Code, an "area price" is a sort of posted price used most often for "north Louisiana and south Louisiana."[127] However, current spot market prices, as well as posted prices, are classified by grades, such as LLS and WTI.[128] These grades primarily relate to the

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117. N. Cent. Airlines, Inc. v. Cont'l Oil Co., 574 F.2d 582, 588 (1978).
118. Riemer, *supra* note 65.
119. *See Oilgram Price Report*, *supra* note 88, at 23–24.
120. *See id.* at 23.
121. *See id.* at 24.
122. *See id.*
123. *See id.*
124. LA. REV. STAT. § 47:633 (2018).
125. *Baton Rouge Refinery*, EXXONMOBIL FUELS & LUBRICANTS (2019), https://corporate.exxonmobil.com/-/media/Global/Files/locations/United-States-operations/Baton-Rouge/2019-BR-Refinery.pdf [https://perma.cc/7FYY-UPBH].
126. LA. REV. STAT. § 47:633.
127. LA. ADMIN. CODE tit. 61, pt. 1, § 2903(b) (2020).
128. *See Oilgram Price Report*, *supra* note 88, at 24.

quality and gravity of the oil produced, and not necessarily the location of oil production. Therefore, it appears that there is not an area price within these reports that the Louisiana Department of Revenue has used. This further shows that the language within Louisiana Revised Statutes section 47:633 is not useful.

III. A NATIONWIDE SEARCH FOR SOLUTIONS

In order to find a solution to the problem presented in cases such as *Avanti Exploration, LLC v. Robinson*, Louisiana should look to what other states have done with their severance tax regimes. For the purposes of this Comment, the states chosen are those similarly positioned in the amount of oil produced per year or states that have severance tax statutes similar to what should be adopted by Louisiana.

A. Louisiana's Severance Tax

The revenue produced by the Louisiana severance tax on crude oil is allocated to the state treasury.[129] The statute does not name any particular funds that the revenue should be allocated to,[130] so it may be assumed that this tax revenue is allocated to the state's general fund. The next section of the statute indicates that some of the funds produced by the severance tax are apportioned to parishes in the state each quarter.[131]

In 2018, Louisiana produced over 48 million barrels of oil.[132] As a result, Louisiana ranked ninth in total oil production in the United States for 2018.[133] During the fiscal year 2018, Louisiana generated over $292 million in revenue from oil severance taxes.[134] Since this tax revenue is credited to the state treasury,[135] the income from severance taxes is an important part of the state's annual budget.

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129. LA. REV. STAT. § 47:645(A).
130. *Id.*
131. *Id.* § 47:646.
132. *Crude Oil Production*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm [https://perma.cc/SG4T-6NG4] (last updated Dec. 31, 2020).
133. *Id.*
134. *Tax Report, 2017–2018*, *supra* note 15, at 50.
135. LA. REV. STAT. § 46:645.

B. The Texas Severance Tax

Texas implemented a severance tax on oil in 1905.[136] The initial rate of the tax was one percent of the oil's value.[137] Since 1951, this severance tax rate has held steady at 4.6 percent of the oil's value.[138] In 2018, Texas produced more than 1.6 billion barrels of oil.[139] In turn, the Texas severance tax produced nearly $3.4 billion in revenue for the 2018 fiscal year.[140] This amount of tax revenue is more than ten times larger than those revenues produced in Louisiana in 2018.[141] However, this is to be expected, considering Texas produced over 1.5 billion more barrels of oil than Louisiana in 2018.[142]

Texas utilizes either an ad valorem or unit tax on crude oil production, depending upon whichever method produces more tax revenue for the state.[143] The standard rate of tax is 4.6 percent of the market value of oil produced in Texas, or 4.6 cents per barrel of oil produced, whichever produces more tax revenue.[144] This means that when the market value of oil is at $10 per barrel or less, the unit-based provision will kick in, ensuring more revenue when the market price of oil is low.[145] By implementing this tax floor, Texas ensured that there will be some sort of substantial revenue from oil produced in the state.[146] The Texas severance tax statute differs from the Louisiana statute in that Texas uses both a value-based and a unit-based provision.[147] The Louisiana statute does not have any unit-based provision in it, and thus is a completely ad valorem

