

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Skarphol

1 A BILL for an Act to amend and reenact sections 57-51.1-02 and 57-51.1-03 of the North
2 Dakota Century Code, relating to oil extraction tax rates and exemptions; and to provide an
3 effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 57-51.1-02 is amended:

6 **57-51.1-02. Imposition of oil extraction tax.** There is hereby imposed an excise tax,
7 to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the
8 earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed
9 for the purposes of this chapter to be engaged in the activity of extracting that oil.

10 The rate of tax is ~~six and one-half percent of the gross value at the well of the oil~~
11 ~~extracted, except that the rate of tax is four percent of the gross value at the well of the oil~~
12 ~~extracted in the following situations:~~

- 13 1. ~~For oil produced from wells drilled and completed after April 27, 1987, commonly~~
14 ~~referred to as new wells, and not otherwise exempt under section 57-51.1-03;~~
- 15 2. ~~For oil produced from a secondary or tertiary recovery project that was certified as~~
16 ~~qualifying by the industrial commission before July 1, 1991;~~
- 17 3. ~~For oil that does not qualify as incremental oil but is produced from a secondary or~~
18 ~~tertiary recovery project that is certified as qualifying by the industrial commission~~
19 ~~after June 30, 1991;~~
- 20 4. ~~For incremental oil produced from a secondary or tertiary recovery project that is~~
21 ~~certified as qualifying by the industrial commission after June 30, 1991, and which~~
22 ~~production is not otherwise exempt under section 57-51.1-03; or~~

5. ~~For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03.~~

~~However, if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period, then the rate of tax on oil extracted from all taxable wells is six and one-half percent of the gross value at the well of the oil extracted until the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period, in which case the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells subject to a reduced rate under subsections 1 through 5.~~

SECTION 2. AMENDMENT. Section 57-51.1-03 is amended:

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, ~~except that oil.~~ Oil produced from any well drilled and completed as a horizontal well after June 30, 2009, is exempt from any taxes imposed under this chapter for a period of twenty-four months if the exemption is not ineffective because of the trigger provision and the well owner has filed with the tax commissioner an election before completion of the well to apply the exemption under this subsection and waive eligibility for the rate reduction under subsection 10. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

1 4. The production of oil from a qualifying well that was worked over is exempt from
2 any taxes imposed under this chapter for a period of twelve months, beginning with
3 the first day of the third calendar month after the completion of the work-over
4 project. The exemption provided by this subsection is only effective if the well
5 operator establishes to the satisfaction of the industrial commission upon
6 completion of the project that the cost of the project exceeded sixty-five thousand
7 dollars or production is increased at least fifty percent during the first two months
8 after completion of the project. A qualifying well under this subsection is a well with
9 an average daily production of no more than fifty barrels of oil during the latest six
10 calendar months of continuous production. A work-over project under this
11 subsection means the continuous employment of a work-over rig, including
12 recompletions and reentries. The exemption provided by this subsection becomes
13 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
14 each month in any consecutive five-month period. However, the exemption is
15 reinstated if, after the trigger provision becomes effective, the average price of a
16 barrel of crude oil is less than the trigger price for each month in any consecutive
17 five-month period.

18 5. a. The incremental production from a secondary recovery project which has
19 been certified as a qualified project by the industrial commission after July 1,
20 1991, is exempt from any taxes imposed under this chapter for a period of five
21 years from the date the incremental production begins.

22 b. The incremental production from a tertiary recovery project which has been
23 certified as a qualified project by the industrial commission subsequent to
24 June 30, 1991, is exempt from any taxes imposed under this chapter for a
25 period of ten years from the date the incremental production begins.

26 c. For purposes of this subsection, incremental production is defined in the
27 following manner:

28 (1) For purposes of determining the exemption provided for in subdivision a
29 and with respect to a unit where there has not been a secondary
30 recovery project, incremental production means the difference between
31 the total amount of oil produced from the unit during the secondary

1 recovery project and the amount of primary production from the unit.

2 For purposes of this paragraph, primary production means the amount
3 of oil which would have been produced from the unit if the secondary
4 recovery project had not been commenced. The industrial commission
5 shall determine the amount of primary production in a manner which
6 conforms to the practice and procedure used by the commission at the
7 time the project is certified.

