

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1365
(Representatives Belter, Kerzman)
(Senators Christmann, O'Connell)

AN ACT to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2, subsections 3 and 11 of section 57-60-01, subsections 2, 3, and 5 of section 57-60-02, sections 57-60-06 and 57-60-07, and subsection 1 of section 57-60-14 of the North Dakota Century Code, relating to the definition of power plant, repowering, and coal conversion facility for sales, use, and privilege tax purposes, the imposition of taxes on coal conversion facilities, the powers of the tax commissioner, and allocation of revenue from coal conversion facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.

1. As used in this section, unless the context otherwise requires:
 - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - b. "Operator" means any person owning, holding, or leasing a power plant.
 - c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts ~~ignite coal~~ lignite coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
 - e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting ~~ignite coal~~ lignite coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants

~~that begin construction after June 30, 1994~~, are exempt from the tax imposed by this chapter.

3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:
 - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
 - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
 - c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts ~~lignite coal~~ lignite coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
 - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

- f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units ~~that begin construction after June 30, 1994~~, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 2. AMENDMENT. Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.

1. As used in this section, unless the context otherwise requires:
 - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - b. "Operator" means any person owning, holding, or leasing a power plant.
 - c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

- e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants ~~that begin construction after June 30, 1994~~, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:
 - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
 - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
 - c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

- d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
 - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
 - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.
- 2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in process units that begin construction after June 30, 1994, are exempt from the tax imposed by this chapter.
 - 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
 - 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
 - 5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 3. AMENDMENT. Subsections 3 and 11 of section 57-60-01 of the North Dakota Century Code are amended and reenacted as follows:

- 3. "Coal conversion facility" means any of the following:
 - a. A plant, other than an electrical generating plant or a coal beneficiation plant, with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products, and which uses or is designed to use over five hundred thousand tons [453592.37 metric tons] of coal per year;
 - b. An electrical generating plant, with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ten thousand kilowatts or more;
 - c. A plant, with all additions thereto, which is designed for coal beneficiation; or
 - d. A gas-fired electrical generating facility, and all additions to the facility, which generates electrical power through the consumption of gas produced by the conversion of lignite coal from its natural form into gas and has a capacity of ten thousand kilowatts or more.
- 11. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing

power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.

SECTION 4. AMENDMENT. Subsections 2, 3, and 5 of section 57-60-02 of the North Dakota Century Code are amended and reenacted as follows:

2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction or ~~completed~~ complete repowering ~~after June 30, 1994,~~ are exempt from eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county ~~which begins construction after June 30, 1994,~~ partial or complete exemption from the remaining fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction or ~~completed~~ complete repowering ~~after June 30, 1994,~~ the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant.
5.
 - a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility ~~or for a period of five years from April 20, 1987, whichever is later.~~ The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
 - b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. ~~If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted.~~

SECTION 5. AMENDMENT. Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes. Each coal conversion facility must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which such facility is located. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property. The taxes imposed by this chapter are also in lieu of those taxes imposed by chapters 57-33 and 57-33.1 on cooperative electrical generating plants that qualify as coal conversion facilities as defined in this chapter for gross receipts derived from the operation of such plants ~~on or after July 1, 1975. Each cooperative electrical generating plant shall receive a credit against the taxes imposed by this chapter for any taxes imposed pursuant to chapters 57-33 and 57-33.1 and payable after July 1, 1975. Such credit applies only for such taxes actually paid and must be applied against the taxes imposed by this chapter in the years in which such payments are made.~~

SECTION 6. AMENDMENT. Section 57-60-07 of the North Dakota Century Code is amended and reenacted as follows:

57-60-07. Powers of commissioner. The commissioner has power to require any person subject to the taxes imposed by this chapter to furnish any additional information deemed by the commissioner to be necessary for the purpose of correctly computing the amount of the tax, and to examine the books, records, and files of such person, and has power to conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and full authority to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the true facts as to the amount of production or generation from any coal ~~development~~ conversion plant, and as to the rendition thereof for taxing purposes.

SECTION 7. AMENDMENT. Subsection 1 of section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter ~~and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08,~~ fifteen percent to the county and eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1365 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 93 Nays 0 Absent 1

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State