

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1467

Introduced by

Representatives Kempenich, Thoreson, S. Meyer, Onstad

Senators Schaible, Wardner

1 A BILL ~~for an Act to amend and reenact sections 57-51.1-01, 57-51.1-02, 57-51.1-03, and~~
2 ~~57-51.1-03.1 of the North Dakota Century Code, relating to oil extraction tax rates and~~
3 ~~exemptions; and to provide an effective date.~~ for an Act to amend and reenact section
4 57-51.1-03 of the North Dakota Century Code, relating to a triggered oil extraction tax rate
5 reduction; to provide an effective date; and to provide an expiration date.

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

7 ~~— **SECTION 1. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is~~
8 ~~amended and reenacted as follows:~~

9 ~~— **57-51.1-01. Definitions for oil extraction tax.**~~

10 ~~— For the purposes of the oil extraction tax law, the following words and terms shall have the~~
11 ~~meaning ascribed to them in this section:~~

12 ~~— 1. "Average daily production" of a well means the qualified maximum total production of~~
13 ~~oil from the well during a calendar month period divided by the number of calendar~~
14 ~~days in that period, and "qualified maximum total production" of a well means that the~~
15 ~~well must have been maintained at the maximum efficient rate of production as~~
16 ~~defined and determined by rule adopted by the industrial commission in furtherance of~~
17 ~~its authority under chapter 38-08.~~

18 ~~— 2. "Average price" of a barrel of crude oil means the monthly average of the daily closing~~
19 ~~price for a barrel of west Texas intermediate-cushing crude oil, as those prices appear~~
20 ~~in the Wall Street Journal, midwest edition, minus two dollars and fifty cent soil, as~~
21 ~~posted by flint hills resources, or as determined by the tax commissioner from~~
22 ~~available indices, if flint hills resources prices are not posted for the relevant time~~
23 ~~period. When computing the monthly average price, the most recent previous daily~~

1 closing price must be considered the daily closing price for the days on which the
2 market is closed.

3 ~~3. "Horizontal reentry well" means a well that was not initially drilled and completed as a~~
4 ~~horizontal well, including any well initially plugged and abandoned as a dry hole, which~~
5 ~~is reentered and recompleted as a horizontal well.~~

6 ~~4. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at~~
7 ~~an angle of at least eighty degrees within the productive formation of at least three~~
8 ~~hundred feet [91.44 meters].~~

9 ~~5. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid~~
10 ~~hydrocarbons that are recovered from gas on the lease incidental to the production of~~
11 ~~the gas.~~

12 ~~6.4. "Property" means the right which arises from a lease or fee interest, as a whole or any~~
13 ~~designated portion thereof, to produce oil. A producer shall treat as a separate~~
14 ~~property each separate and distinct producing reservoir subject to the same right to~~
15 ~~produce crude oil; provided, that such reservoir is recognized by the industrial~~
16 ~~commission as a producing formation that is separate and distinct from, and not in~~
17 ~~communication with, any other producing formation.~~

18 ~~7.5. "Qualifying secondary recovery project" means a project employing water flooding. To~~
19 ~~be eligible for the tax reduction provided under section 57-51.1-02, a secondary~~
20 ~~recovery project must be certified as qualifying by the industrial commission and the~~
21 ~~project operator must have achieved for six consecutive months an average~~
22 ~~production level of at least twenty-five percent above the level that would have been~~
23 ~~recovered under normal recovery operations. To be eligible for the tax exemption~~
24 ~~provided under section 57-51.1-03 and subsequent thereto the rate reduction provided~~
25 ~~under section 57-51.1-02, a secondary recovery project must be certified as qualifying~~
26 ~~by the industrial commission and the project operator must have obtained incremental~~
27 ~~production as defined in subsection 53 of section 57-51.1-03.~~

28 ~~8.6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil~~
29 ~~which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as~~
30 ~~amended through December 31, 1986, and includes the following methods for~~
31 ~~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.~~

~~It 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 reduction provided under section 57-51.1-02, 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 achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, 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 5 of section 57-51.1-03.~~

~~9.7. "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.~~

~~10.8. "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.

