

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.

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

5 **SECTION 1. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-51.1-01. Definitions for oil extraction tax.**

8 For the purposes of the oil extraction tax law, the following words and terms shall have the
9 meaning ascribed to them in this section:

- 10 1. "Average daily production" of a well means the qualified maximum total production of
11 oil from the well during a calendar month period divided by the number of calendar
12 days in that period, and "qualified maximum total production" of a well means that the
13 well must have been maintained at the maximum efficient rate of production as
14 defined and determined by rule adopted by the industrial commission in furtherance of
15 its authority under chapter 38-08.
- 16 2. "Average price" of a barrel of crude oil means the monthly average of the daily closing
17 price for a barrel of ~~west Texas intermediate cushing crude oil, as those prices appear~~
18 ~~in the Wall Street Journal, midwest edition, minus two dollars and fifty cent~~~~soil, as~~
19 posted by flint hills resources, or as determined by the tax commissioner from
20 available indices, if flint hills resources prices are not posted for the relevant time
21 period. When computing the monthly average price, the most recent previous daily
22 closing price must be considered the daily closing price for the days on which the
23 market is closed.

- 1 3. ~~"Horizontal reentry well" means a well that was not initially drilled and completed as a~~
2 ~~horizontal well, including any well initially plugged and abandoned as a dry hole, which~~
3 ~~is reentered and recompleted as a horizontal well.~~
- 4 4. ~~"Horizontal well" means a well with a horizontal displacement of the well bore drilled at~~
5 ~~an angle of at least eighty degrees within the productive formation of at least three~~
6 ~~hundred feet [91.44 meters].~~
- 7 5. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid
8 hydrocarbons that are recovered from gas on the lease incidental to the production of
9 the gas.
- 10 6.4. "Property" means the right which arises from a lease or fee interest, as a whole or any
11 designated portion thereof, to produce oil. A producer shall treat as a separate
12 property each separate and distinct producing reservoir subject to the same right to
13 produce crude oil; provided, that such reservoir is recognized by the industrial
14 commission as a producing formation that is separate and distinct from, and not in
15 communication with, any other producing formation.
- 16 7.5. "Qualifying secondary recovery project" means a project employing water flooding. To
17 be eligible for the tax reduction provided under section 57-51.1-02, a secondary
18 recovery project must be certified as qualifying by the industrial commission and the
19 project operator must have achieved for six consecutive months an average
20 production level of at least twenty-five percent above the level that would have been
21 recovered under normal recovery operations. To be eligible for the tax exemption
22 provided under section 57-51.1-03 and subsequent thereto the rate reduction provided
23 under section 57-51.1-02, a secondary recovery project must be certified as qualifying
24 by the industrial commission and the project operator must have obtained incremental
25 production as defined in subsection 53 of section 57-51.1-03.
- 26 8.6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil
27 which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as
28 amended through December 31, 1986, and includes the following methods for
29 recovery:
- 30 a. Miscible fluid displacement.
- 31 b. Steam drive injection.

- 1 c. Microemulsion.
- 2 d. In situ combustion.
- 3 e. Polymer augmented water flooding.
- 4 f. Cyclic steam injection.
- 5 g. Alkaline flooding.
- 6 h. Carbonated water flooding.
- 7 i. Immiscible carbon dioxide displacement.
- 8 j. New tertiary recovery methods certified by the industrial commission.

9 It does not include water flooding, unless the water flooding is used as an element of
10 one of the qualifying tertiary recovery techniques described in this subsection, or
11 immiscible natural gas injection. To be eligible for the tax reduction provided under
12 section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the
13 industrial commission, the project operator must continue to operate the unit as a
14 qualifying tertiary recovery project, and the project operator must have achieved for at
15 least one month a production level of at least fifteen percent above the level that would
16 have been recovered under normal recovery operations. To be eligible for the tax
17 exemption provided under section 57-51.1-03 and subsequent thereto the rate
18 reduction provided under section 57-51.1-02, a tertiary recovery project must be
19 certified as qualifying by the industrial commission, the project operator must continue
20 to operate the unit as a qualifying tertiary recovery project, and the project operator
21 must have obtained incremental production as defined in subsection 5 of section
22 57-51.1-03.

23 9-7. "Royalty owner" means an owner of what is commonly known as the royalty interest
24 and shall not include the owner of any overriding royalty or other payment carved out
25 of the working interest.

26 ~~40-8.~~ "Stripper well property" means a "property" whose average daily production of oil,
27 excluding condensate recovered in nonassociated production, per well did not exceed
28 ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less,
29 fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80
30 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day
31 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~~

1 taxable wells during the immediately following calendar month is four and one-half
2 percent of the gross value at the well of the oil extracted.

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

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

12 ~~3.4.~~ For oil that does not qualify as incremental oil but is produced from a secondary or
13 tertiary recovery project that is certified as qualifying by the industrial commission after
14 June 30, 1991;

15 ~~4.5.~~ For incremental oil produced from a secondary or tertiary recovery project that is
16 certified as qualifying by the industrial commission after June 30, 1991, and which
17 production is not otherwise exempt under ~~section 57-51.1-03; or,~~

18 ~~5.6.~~ For oil produced from a well that receives an exemption pursuant to subsection 4 of
19 section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt
20 under section 57-51.1-03.

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

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

29 **57-51.1-03. (Effective through June 30, 2012) Exemptions from oil extraction tax.**

30 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

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

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

24 (4) For purposes of determining the exemption provided for in subdivision b and
25 with respect to a unit where there has not been a secondary recovery
26 project, incremental production means the difference between the total
27 amount of oil produced from the unit during the tertiary recovery project and
28 the amount of primary production from the unit. For purposes of this
29 paragraph, primary production means the amount of oil which would have
30 been produced from the unit if the tertiary recovery project had not been
31 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 ~~8.4.~~ 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 or the first four million five hundred thousand-~~
30 ~~dollars of gross value at the well, whichever is less, of oil produced during the first~~
31 ~~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.

- 1 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
- 2 June 30, 2011.