

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 57-51-02.5 of the North Dakota Century Code, relating to oil production tax exemptions; to amend and reenact sections 57-51-01, 57-51-02, 57-51-02.1, 57-51-02.2, 57-51-02.4, 57-51-03, 57-51-04, 57-51-05, 57-51-05.1, 57-51-06, 57-51-15, 57-51-16, and 57-51-17 of the North Dakota Century Code, relating to oil and gas production taxes; to repeal chapter 57-51.1 of the North Dakota Century Code, relating to the oil extraction tax; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51-01. Definitions. As used in this chapter:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.
2. "Barrel of oil" means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.99 liters computed at a temperature of 15.56 degrees Celsius].
- ~~2-~~ 3. "Commissioner" means the state tax commissioner.
- ~~3-~~ 4. "Field" means the geographic area underlaid by one or more pools, as defined by the industrial commission.
- ~~4-~~ 5. "Gas" means natural gas and casinghead gas.
- ~~6-~~ 6. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].
- ~~5-~~ 7. "Oil" means petroleum, crude oil, mineral oil, and casinghead gasoline and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
- ~~6-~~ 8. "Person" includes partnership, corporation, limited liability company, association, fiduciary, trustee, and any combination of individuals.
- ~~7-~~ 9. "Posted price" means the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.

10. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.
11. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax exemption provided under section 57-51-02.5, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 3 of section 57-51-02.5.
12. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

- a. Miscible fluid displacement.
- b. Steam drive injection.
- c. Microemulsion.
- d. In situ combustion.
- e. Polymer augmented water flooding.
- f. Cyclic steam injection.
- g. Alkaline flooding.
- h. Carbonated water flooding.
- i. Immiscible carbon dioxide displacement.
- j. New tertiary recovery methods certified by the industrial commission.

The term does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax exemption provided under section 57-51-02.5, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection 3 of section 57-51-02.5.

13. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.
- 8- 14. "Shallow gas" means gas produced from a gas well completed in or producing from a shallow gas zone, as certified to the tax commissioner by the industrial commission.
- 9- 15. "Shallow gas zone" means a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters]

below the surface but above the top of the Rierdon formation, from which gas is or may be produced.

16. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.
- 40- 17. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:
- a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
 - b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
 - c. When no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system, as determined by the commissioner.
18. "Two-year inactive well" means any well certified by the industrial commission that did not produce oil in more than one month in any consecutive twenty-four-month period before being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.

SECTION 2. AMENDMENT. Section 57-51-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02. ~~Gross production~~ Production tax - Oil.

1. A tax of five percent of the gross value at the well is levied upon all oil produced within North Dakota, less the value of any part thereof, the ownership or right to which is exempt from taxation. The tax levied attaches to the whole production, including the royalty interest. The tax imposed by this subsection must be separately reported and segregated by the tax commissioner and state treasurer so the proceeds may be properly apportioned and allocated under subsection 1 of section 57-51-15.
2. If the average daily price per barrel of oil received by a well operator for a calendar month exceeds fifty dollars, the tax rate under subsection 1 is increased for that month. The amount of the rate increase is one-hundredth of one percentage point for every ten cents, or fraction thereof, by which the average daily price per barrel of oil received by the well operator for a calendar month exceeds fifty dollars. The maximum tax

rate increase under this subsection is seven percentage points. The tax imposed by this subsection must be separately reported and segregated by the tax commissioner and state treasurer so the proceeds may be properly apportioned and allocated under subsection 2 of section 57-51-15.

SECTION 3. AMENDMENT. Section 57-51-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.1. Type of tax. For purposes of interpreting chapter 785 of the 1987 Session Laws, relating to federal land bank taxation and to the taxation of other governmental entities if their immunity from taxation has been waived, the ~~gross~~ production tax is a real property tax on oil-producing and gas-producing mineral estates and interests.

SECTION 4. AMENDMENT. Section 57-51-02.2 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.2. ~~Gross production~~ Production tax - Gas. A ~~gross~~ production tax is levied upon all gas produced within North Dakota except gas that is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. The gas tax rate is four cents times the gas base rate adjustment for each fiscal year as calculated under subsection 2.
2.
 - a. The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for each fiscal year beginning on July first.
 - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
 - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first.
 - d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
 - e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 5. AMENDMENT. Section 57-51-02.4 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.4. Shallow gas - ~~Gross production~~ Production tax exemption. Shallow gas produced during the first twenty-four months of production from and after the date of first sales of gas from a well completed or recompleted in a shallow gas zone after June 30, 2003, is exempted from the ~~gross~~ production tax levied under

section 57-51-02.2. Gas produced from such a well during testing prior to well completion or connection to a pipeline is also exempt from the ~~gross~~ production tax.