~~11. "Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.~~

~~12. "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 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**57-51.1-02. Imposition of oil extraction tax.**~~

~~There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil.~~

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

~~1. For oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03; if the average price of a barrel of crude oil is less than sixty-five dollars but not less than~~

~~fifty-five dollars for a full calendar month, then the rate of tax on oil extracted from all taxable wells during the immediately following calendar month is four and one-half percent of the gross value at the well of the oil extracted.~~

~~2. For oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991; if the average price of a barrel of crude oil is less than fifty-five dollars but not less than forty-five dollars for a full calendar month, then the rate of tax on oil extracted from all taxable wells during the immediately following calendar month is two and one-half percent of the gross value at the well of the oil extracted.~~

~~3. If the average price of a barrel of crude oil is less than forty-five dollars for a full calendar month, then there is no tax on oil extracted from all taxable wells during the immediately following calendar month.~~

~~3.4. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991;~~

~~4.5. For incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03; or~~

~~5.6. 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 3. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**57-51.1-03. (Effective through June 30, 2012) 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 produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. 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.~~
- ~~4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter 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. The exemption provided by 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.~~
- ~~5. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is~~

exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.

~~b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter 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 prior to July 1, 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 before July 1, 1991, 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 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 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 this exemption that must include procedures for determining incremental production as defined in subdivision c.~~

~~6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. 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.~~

~~7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. 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.~~

~~8.4. 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.~~

~~9. 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 eighteen months after completion, from a horizontal well drilled and completed after~~

April 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. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

~~—(Effective after June 30, 2012) 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 produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. 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.~~
- ~~4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the~~

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

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

19 ~~b. The incremental production from a tertiary recovery project that does not use~~
20 ~~carbon dioxide and which has been certified as a qualified project by the~~
21 ~~industrial commission is exempt from any taxes imposed under this chapter for a~~
22 ~~period of ten years from the date the incremental production begins. Incremental~~
23 ~~production from a tertiary recovery project that uses carbon dioxide and which~~
24 ~~has been certified as a qualified project by the industrial commission is exempt~~
25 ~~from any taxes imposed under this chapter from the date the incremental~~
26 ~~production begins.~~

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

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

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

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

24 ~~————— (3) For purposes of determining the exemption provided for in subdivision a and~~
25 ~~with respect to a unit where a secondary recovery project was in existence~~
26 ~~before July 1, 1991, and where the industrial commission can establish an~~
27 ~~accurate production decline curve, incremental production means the~~
28 ~~difference between the total amount of oil produced from the unit during the~~
29 ~~new secondary recovery project and the total amount of oil that would have~~
30 ~~been produced from the unit if the new secondary recovery project had not~~
31 ~~been commenced. For purposes of this paragraph, the total amount of oil~~

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

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

19 ~~(5) For purposes of determining the exemption provided for in subdivision b and~~
20 ~~with respect to a unit where there is or has been a secondary recovery~~
21 ~~project, incremental production means the difference between the total~~
22 ~~amount of oil produced during the tertiary recovery project and the amount~~
23 ~~of production which would be equivalent to the average monthly production~~
24 ~~from the unit during the most recent twelve months of normal production~~
25 ~~reduced by a production decline rate of ten percent for each year. The~~
26 ~~industrial commission shall determine the average monthly production from~~
27 ~~the unit during the most recent twelve months of normal production and~~
28 ~~must upon request or upon its own motion hold a hearing to make this~~
29 ~~determination. For purposes of this paragraph, when determining the most~~
30 ~~recent twelve months of normal production the industrial commission is not~~
31 ~~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 this exemption that must include procedures for determining incremental production as defined in subdivision c.~~

~~6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. 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.~~

~~7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. 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.

~~8. 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.~~

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

~~**SECTION 4. AMENDMENT.** Section 57-51.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**57-51.1-03.1. Stripper well, new well, work-over, and secondary or tertiary project certification for tax exemption or rate reduction – Filing requirement.**~~

~~To receive the benefits of a tax exemption or tax rate reduction, a certification of qualifying well status prepared by the industrial commission must be submitted to the tax commissioner as follows:~~

~~1. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property under subsection 2 of section 57-51.1-03, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's qualification period.~~

1 ~~2. To receive, from the first day of eligibility, a tax exemption under subsection 3 of~~
2 ~~section 57-51.1-03 and a rate reduction on production from a new well under section~~
3 ~~57-51.1-02, the industrial commission's certification must be submitted to the tax~~
4 ~~commissioner within eighteen months after a new well is completed.~~

