

Introduced by

Representatives S. Meyer, Onstad

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 cents. When~~  
19 ~~computing the monthly average price, the most recent previous daily closing price~~  
20 ~~must be considered the daily closing price for the days on which the market is closed.~~
- 21 3. ~~"Horizontal reentry well" means a well that was not initially drilled and completed as a~~  
22 ~~horizontal well, including any well initially plugged and abandoned as a dry hole, which~~  
23 ~~is reentered and recompleted as a horizontal well.~~

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

- 1 f. Cyclic steam injection.
- 2 g. Alkaline flooding.
- 3 h. Carbonated water flooding.
- 4 i. Immiscible carbon dioxide displacement.
- 5 j. New tertiary recovery methods certified by the industrial commission.

6 It does not include water flooding, unless the water flooding is used as an element of  
7 one of the qualifying tertiary recovery techniques described in this subsection, or  
8 immiscible natural gas injection. To be eligible for the tax reduction provided under  
9 section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the  
10 industrial commission, the project operator must continue to operate the unit as a  
11 qualifying tertiary recovery project, and the project operator must have achieved for at  
12 least one month a production level of at least fifteen percent above the level that would  
13 have been recovered under normal recovery operations. To be eligible for the tax  
14 exemption provided under section 57-51.1-03 and subsequent thereto the rate  
15 reduction provided under section 57-51.1-02, a tertiary recovery project must be  
16 certified as qualifying by the industrial commission, the project operator must continue  
17 to operate the unit as a qualifying tertiary recovery project, and the project operator  
18 must have obtained incremental production as defined in subsection 53 of section  
19 57-51.1-03.

20 9-6. "Royalty owner" means an owner of what is commonly known as the royalty interest  
21 and shall not include the owner of any overriding royalty or other payment carved out  
22 of the working interest.

23 10-7. "Stripper well property" means a "property" whose average daily production of oil,  
24 excluding condensate recovered in nonassociated production, per well did not exceed  
25 ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less,  
26 fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80  
27 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day  
28 for wells of a depth of more than ten thousand feet [3048 meters] during any  
29 preceding consecutive twelve-month period. Wells which did not actually yield or  
30 produce oil during the qualifying twelve-month period, including disposal wells, dry

1 wells, spent wells, and shut-in wells, are not production wells for the purpose of  
2 determining whether the stripper well property exemption applies.

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

10 12. ~~"Two-year inactive well" means any well certified by the industrial commission that did~~  
11 ~~not produce oil in more than one month in any consecutive twenty-four month period~~  
12 ~~before being recompleted or otherwise returned to production after July 31, 1995. A~~  
13 ~~well that has never produced oil, a dry hole, and a plugged and abandoned well are~~  
14 ~~eligible for status as a two-year inactive well.~~

15 **SECTION 2. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **57-51.1-02. Imposition of oil extraction tax.**

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

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

- 25 1. For oil produced from new wells drilled and completed after ~~April 27, 1987, commonly~~  
26 ~~referred to as new wells, and not otherwise exempt under section 57-51.1-03~~June 30,  
27 2011;
- 28 2. For oil produced from a secondary or tertiary recovery project ~~that was certified as~~  
29 ~~qualifying by the industrial commission before July 1, 1991~~not otherwise exempt under  
30 section 57-51.1-03;

- 1       3. For oil that does not qualify as incremental oil but is produced from a secondary or  
2       tertiary recovery project that is ~~certified as qualifying by the industrial commission after~~  
3       ~~June 30, 1994; or~~
- 4       4. For incremental oil produced from a secondary or tertiary recovery project that is  
5       ~~certified as qualifying by the industrial commission after June 30, 1991, and which~~  
6       ~~production is not otherwise exempt under section 57-51.1-03; or.~~
- 7       5. For oil produced from a well that receives an exemption pursuant to subsection 4 of  
8       ~~section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt~~  
9       ~~under section 57-51.1-03.~~

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

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

18       **57-51.1-03. (Effective through June 30, 2012) Exemptions from oil extraction tax.**

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

- 20       1. The activity of extracting from the earth any oil that is exempt from the gross  
21       production tax imposed by chapter 57-51.
- 22       2. The activity of extracting from the earth any oil from a stripper well property.
- 23       3. For a well drilled and completed as a vertical well, the initial production of oil from the  
24       well is exempt from any taxes imposed under this chapter for a period of fifteen  
25       months, except that oil produced from any well drilled and completed as a horizontal  
26       well is exempt from any taxes imposed under this chapter for a period of twenty-four  
27       months. Oil recovered during testing prior to well completion is exempt from the oil  
28       extraction tax. The exemption under this subsection becomes ineffective if the average  
29       price of a barrel of crude oil exceeds the trigger price for each month in any  
30       consecutive five-month period. However, the exemption is reinstated if, after the

1           ~~trigger provision becomes effective, the average price of a barrel of crude oil is less-~~  
2           ~~than the trigger price for each month in any consecutive five-month period.~~

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

- 19          5.   a.   ~~The incremental production from a secondary recovery project which has been~~  
20              ~~certified as a qualified project by the industrial commission after July 1, 1991, is~~  
21              ~~exempt from any taxes imposed under this chapter for a period of five years from~~  
22              ~~the date the incremental production begins.~~
- 23          b.   ~~The incremental production from a tertiary recovery project that does not use~~  
24              ~~carbon dioxide and which has been certified as a qualified project by the~~  
25              ~~industrial commission is exempt from any taxes imposed under this chapter for a~~  
26              ~~period of ten years from the date the incremental production begins. Incremental~~  
27              ~~production from a tertiary recovery project that uses carbon dioxide and which~~  
28              ~~has been certified as a qualified project by the industrial commission is exempt~~  
29              ~~from any taxes imposed under this chapter from the date the incremental~~  
30              ~~production begins.~~

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

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

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

29          (3) 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          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~~

1 of crude oil is less than the trigger price for each month in any consecutive five-month  
2 period.