SECTION 6. Section 57-51-02.5 of the North Dakota Century Code is created and enacted as follows:

57-51-02.5. Exemptions from oil and gas production tax. The following activities are specifically exempted from the oil and gas production tax imposed under subsection 2 of section 57-51-02:

1. The activity of extracting from the earth any oil from a stripper well property.
2. The production of oil from a qualifying well that was worked over is exempt for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries.
3.
 - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission is exempt for a period of five years from the date the incremental production begins.
 - b. The incremental production from a tertiary recovery project which has been certified as a qualified project by the industrial commission is exempt for a period of ten years from the date the incremental production begins.
 - c. For purposes of this subsection, incremental production is defined in the following manner:
 - (1) For purposes of determining the exemption provided for in subdivision a 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 secondary 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 secondary 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.
 - (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence in 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary 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 months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.

- (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the 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. 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 months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when

determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.

- (6) 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 and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary 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 tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- d. The industrial commission shall adopt rules relating to the exemptions under this subsection which must include procedures for determining incremental production as defined in subdivision c.
- 4. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
 - a. The well is located within the boundaries of an Indian reservation;
 - b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
 - c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.
- 5. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first thirty-six months after completion, from a horizontal well drilled and completed after June 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter.

SECTION 7. AMENDMENT. Section 57-51-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51-03. ~~Gross production~~ Production tax to be in lieu of other taxes.

The payment of the taxes ~~herein imposed must be~~ under this chapter is in full, and in lieu of all ad valorem taxes by the state, counties, cities, ~~towns~~, townships, school districts, and other ~~municipalities~~ taxing districts, upon any property rights attached to or inherent in the right to producing oil or gas, upon producing oil or gas leases, upon machinery, appliances, and equipment used in and around any well producing oil or gas and actually used in the operation of such well, and also upon oil and gas produced in the state upon which ~~gross~~ production taxes have been paid, and upon any investment in any such property. Any interest in the land, other than that herein enumerated, must be assessed and taxed as other property within the taxing district in which such

property is situated. It is expressly provided that the ~~gross~~ production tax is not in lieu of income taxes nor excise taxes upon the sale of oil and gas products at retail.

SECTION 8. AMENDMENT. Section 57-51-04 of the North Dakota Century Code is amended and reenacted as follows:

57-51-04. Equipment used in production exempt from ad valorem tax. No equipment, material, or property is exempt from the payment of ad valorem tax by reason of the payment of the ~~gross~~ production tax ~~as herein provided under this chapter~~ except such equipment, machinery, tools, material, or property as is actually necessary and being used at the site of a producing well in the production of oil or gas; ~~and it is expressly declared that no.~~ Any ice plants, hospitals, office buildings, garages, residences, gasoline extraction or absorption plants, water systems, fuel systems, roominghouses, and other buildings, ~~nor~~ and any equipment or material used in connection therewith is not exempt from ad valorem tax, ~~nor are~~ and drilling rigs are not exempt. The real property is not exempt under this chapter except to the extent of the mineral interests therein.

SECTION 9. AMENDMENT. Section 57-51-05 of the North Dakota Century Code is amended and reenacted as follows:

57-51-05. Payment of tax on monthly basis - When tax due - When delinquent - Payment by purchaser - By producer - How casinghead gas taxed.

1. The ~~gross~~ production tax on oil or gas, as herein provided, must be paid on a monthly basis. The tax on oil is due and payable on the twenty-fifth day of the month succeeding the month of production. The tax on gas is due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it becomes delinquent and must be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when the request is granted the tax is not delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve percent per annum from the date the tax was due to the date the tax is paid.
2. On oil or gas produced and sold, the ~~gross~~ production tax thereon must be paid by the purchaser, and the purchaser is authorized to deduct in making settlement with the producer or royalty owner, the amount of tax paid; provided, that in the event oil produced is not sold but is retained by the producer, the tax on the oil not sold must be paid by the producer, including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner the producer has the right to deduct the amount of the tax paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time the tax becomes due with the amount of the tax paid.
3. Gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, must be considered for the purpose of this chapter, as to the amount utilized, as gas actually produced and saved.
4. All calculations of the ~~gross~~ production tax on oil or gas, including production, distribution, and claims for credit or refund, are based on the month of production and must be credited to that month.