5 ~~3. To receive, from the first day of eligibility, a tax exemption under subsection 4 of~~
6 ~~section 57-51.1-03 and a rate reduction for a work-over well under section 57-51.1-02,~~
7 ~~the industrial commission's certification must be submitted to the tax commissioner~~
8 ~~within eighteen months after the work-over project is completed.~~

9 ~~4. To receive, from the first day of eligibility, a tax exemption under subsection 53 of~~
10 ~~section 57-51.1-03 and a tax rate reduction under section 57-51.1-02 on production~~
11 ~~from a secondary or tertiary project, the industrial commission's certification must be~~
12 ~~submitted to the tax commissioner within the following time periods:~~

13 ~~a. For a tax exemption, within eighteen months after the month in which the first~~
14 ~~incremental oil was produced.~~

15 ~~b. For a tax rate reduction, within eighteen months after the end of the period~~
16 ~~qualifying the project for the rate reduction.~~

17 ~~5. To receive, from the first day of eligibility, a tax exemption or the reduction on~~
18 ~~production for which any other tax exemption or rate reduction may apply, the~~
19 ~~industrial commission's certification must be submitted to the tax commissioner within~~
20 ~~eighteen months of the completion, recompletion, or other qualifying date.~~

21 ~~6. To receive, from the first day of eligibility, a tax exemption under subsection 6 of~~
22 ~~section 57-51.1-03 on production from a two-year inactive well, the industrial~~
23 ~~commission's certification must be submitted to the tax commissioner within eighteen~~
24 ~~months after the end of the two-year inactive well's qualification period.~~

25 ~~If the industrial commission's certification is not submitted to the tax commissioner within the~~
26 ~~eighteen-month period provided in this section, then the exemption or rate reduction does not~~
27 ~~apply for the production periods in which the certification is not on file with the tax~~
28 ~~commissioner. When the industrial commission's certification is submitted to the tax~~
29 ~~commissioner after the eighteen-month period, the tax exemption or rate reduction applies to~~
30 ~~prospective production periods only and the exemption or rate reduction is effective the first day~~
31 ~~of the month in which the certification is received by the tax commissioner.~~

~~SECTION 5. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.~~

SECTION 1. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. (Effective through June 30, 20122013) 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 produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. 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.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter 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. The exemption provided by this subsection becomes ineffective if the average price of a barrel of

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

- 5 5. a. The incremental production from a secondary recovery project which has been
6 certified as a qualified project by the industrial commission after July 1, 1991, is
7 exempt from any taxes imposed under this chapter for a period of five years from
8 the date the incremental production begins.
- 9 b. The incremental production from a tertiary recovery project that does not use
10 carbon dioxide and which has been certified as a qualified project by the
11 industrial commission is exempt from any taxes imposed under this chapter for a
12 period of ten years from the date the incremental production begins. Incremental
13 production from a tertiary recovery project that uses carbon dioxide and which
14 has been certified as a qualified project by the industrial commission is exempt
15 from any taxes imposed under this chapter from the date the incremental
16 production begins.
- 17 c. For purposes of this subsection, incremental production is defined in the following
18 manner:
- 19 (1) For purposes of determining the exemption provided for in subdivision a and
20 with respect to a unit where there has not been a secondary recovery
21 project, incremental production means the difference between the total
22 amount of oil produced from the unit during the secondary recovery project
23 and the amount of primary production from the unit. For purposes of this
24 paragraph, primary production means the amount of oil which would have
25 been produced from the unit if the secondary recovery project had not been
26 commenced. The industrial commission shall determine the amount of
27 primary production in a manner which conforms to the practice and
28 procedure used by the commission at the time the project is certified.
- 29 (2) For purposes of determining the exemption provided for in subdivision a and
30 with respect to a unit where a secondary recovery project was in existence
31 prior to July 1, 1991, and where the industrial commission cannot establish

1 an accurate production decline curve, incremental production means the
2 difference between the total amount of oil produced from the unit during a
3 new secondary recovery project and the amount of production which would
4 be equivalent to the average monthly production from the unit during the
5 most recent twelve months of normal production reduced by a production
6 decline rate of ten percent for each year. The industrial commission shall
7 determine the average monthly production from the unit during the most
8 recent twelve months of normal production and must upon request or upon
9 its own motion hold a hearing to make this determination. For purposes of
10 this paragraph, when determining the most recent twelve months of normal
11 production the industrial commission is not required to use twelve
12 consecutive months. In addition, the production decline rate of ten percent
13 must be applied from the last month in the twelve-month period of time.