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136. *History of Natural Gas and Crude Oil Tax Rates*, TEX. COMPTROLLER OF PUB. ACCTS., https://comptroller.texas.gov/taxes/natural-gas/cong-rate-history.php [https: //perma.cc/8MMT-36XJ] (last visited Jan. 23, 2021).
137. *Id.*
138. *Id.*
139. *Crude Oil Production*, *supra* note 132.
140. *Revenue by Source for Fiscal Year 2018 – Oil Production Tax*, TEX. COMPTROLLER OF PUB. ACCTS., https://bivisual.cpa.texas.gov/QvAjaxZfc/QvsView Client.aspx?public=only&size=long&name=Temp/36b8281812d44cc48f0cfc09 cc2b7087.html [https://perma.cc/F7VC-4MXM] (last visited Jan. 26, 2021).
141. *Compare id., with Tax Report, 2017–2018*, *supra* note 15, at 50.
142. *Crude Oil Production*, *supra* note 132.
143. TEX. TAX CODE ANN. § 202.052 (West 2018).
144. *Id.*
145. *Id.*
146. *Id.*
147. *Compare* LA. REV. STAT. § 47:633 (2018), *with* TEX. TAX CODE ANN. § 202.052.

tax.[148] Additionally, there are no protections against a low market value in the Louisiana statute like there are in the Texas statute.[149]

The Texas statute also provides for a lower rate of tax, specifically 2.3 percent of the market value for oil produced "from a new or expanded enhanced recovery project."[150] The qualifications for a "new or expanded enhanced recovery project" may be found in section 202.054(b) of the Texas Tax Code.[151] For an oil well to be classified as an enhanced recovery project and subject to the lower rate, the Railroad Commission of Texas must approve an application confirming that the well meets the requirements outlined in the Texas Tax Code.[152]

The allocation scheme of the Texas severance tax is as follows. First, 0.5 percent of the overall severance revenue is set aside for the comptroller to use to enforce the severance tax.[153] Then, one-fourth of the remaining severance tax revenue is deposited into Texas's "foundation school fund."[154] The remaining three-fourths of the severance tax revenues are then deposited into the Texas general revenue fund.[155] Finally, there is a provision stating that revenue resulting from "incremental production from a qualifying lease" shall only be spent from the general fund in order to fund the "Texas tuition assistance grant program."[156] Louisiana, on the other hand, simply allocates all of its severance tax revenue to the state treasury.[157]

C. The Alaska Severance Tax

Alaska's first severance tax was imposed by the territorial government in 1955 at one percent of the value of all oil produced in the state.[158] The current statutory scheme for the Alaska severance tax is a formula-based

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148. LA. REV. STAT. § 47:633.
149. *Id.*
150. TEX. TAX CODE ANN. § 202.052(b).
151. *Id.*; *see also id.* § 202.054(b).
152. *Id.* § 202.054.
153. *Id.* § 202.352 (in Texas, the comptroller is essentially the state's tax collector).
154. *Id.* § 202.353.
155. *Id.*
156. *Id.* § 202.354. (The Texas Foundation School Fund is, very generally, a state source of funding for public schools in the state of Texas. The Texas Tuition Assistance Grant Program has been repealed.).
157. LA. REV. STAT. § 47:645(A) (2018).
158. *Oil and Gas Production Tax Historical Overview*, ALASKA DEP'T OF REVENUE, http://www.tax.alaska.gov/programs/programs/reports/Historical.aspx?60650 [https://perma.cc/7ZKQ-DEAB] (last visited Jan. 23, 2021).

ad valorem tax.[159] The tax is currently assessed for both oil and gas.[160] Until January 1, 2022, the standard rate is 35 percent "of the production tax value of taxable oil."[161] After January 1, 2022, the rate of 35 percent will stay the same, but the way that the taxable base is calculated will change.[162] In addition, after January 1, 2022, gas will be taxed at 13 percent "of the gross value at the point of production."[163]

In 2018, Alaska produced just shy of 175 million barrels of oil.[164] Because Alaska currently assesses its severance tax on both oil and gas at the same rate, the data provided for revenue earned in 2018 is for taxes on both oil and gas.[165] However, in 2018, Alaska collected more than $805 million in tax revenue resulting from the severance tax, constituting more than half of the total tax revenue in the state.[166] Alaska deposits the revenue resulting from the production tax into the state's general fund.[167]

Perhaps most interesting about Alaska's severance tax scheme is the availability of severance tax credits available for producers who donate to approved educational entities.[168] The statute allows for "contributions of cash or equipment" to be donated to qualifying entities, which is then put toward tax credits for the production tax.[169] Qualifying entities include: (1) "direct instruction, research, and educational support purposes, including library and museum acquisitions, and contributions to endowment"[170] to accredited two and four-year colleges in the state;[171] (2) "secondary school vocational education courses" at school districts in Alaska;[172] (3) other vocational education courses administered by entities other than school districts;[173] (4) contributions to facilities of accredited two and four-year colleges;[174] (5) "Alaska Native cultural or heritage