SECTION 10. AMENDMENT. Section 57-51-05.1 of the North Dakota Century Code is amended and reenacted as follows:

57-51-05.1. Reclamation of oil - Refiner to pay tax - Reports required. On all oil reclaimed from tank bottoms, pit oil, and saltwater, the ~~gross~~ production tax shall be paid by the operator of the reclaiming plant, unless taxes have already been paid thereon. If tank bottom or pit oil material is removed from the lease by the operator of a treatment plant, the gross value of oil reclaimed from the material is the purchase price paid by the operator of the treatment plant for the material from which the oil is reclaimed. If the operator has not paid a cash price for the material, the oil reclaimed has no value at the well. Every person, firm, association, corporation, or limited liability company engaged in the sale, purchasing, and refining of tank bottoms, pit oil, and saltwater shall report to the commissioner, upon forms prescribed by the commissioner, information necessary to the enforcement of this section.

SECTION 11. AMENDMENT. Section 57-51-06 of the North Dakota Century Code is amended and reenacted as follows:

57-51-06. Tax paid to commissioner - Statements by person paying tax - Statements by producer.

1. The tax herein provided for must be paid to the commissioner and the person paying the tax shall file with the commissioner at the time the tax is required to be paid a statement on forms prescribed by the commissioner. The commissioner may require a purchaser to file the statement or report by electronic data interchange or other electronic media.
2. Any person engaged in the production, within this state, of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement upon forms prescribed by the commissioner. The commissioner may waive the requirement that a producer file a well production report. A waiver by the commissioner of the requirement to file a well production report does not release the producer from any obligation to remit the tax under this chapter. A waiver does not release the producer from any duty or obligation under section 57-51-07 to maintain production records for inspection by the commissioner.
3. Reports from either the purchaser or producer, as the case may be, are delinquent after the last day fixed for their filing, and every person required to file a report is subject to a penalty of twenty-five dollars per day for each property upon which the person fails or refuses to file the reports. The penalties herein prescribed are for failure to file reports and are in addition to the penalty imposed by section 57-51-10 and likewise constitute a lien against the assets of the person failing or refusing to file the reports. The penalties prescribed under this section must be collected in the same manner as ~~gross~~ production taxes and must be apportioned as other ~~gross~~ production tax penalties; provided, that the commissioner may, for good cause shown, waive any penalties imposed under this section. When royalty is claimed to be exempt from taxation by law, the facts on which the claims of exemption are based and other relevant information must be furnished when requested by the commissioner.
4. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

SECTION 12. AMENDMENT. Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. Apportionment and use of proceeds of tax.

1. The ~~gross~~ production tax provided for in ~~this chapter~~ subsection 1 of section 57-51-02 and section 57-51-02.2 must be apportioned as follows:
 - 4- a. First the tax revenue ~~collected under this chapter~~ equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding six million dollars per biennium, including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.
 - 2- b. The first one million dollars of annual revenue after the deduction of the amount provided for in ~~subsection 4 subdivision a~~ from oil or gas produced in any county must be allocated to that county. The second one million dollars of annual revenue after the deduction for the amount provided for in ~~subsection 4 subdivision a~~ from oil and gas produced in any county must be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The third one million dollars of annual revenue after the deduction of the amount provided for in ~~subsection 4 subdivision a~~ from oil or gas produced in any county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in ~~subsection 4 subdivision a~~ above three million dollars from oil or gas produced in any county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this ~~subsection~~ subdivision must be limited based upon the population of the county according to the last official decennial federal census as follows:
 - a- (1) Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year; however, a county may receive up to four million nine hundred thousand dollars under this ~~subdivision paragraph~~ for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding three million nine hundred thousand dollars under this ~~subdivision paragraph~~ is not subject to allocation under ~~subsection 3 subdivision c~~ but must be credited by the county treasurer to the county general fund.
 - b- (2) Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year; however, a county may receive up to five million one hundred thousand dollars under this ~~subdivision paragraph~~ for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding four million one hundred thousand dollars under this ~~subdivision paragraph~~ is not subject to allocation under ~~subsection 3 subdivision c~~ but

must be credited by the county treasurer to the county general fund.

- 6- (3) Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year; however, a county may receive up to five million six hundred thousand dollars under this ~~subdivision~~ paragraph for each fiscal year if during that fiscal year the county levies a total of ten mills or more for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding four million six hundred thousand dollars under this ~~subdivision~~ paragraph is not subject to allocation under ~~subsection 3~~ subdivision c but must be credited by the county treasurer to the county general fund.

