

Sixty-second  
Legislative Assembly  
of North Dakota

**ENGROSSED 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 section 57-51.1-03 of the North Dakota Century Code,  
2 relating to a triggered oil extraction tax rate reduction; to provide an effective date; and to  
3 provide an expiration date.

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

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

7 **57-51.1-03. (Effective through June 30, 20122013) Exemptions from oil extraction tax.**

8 The following activities are specifically exempted from the oil extraction tax:

- 9 1. The activity of extracting from the earth any oil that is exempt from the gross  
10 production tax imposed by chapter 57-51.
- 11 2. The activity of extracting from the earth any oil from a stripper well property.
- 12 3. For a well drilled and completed as a vertical well, the initial production of oil from the  
13 well is exempt from any taxes imposed under this chapter for a period of fifteen  
14 months, except that oil produced from any well drilled and completed as a horizontal  
15 well is exempt from any taxes imposed under this chapter for a period of twenty-four  
16 months. Oil recovered during testing prior to well completion is exempt from the oil  
17 extraction tax. The exemption under this subsection becomes ineffective if the average  
18 price of a barrel of crude oil exceeds the trigger price for each month in any  
19 consecutive five-month period. However, the exemption is reinstated if, after the  
20 trigger provision becomes effective, the average price of a barrel of crude oil is less  
21 than the trigger price for each month in any consecutive five-month period.
- 22 4. The production of oil from a qualifying well that was worked over is exempt from any  
23 taxes imposed under this chapter for a period of twelve months, beginning with the  
24 first day of the third calendar month after the completion of the work-over project. The

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

- 14 5. a. The incremental production from a secondary recovery project which has been  
15 certified as a qualified project by the industrial commission after July 1, 1991, is  
16 exempt from any taxes imposed under this chapter for a period of five years from  
17 the date the incremental production begins.
- 18 b. The incremental production from a tertiary recovery project that does not use  
19 carbon dioxide and which has been certified as a qualified project by the  
20 industrial commission is exempt from any taxes imposed under this chapter for a  
21 period of ten years from the date the incremental production begins. Incremental  
22 production from a tertiary recovery project that uses carbon dioxide and which  
23 has been certified as a qualified project by the industrial commission is exempt  
24 from any taxes imposed under this chapter from the date the incremental  
25 production begins.
- 26 c. For purposes of this subsection, incremental production is defined in the following  
27 manner:
- 28 (1) For purposes of determining the exemption provided for in subdivision a and  
29 with respect to a unit where there has not been a secondary recovery  
30 project, incremental production means the difference between the total  
31 amount of oil produced from the unit during the secondary recovery project

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

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

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

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

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

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

1 decline rate of ten percent must be applied from the last month in the  
2 twelve-month period of time.

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

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

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

29 7. The production of oil from a horizontal reentry well, as determined by the industrial  
30 commission and certified to the state tax commissioner, for a period of nine months  
31 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 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, 20122013) Exemptions from oil extraction tax.** The following activities are specifically exempted from the oil extraction tax:

- 1       1.   The activity of extracting from the earth any oil that is exempt from the gross  
2           production tax imposed by chapter 57-51.
- 3       2.   The activity of extracting from the earth any oil from a stripper well property.
- 4       3.   For a well drilled and completed as a vertical well, the initial production of oil from the  
5           well is exempt from any taxes imposed under this chapter for a period of fifteen  
6           months, except that oil produced from any well drilled and completed as a horizontal  
7           well is exempt from any taxes imposed under this chapter for a period of twenty-four  
8           months. Oil recovered during testing prior to well completion is exempt from the oil  
9           extraction tax. The exemption under this subsection becomes ineffective if the average  
10          price of a barrel of crude oil exceeds the trigger price for each month in any  
11          consecutive five-month period. However, the exemption is reinstated if, after the  
12          trigger provision becomes effective, the average price of a barrel of crude oil is less  
13          than the trigger price for each month in any consecutive five-month period.
- 14      4.   The production of oil from a qualifying well that was worked over is exempt from any  
15          taxes imposed under this chapter for a period of twelve months, beginning with the  
16          first day of the third calendar month after the completion of the work-over project. The  
17          exemption provided by this subsection is only effective if the well operator establishes  
18          to the satisfaction of the industrial commission upon completion of the project that the  
19          cost of the project exceeded sixty-five thousand dollars or production is increased at  
20          least fifty percent during the first two months after completion of the project. A  
21          qualifying well under this subsection is a well with an average daily production of no  
22          more than fifty barrels of oil during the latest six calendar months of continuous  
23          production. A work-over project under this subsection means the continuous  
24          employment of a work-over rig, including recompletions and reentries. The exemption  
25          provided by this subsection becomes ineffective if the average price of a barrel of  
26          crude oil exceeds the trigger price for each month in any consecutive five-month  
27          period. However, the exemption is reinstated if, after the trigger provision becomes  
28          effective, the average price of a barrel of crude oil is less than the trigger price for  
29          each month in any consecutive five-month period.
- 30      5.   a.   The incremental production from a secondary recovery project which has been  
31              certified as a qualified project by the industrial commission after July 1, 1991, is

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

3 b. The incremental production from a tertiary recovery project that does not use  
4 carbon dioxide and which has been certified as a qualified project by the  
5 industrial commission is exempt from any taxes imposed under this chapter for a  
6 period of ten years from the date the incremental production begins. Incremental  
7 production from a tertiary recovery project that uses carbon dioxide and which  
8 has been certified as a qualified project by the industrial commission is exempt  
9 from any taxes imposed under this chapter from the date the incremental  
10 production begins.

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

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

23 (2) For purposes of determining the exemption provided for in subdivision a and  
24 with respect to a unit where a secondary recovery project was in existence  
25 prior to July 1, 1991, and where the industrial commission cannot establish  
26 an accurate production decline curve, incremental production means the  
27 difference between the total amount of oil produced from the unit during a  
28 new secondary recovery project and the amount of production which would  
29 be equivalent to the average monthly production from the unit during the  
30 most recent twelve months of normal production reduced by a production  
31 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

1                               that conforms to the practice and procedure used by the commission at the  
2                               time the tertiary recovery project is certified.

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

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

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

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

24                  a.   The well is located within the boundaries of an Indian reservation;

25                  b.   The well is drilled and completed on lands held in trust by the United States for  
26                      an Indian tribe or individual Indian; or

27                  c.   The well is drilled and completed on lands held by an Indian tribe if the interest is  
28                      in existence on August 1, 1997.

29              9.   The first seventy-five thousand barrels of oil produced during the first eighteen months  
30                  after completion, from a horizontal well drilled and completed in the Bakken formation  
31                  after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two

1           percent of the gross value at the well of the oil extracted under this chapter. A well  
2           eligible for a reduced tax rate under this subsection is eligible for the exemption for  
3           horizontal wells under subsection 3, if the exemption under subsection 3 is effective  
4           during all or part of the first twenty-four months after completion.

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