159. ALASKA STAT. § 43.55.011(e) (2018).
160. *Id.*
161. *Id.* § 43.55.011(e)(2).
162. *See id.* § 43.55.160(h).
163. *Id.* § 43.55.011(e)(3)(B).
164. *Crude Oil Production*, *supra* note 132.
165. *See Oil and Gas Production Tax 2018 Annual Report*, ALASKA DEP'T OF REVENUE (2018), http://tax.alaska.gov/programs/programs/reports/Annual.aspx?60650&Year=2018 [https://perma.cc/6R56-2KS3].
166. *Id.*
167. ALASKA STAT. § 43.55.080 (2018).
168. *Id.* § 43.55.019.
169. *Id.* § 43.55.019(a).
170. *Id.* § 43.55.019(a)(1).
171. *Id.*
172. *Id.* § 43.55.019(a)(2).
173. *Id.* § 43.55.019(a)(3).
174. *Id.* § 43.55.019(a)(4).

programs and educational support";[175] (6) coastal ecosystem learning centers;[176] and (7) "the Alaska higher education investment fund."[177]

Prior to 2021, a crude oil producer was allowed a credit of 50 percent of contributions or equipment donations valued less than or equal to $100,000.[178] For any subsequent $200,000 donated, 75 percent of that $200,000 can be applied as a credit.[179] For donations exceeding $300,000, 50 percent of the contribution value could be applied as a tax credit.[180]

For example, a producer who donated $100,000 to an accredited university in Alaska will receive a $50,000 credit to apply to their production tax balance. A producer who donates $300,000 will receive a $50,000 credit for the first $100,000, and a $150,000 credit for the next $200,000, producing a total credit of $200,000 to be applied to the producer's severance tax assessment. Likewise, a producer who donates $400,000 will receive a total credit of $250,000.

As of January 1, 2021, Alaska's statute implements a new calculation for the tax credit.[181] Oil producers making donations to such institutions may credit 50 percent of its contributions against its severance tax liability.[182] For example, under the current statute, an oil producer that donates cash or equipment worth $200,000 to an accredited institution may credit 50 percent of that contribution, resulting in a $100,000 tax credit.

While a tax credit may significantly reduce a producer's tax liability, the statute does not allow a producer to reduce its tax liability below $0 for the year.[183] In addition, the current statute has a limit of a $1 million credit.[184] In contrast, Louisiana has no such tax incentive for donations to educational entities in exchange for severance tax credits.

D. The Utah Severance Tax

In 2018, Utah produced slightly more than 37 million barrels of oil, ranking tenth in production in the United States.[185] This makes Utah the

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175. *Id.* § 43.55.019(a)(5).
176. *Id.* § 43.55.019(a)(6).
177. *Id.* § 43.55.019(a)(7).
178. *Id.* § 43.55.019(b)(1).
179. *Id.* § 43.55.019(b)(2).
180. *Id.* § 43.55.019(b)(3).
181. *Id.* § 43.55.019(b).
182. *Id.*
183. *Id.* § 43.55.019(e).
184. *Id.* § 43.55.019(d)(2).
185. *Crude Oil Production*, *supra* note 132.

closest state to Louisiana in regard to the volume of oil produced in 2018.[186] Like Alaska, Utah utilizes a formula-based severance tax.[187]

In addition to the standard rates, there are exceptions for stripper wells.[188] The Utah severance tax rate adopts a "sliding scale" method, in which the first $13 of value per barrel of oil is taxed at 3 percent, and the value above $13, starting at $13.01, is taxed at 5 percent.[189] For example, if the barrel of oil involved had a taxable value of $100, the first $13 will be taxed at 3 percent, and the remaining $87 will be taxed at 5 percent. This will produce a severance tax revenue of $4.74 for that barrel of oil. The way this scheme works is unique, as no other state follows this tax regime.

The revenue produced by the Utah severance tax on oil is generally deposited into the state's general fund.[190] However, if the oil is produced on either Ute Indian or Navajo Nation land, then there are special provisions about the disposition of those collected funds.[191] In fiscal year 2018, Utah received $28.1 million in revenue from oil and gas severance taxes.[192]

Utah's system is significantly different from the system that Louisiana utilizes, since Louisiana does not use a sliding scale method to determine taxable value.[193] Further, Louisiana does not use different rates to tax different parts of the total value of each barrel of oil. In addition, there are no exceptions for the displacement of funds dependent upon whether or not oil was produced on Native American land.