Any allocations for any county pursuant to this ~~subsection~~ subdivision which exceed the applicable limitation for that county as provided in ~~subdivisions a through e~~ paragraphs 1 through 3 must be deposited instead in the state's general fund.

- 3- c. Forty-five percent of all revenues ~~as may by the legislative assembly be allocated to any county hereunder~~ under subdivision b must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this ~~subsection~~ subdivision greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this ~~subsection~~ subdivision, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this ~~subsection~~ subdivision. As used in this ~~subsection~~ subdivision, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this ~~subsection~~ subdivision. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. Once this level has been reached through distributions under this ~~subsection~~ subdivision, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of

that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a- (1) Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
 - b- (2) Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
 - e- (3) The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
 - (4) (a) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) (b) Four hundred twenty.
2. The production tax provided for in subsection 2 of section 57-51-02 must be apportioned quarterly by the state treasurer as follows:
- a. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law, which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - (1) The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - (2) The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
 - b. Twenty percent must be allocated as provided in section 24 of article X of the Constitution of North Dakota.

- c. Sixty percent must be allocated and credited to the state's general fund for general state purposes.
3. All revenue deposited in the general fund during a biennium derived from taxes imposed on oil and gas under this chapter which exceeds seventy-one million dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. The state treasurer shall transfer interest earnings of the permanent oil tax trust fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a two-thirds vote of the members elected to each house of the legislative assembly.
- If the distribution formulas under this chapter are amended effective after June 30, 1997, the director of the budget shall adjust the seventy-one million dollar amount in this subsection by the same percentage increase or decrease in the amount of revenue allocable to the general fund after the change in the allocation formula, and transfers to the permanent oil tax trust fund shall thereafter be made using that adjusted figure so that the dollar amount of the transfers to the permanent oil tax trust fund is not increased or decreased merely because of changes in the distribution formulas.
4. There is established a special fund in the state treasury to be known as the oil and gas research fund. Two percent of the state's share of the oil and gas production tax revenues, up to three million dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax revenues for the previous three months. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the oil and gas research council to be used for purposes stated in chapter 54-17.6.

SECTION 13. AMENDMENT. Section 57-51-16 of the North Dakota Century Code is amended and reenacted as follows:

57-51-16. Distribution of proceeds in certain cases. If ~~gross~~ production tax is paid to the commissioner and the reports accompanying such tax are insufficient to enable the commissioner to determine the source, by county, from which it is produced, the state treasurer shall allocate those revenues under this section. In the first distribution to counties under section 57-51-15 which occurs after June ~~gross~~ production tax revenues are received by the state treasurer for allocation, the revenue under this section must be allocated among counties in the same proportions that revenue was allocated among counties that received distributions under section 57-51-15 during the year ended June thirtieth. Revenue received by the county under this section must be allocated within the county as provided in subdivision c of subsection 3 1 of section 57-51-15.

SECTION 14. AMENDMENT. Section 57-51-17 of the North Dakota Century Code is amended and reenacted as follows:

57-51-17. Reports by carriers of oil and gas transported - Reports of refiners - Reports by persons purchasing or storing oil. It is the duty of every railroad company, pipeline company, or transportation company to furnish to the commissioner, upon request, any and all information relative to the transportation of oil or gas subject to ~~gross~~ production tax, that may be required to properly enforce the provisions of this chapter. The commissioner may require any pipeline or transportation company to install suitable measuring devices to enable the company to provide information concerning the quantity of oil or gas transported within, into, out of, or across the state of North Dakota. It is the duty of every person engaged in the

operation of a refinery for the processing of oil or gas, in the state of North Dakota, to furnish to the commissioner, upon request, any and all information, relative to oil or gas subject to ~~gross~~ production tax that has been processed by it that may be required to properly enforce the provisions of this chapter. It is the duty of every person engaged in the purchase or storing of oil or gas subject to ~~gross~~ production tax in the state of North Dakota to furnish to the commissioner, upon request, showing the amount of oil or gas in storage, and giving, along with information required, the location, identity, character, and capacity of the storage receptacle in which the oil or gas is stored. Information requested under this section must be provided within forty-five days of the request.

The failure of any person to comply with the provisions of this section makes that person subject to a penalty of twenty-five dollars for each day that person fails or refuses to furnish the information or comply with the provisions of this chapter. Any penalty may be recovered at the suit of the state, on relation of the commissioner. The penalty so collected must be apportioned to the state general fund. The commissioner may, for good cause shown, excuse any or all penalties imposed under this section.

SECTION 15. REPEAL. Chapter 57-51.1 of the North Dakota Century Code is repealed.

SECTION 16. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2009."

Renumber accordingly