14 (3) For purposes of determining the exemption provided for in subdivision a and
15 with respect to a unit where a secondary recovery project was in existence
16 before July 1, 1991, and where the industrial commission can establish an
17 accurate production decline curve, incremental production means the
18 difference between the total amount of oil produced from the unit during the
19 new secondary recovery project and the total amount of oil that would have
20 been produced from the unit if the new secondary recovery project had not
21 been commenced. For purposes of this paragraph, the total amount of oil
22 that would have been produced from the unit if the new secondary recovery
23 project had not been commenced includes both primary production and
24 production that occurred as a result of the secondary recovery project that
25 was in existence before July 1, 1991. The industrial commission shall
26 determine the amount of oil that would have been produced from the unit if
27 the new secondary recovery project had not been commenced in a manner
28 that conforms to the practice and procedure used by the commission at the
29 time the new secondary recovery project is certified.

30 (4) For purposes of determining the exemption provided for in subdivision b and
31 with respect to a unit where there has not been a secondary recovery

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

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

24 (6) For purposes of determining the exemption provided for in subdivision b and
25 with respect to a unit where there is or has been a secondary recovery
26 project and where the industrial commission can establish an accurate
27 production decline curve, incremental production means the difference
28 between the total amount of oil produced from the unit during the tertiary
29 recovery project and the total amount of oil that would have been produced
30 from the unit if the tertiary recovery project had not been commenced. For
31 purposes of this paragraph, the total amount of oil that would have been

1 produced from the unit if the tertiary recovery project had not been
2 commenced includes both primary production and production that occurred
3 as a result of any secondary recovery project. The industrial commission
4 shall determine the amount of oil that would have been produced from the
5 unit if the tertiary recovery project had not been commenced in a manner
6 that conforms to the practice and procedure used by the commission at the
7 time the tertiary recovery project is certified.

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

11 6. The production of oil from a two-year inactive well, as determined by the industrial
12 commission and certified to the state tax commissioner, for a period of ten years after
13 the date of receipt of the certification. The exemption under this subsection becomes
14 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
15 each month in any consecutive five-month period. However, the exemption is
16 reinstated if, after the trigger provision becomes effective, the average price of a barrel
17 of crude oil is less than the trigger price for each month in any consecutive five-month
18 period.

19 7. The production of oil from a horizontal reentry well, as determined by the industrial
20 commission and certified to the state tax commissioner, for a period of nine months
21 after the date the well is completed as a horizontal well. The exemption under this
22 subsection becomes ineffective if the average price of a barrel of crude oil exceeds the
23 trigger price for each month in any consecutive five-month period. However, the
24 exemption is reinstated if, after the trigger provision becomes effective, the average
25 price of a barrel of crude oil is less than the trigger price for each month in any
26 consecutive five-month period.

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

- 29 a. The well is located within the boundaries of an Indian reservation;
30 b. The well is drilled and completed on lands held in trust by the United States for
31 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.

9. 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 eighteen months after completion, from a horizontal well drilled and completed after April 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. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

(Effective after June 30, ~~2012~~2013) 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 produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. 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.

4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter 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. The exemption provided by 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.

5.
 - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
 - b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter 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 prior to July 1, 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 before July 1, 1991, and where the industrial commission can establish an

1 accurate production decline curve, incremental production means the
2 difference between the total amount of oil produced from the unit during the
3 new secondary recovery project and the total amount of oil that would have
4 been produced from the unit if the new secondary recovery project had not
5 been commenced. For purposes of this paragraph, the total amount of oil
6 that would have been produced from the unit if the new secondary recovery
7 project had not been commenced includes both primary production and
8 production that occurred as a result of the secondary recovery project that
9 was in existence before July 1, 1991. The industrial commission shall
10 determine the amount of oil that would have been produced from the unit if
11 the new secondary recovery project had not been commenced in a manner
12 that conforms to the practice and procedure used by the commission at the
13 time the new secondary recovery project is certified.

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

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

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

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

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

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

7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. 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.

8. 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.

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

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2011, and is effective through June 30, 2013, and is thereafter ineffective.