IV. PROPOSED SOLUTIONS

A. Proposed Replacement for the Posted Price

Based on the Louisiana Third Circuit's assertion that usage of the posted price as a standard for oil valuation is in "disuse,"[194] and the

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186. *Id.*
187. UTAH CODE ANN. § 59-5-102 (West 2019).
188. *Id.* § 59-5-102(2)(b)(ii)(A).
189. *Id.* § 59-5-102(4)(a)(i)–(ii).
190. *Id.* § 59-5-115.
191. *See id.* §§ 59-5-116, 59-5-119.
192. *Revenue Summary Final Fiscal Year 2017-2018 Through 12 Months*, UTAH ST. TAX COMMISSION (Dec. 2018), https://tax.utah.gov/esu/revenuereports/summary2018.pdf [https://perma.cc/MN2M-6HHA].
193. LA. REV. STAT. § 47:633 (2018).
194. Avanti Expl., LLC v. Robinson, 268 So. 3d 1093, 1097 (La. Ct. App. 3d Cir. 2019).

confusion that arose when the Louisiana Department of Revenue used a spot market price instead of the posted field price,[195] it is apparent that the language of Louisiana Revised Statutes section 47:633 in its current state is not useful. In addition, the posted field price language is clearly causing problems regarding the amount of severance tax to be paid, resulting in litigation between the Louisiana Department of Revenue and oil producers.

While the posted field price language may not cause problems when there is an arm's length transaction available to satisfy the gross receipts provision, it is still possible that problems will arise in situations such as *Robinson v. Mantle Oil & Gas, LLC*. In addition, the posted price language may cause problems when there is not an arm's length transaction upon which one may assess the value of the oil produced. In order for these problems to be avoided in the future, the legislature should make changes to the existing severance tax statute. The phrase "posted field price" should be removed from the statute completely,[196] and be replaced with a more modern method to assess the value of crude oil.

Since oil valuations are updated daily, the valuation method should determine the price for the grade most similar to the oil produced, on the date that the oil was produced.[197] Further, if the transaction indicates the grade of oil produced, the price for that specific grade on the day that oil was produced should be used. If there are multiple sources for price assessments available, the average of those prices for the grade produced should be used to produce a single price per barrel for that day. Then, that price should be multiplied by the number of barrels produced on that day. The resulting product of those figures should be the tax base. For example, if the most similar grade to the quality of oil produced is LLS, the spot price for LLS should be used. If the contract specifies the grade produced as LLS, or some other grade that is readily available in daily price reports, the price of that grade on the date the oil is produced should be used. The date of oil production should be the date for the crude oil market reports used to value the oil.

If the crude oil is produced on January 1, 2021, then the corresponding report for January 1, 2021, should be used. Should the oil be produced on a day that a price report is not compiled by a major reporting agency, the reports for the trading day immediately before and the trading day immediately after the oil production should be averaged to produce an

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195. Robinson v. Mantle Oil & Gas, LLC, 247 So. 3d 738, 745 (La. Ct. App. 1st Cir.), *writ denied*, 252 So. 3d 922 (La. 2018).

196. LA. REV. STAT. § 47:633(7)(a).

197. *See* S&P GLOBAL PLATTS, *supra* note 87; *see also Argus Crude Methodology and Specifications Guide*, *supra* note 87.

assessed price. If the average of the spot market price assessments comes to $10 per barrel, and 100 barrels of oil are produced, the tax base would be $1000. Should the tax rate of 12.5 percent be left in place, the revenue from this crude oil production would be $125. As discussed earlier, it is understood that the grade or quality of oil produced will vary and thus will command a different price. However, in the interest of simplicity, grade prices should be used when gross receipts are unavailable.

B. Streamline the Severance Tax

Additionally, the exemptions and lower rates for stripper wells and other types of wells should be removed, and all oil produced should be taxed at the same rate. This would simplify the severance tax scheme in Louisiana, and would ultimately produce more tax revenue for the State.

In 2018, Louisiana produced roughly 48 million barrels of oil.[198] Also in 2018, the average first purchase price of domestic crude oil in Louisiana was $66.65 per barrel.[199] Theoretically, this would have produced approximately $390,900,000 in tax revenue for fiscal year 2018. However, only $292 million in revenue was produced due to the current severance tax on oil.[200] It is apparent that the exemptions and exceptions within the statute are creating a much lower tax revenue from the severance tax on oil. Because of this, the same 12.5 percent severance tax rate should be uniformly applied to all oil produced in the state, regardless of its well designation.