8 (2) For purposes of determining the exemption provided for in subdivision a
9 and with respect to a unit where a secondary recovery project was in
10 existence prior to July 1, 1991, and where the industrial commission
11 cannot establish an accurate production decline curve, incremental
12 production means the difference between the total amount of oil
13 produced from the unit during a new secondary recovery project and
14 the amount of production which would be equivalent to the average
15 monthly production from the unit during the most recent twelve months
16 of normal production reduced by a production decline rate of ten
17 percent for each year. The industrial commission shall determine the
18 average monthly production from the unit during the most recent twelve
19 months of normal production and must upon request or upon its own
20 motion hold a hearing to make this determination. For purposes of this
21 paragraph, when determining the most recent twelve months of normal
22 production the industrial commission is not required to use twelve
23 consecutive months. In addition, the production decline rate of ten
24 percent must be applied from the last month in the twelve-month period
25 of time.

26 (3) For purposes of determining the exemption provided for in subdivision a
27 and with respect to a unit where a secondary recovery project was in
28 existence before July 1, 1991, and where the industrial commission can
29 establish an accurate production decline curve, incremental production
30 means the difference between the total amount of oil produced from the
31 unit during the new secondary recovery project and the total amount of

oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

(4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

(5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve

1 months of normal production and must upon request or upon its own
2 motion hold a hearing to make this determination. For purposes of this
3 paragraph, when determining the most recent twelve months of normal
4 production the industrial commission is not required to use twelve
5 consecutive months. In addition, the production decline rate of ten
6 percent must be applied from the last month in the twelve-month period
7 of time.

8 (6) For purposes of determining the exemption provided for in subdivision b
9 and with respect to a unit where there is or has been a secondary
10 recovery project and where the industrial commission can establish an
11 accurate production decline curve, incremental production means the
12 difference between the total amount of oil produced from the unit during
13 the tertiary recovery project and the total amount of oil that would have
14 been produced from the unit if the tertiary recovery project had not been
15 commenced. For purposes of this paragraph, the total amount of oil
16 that would have been produced from the unit if the tertiary recovery
17 project had not been commenced includes both primary production and
18 production that occurred as a result of any secondary recovery project.
19 The industrial commission shall determine the amount of oil that would
20 have been produced from the unit if the tertiary recovery project had not
21 been commenced in a manner that conforms to the practice and
22 procedure used by the commission at the time the tertiary recovery
23 project is certified.

24 d. The industrial commission shall adopt rules relating to this exemption that
25 must include procedures for determining incremental production as defined in
26 subdivision c.

27 6. The production of oil from a two-year inactive well, as determined by the industrial
28 commission and certified to the state tax commissioner, for a period of ten years
29 after the date of receipt of the certification. The exemption under this subsection
30 becomes ineffective if the average price of a barrel of crude oil exceeds the trigger
31 price for each month in any consecutive five-month period. However, the

1 exemption is reinstated if, after the trigger provision becomes effective, the
2 average price of a barrel of crude oil is less than the trigger price for each month in
3 any consecutive five-month period.

4 7. The production of oil from a horizontal reentry well, as determined by the industrial
5 commission and certified to the state tax commissioner, for a period of nine months
6 after the date the well is completed as a horizontal well. The exemption under this
7 subsection becomes ineffective if the average price of a barrel of crude oil exceeds
8 the trigger price for each month in any consecutive five-month period. However,
9 the exemption is reinstated if, after the trigger provision becomes effective, the
10 average price of a barrel of crude oil is less than the trigger price for each month in
11 any consecutive five-month period.

12 8. The initial production of oil from a well is exempt from any taxes imposed under
13 this chapter for a period of sixty months if:

- 14 a. The well is located within the boundaries of an Indian reservation;
15 b. The well is drilled and completed on lands held in trust by the United States
16 for an Indian tribe or individual Indian; or
17 c. The well is drilled and completed on lands held by an Indian tribe if the
18 interest is in existence on August 1, 1997.

19 9. The first seventy-five thousand barrels of oil produced during the first eighteen
20 months after completion, from a horizontal well drilled and completed in the Bakken
21 formation after June 30, 2007, and before July 1, 2008, is subject to a reduced tax
22 rate of two percent of the gross value at the well of the oil extracted under this
23 chapter. A well eligible for a reduced tax rate under this subsection is eligible for
24 the exemption for horizontal wells under subsection 3, if the exemption under
25 subsection 3 is effective during all or part of the first twenty-four months after
26 completion.

27 10. The first seventy-five thousand barrels or the first four million five hundred
28 thousand dollars of gross value at the well, whichever is less, of oil produced
29 during the first thirty-six months after completion, from a horizontal well drilled and
30 completed after June 30, 2009, is subject to a reduced tax rate of two percent of
31 the gross value at the well of the oil extracted under this chapter. Production from

1 a well eligible for the rate reduction under this subsection is not eligible for the
2 exemption under subsection 3 unless the well owner has filed the election
3 described in subsection 3.

4 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
5 June 30, 2009.