In 2015, approximately 20,576 oil wells in Louisiana were classified as marginal, or stripper wells.[201] This means these wells produced an average of less than, or equal to, 10 barrels of oil per day.[202] In 2015, these wells produced nearly 9 million barrels of oil, accounting for 14.3 percent of total oil production in Louisiana.[203] This shows wells with low production are very important to the oil industry in Louisiana. While implementing a higher tax rate on oil produced by these wells may cause some of them to be shut down, it is unlikely that shutdowns would actually

198. *Crude Oil Production*, *supra* note 132.

199. *Domestic Crude Oil First Purchase Prices by Area*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=F003022__3&f=A [https://perma.cc/37SR-MHS9] (last updated Jan. 4, 2021).

200. *Tax Report, 2017–2018*, *supra* note 15, at 50.

201. Edward L. O'Brien, III, *Marginal Wells are Not Insignificant*, LA. DEP'T NAT. RESOURCES 1 (Sept. 2017), http://www.dnr.louisiana.gov/assets/TAD/newsletters/2017/2017-09_topic1.pdf [https://perma.cc/KWD9-Q79W].

202. *Id.*

203. *Id.*

occur. Many of these low-yielding wells have been producing oil for such a long time that they have paid for themselves, and whatever revenue being produced outside of operating costs is pure profit.[204] The incentive to profit from these wells will still be there even with a slightly higher tax rate.

Implementing a uniform tax rate to all wells in the state, regardless of the average number of barrels produced, will result in both a simpler tax application and more tax revenue. Both of these positive outcomes far outweigh the slight risk that some low-yielding wells may be shut down. These changes will result in a severance tax that is both fairer and easier for the state to administer.

C. Changes to the Allocation of Revenue

Within the higher revenue from severance taxes on oil that will result from these proposed changes, Louisiana should allocate a portion of the tax allotment to a specific fund for education, similar to how the Texas severance tax operates.[205] This would provide schools in the state with a relatively steady stream of income, allowing them to budget more effectively, and hopefully alleviate any sort of issues at the legislative level on allocating funds to schools in Louisiana.

If the set allotment of severance tax revenue set forth in the proposed statute is not feasible, then the Alaska scheme of allowing tax credits for the severance tax on oil in exchange for donations of funds or equipment to approved educational entities should be implemented.[206] Allowing for tax credits would incentivize the private sector to help fund educational undertakings in the state. The approved entities should be similar to those in Alaska, such as accredited or state-funded primary, secondary, and higher education entities. Even though tax credits may not provide a stream of income as certain or steady as the statutory allotment would, it will still likely result in much more private funding of schools and educational entities in Louisiana. For this reason, a tax credit scheme is a good alternative for changes that can be made to the statutory regime as it relates to funding education in the state of Louisiana.

CONCLUSION

It is apparent that the current statutory scheme of Louisiana's severance tax is not in sync with the rest of the country in both structure and language. The "posted price" language within Louisiana Revised

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204. *Id.*
205. TEX. TAX CODE ANN. § 202.353 (West 2018).
206. ALASKA STAT. § 43.55.019 (2018).

Statutes section 47:633 will continue to cause problems if it is not changed and replaced with a modern form of valuation for crude oil. In order to fix the aforementioned problems, two changes to the Louisiana severance tax statute should be made by the legislature. First, in order to prevent more disputes between the Louisiana Department of Revenue and crude oil producers, the posted price language in the statute should be removed. Second, the exceptions to the 12.5 percent tax rate should be removed, and all oil produced in the state should be taxed at the same rate. Third, there should be a change in the statutory regime to allocate a portion of the funds received from severance taxes to a fund for education, be it elementary, secondary, or higher education. If the legislature determines that changes to the tax allocation are not tenable, Alaska's approach of providing severance tax credits for donations to approved educational funds would be an adequate substitute.[207]

If the changes proposed in this Comment are made, the result will be both a simpler severance tax scheme in Louisiana, and potentially more funding for education in the state. A simpler scheme would create a more uniform severance tax, creating a system that more fairly taxes all oil producers in the state, and would make the severance tax much more easily administered. These changes to the legislation will allow for a more certain severance tax revenue for the state. Further, these changes will provide more certainty for crude oil producers to determine what the ultimate severance tax bill will be for the crude oil produced. In addition, the educational institutions in the state would have a steadier stream of income resulting from the large amount of oil production activity in the state.

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207. *Id.*

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