3 7. ~~The production of oil from a horizontal reentry well, as determined by the industrial~~  
4 ~~commission and certified to the state tax commissioner, for a period of nine months~~  
5 ~~after the date the well is completed as a horizontal well. The exemption under this~~  
6 ~~subsection becomes ineffective if the average price of a barrel of crude oil exceeds the~~  
7 ~~trigger price for each month in any consecutive five-month period. However, the~~  
8 ~~exemption is reinstated if, after the trigger provision becomes effective, the average~~  
9 ~~price of a barrel of crude oil is less than the trigger price for each month in any~~  
10 ~~consecutive five-month period.~~

11 8.4. The initial production of oil from a well is exempt from any taxes imposed under this  
12 chapter for a period of sixty months if:

- 13 a. The well is located within the boundaries of an Indian reservation;  
14 b. The well is drilled and completed on lands held in trust by the United States for  
15 an Indian tribe or individual Indian; or  
16 c. The well is drilled and completed on lands held by an Indian tribe if the interest is  
17 in existence on August 1, 1997.

18 9. ~~The first seventy-five thousand barrels or the first four million five hundred thousand~~  
19 ~~dollars of gross value at the well, whichever is less, of oil produced during the first~~  
20 ~~eighteen months after completion, from a horizontal well drilled and completed after~~  
21 ~~April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the~~  
22 ~~well of the oil extracted under this chapter. A well eligible for a reduced tax rate under~~  
23 ~~this subsection is eligible for the exemption for horizontal wells under subsection 3, if~~  
24 ~~the exemption under subsection 3 is effective during all or part of the first twenty-four~~  
25 ~~months after completion. The rate reduction under this subsection becomes effective~~  
26 ~~on the first day of the month following a month for which the average price of a barrel~~  
27 ~~of crude oil is less than fifty-five dollars. The rate reduction under this subsection~~  
28 ~~becomes ineffective on the first day of the month following a month in which the~~  
29 ~~average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction~~  
30 ~~under this subsection is effective on the date of completion of a well, the rate reduction~~  
31 ~~applies to production from that well for up to eighteen months after completion, subject~~

1 to the other limitations of this subsection. If the rate reduction under this subsection is  
2 ineffective on the date of completion of a well, the rate reduction under this subsection  
3 does not apply to production from that well at any time.

4 **(Effective after June 30, 2012) Exemptions from oil extraction tax.** The following  
5 activities are specifically exempted from the oil extraction tax:

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

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

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

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

16 e. For purposes of this subsection, incremental production is defined in the following  
17 manner:

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

28 (2) For purposes of determining the exemption provided for in subdivision a and  
29 with respect to a unit where a secondary recovery project was in existence  
30 prior to July 1, 1991, and where the industrial commission cannot establish  
31 an accurate production decline curve, incremental production means the

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

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

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

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

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

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

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

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

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

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

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

1 e. ~~The well is drilled and completed on lands held by an Indian tribe if the interest is~~  
2 ~~in existence on August 1, 1997.~~

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

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

12 **57-51.1-03.1. Stripper well, new well, work-over, and secondary or tertiary project**  
13 **certification for tax exemption or rate reduction - Filing requirement.**

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

- 17 1. To receive, from the first day of eligibility, a tax exemption on production from a  
18 stripper well property under subsection 2 of section 57-51.1-03, the industrial  
19 commission's certification must be submitted to the tax commissioner within eighteen  
20 months after the end of the stripper well property's qualification period.
- 21 2. To receive, from the first day of eligibility, a ~~tax exemption under subsection 3 of~~  
22 ~~section 57-51.1-03 and a~~ rate reduction on production from a new well under section  
23 57-51.1-02, the industrial commission's certification must be submitted to the tax  
24 commissioner within eighteen months after a new well is completed.
- 25 3. ~~To receive, from the first day of eligibility, a tax exemption under subsection 4 of~~  
26 ~~section 57-51.1-03 and a rate reduction for a work-over well under section 57-51.1-02,~~  
27 ~~the industrial commission's certification must be submitted to the tax commissioner~~  
28 ~~within eighteen months after the work-over project is completed.~~
- 29 4. To receive, from the first day of eligibility, a tax exemption under subsection ~~5~~3 of  
30 section 57-51.1-03 and a tax rate reduction under section 57-51.1-02 on production



1 from a secondary or tertiary recovery project, the industrial commission's certification  
2 must be submitted to the tax commissioner within the following time periods:

3 a. For a tax exemption, within eighteen months after the month in which the first  
4 incremental oil was produced.

5 b. For a tax rate reduction, within eighteen months after the end of the period  
6 qualifying the project for the rate reduction.

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

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

15 If the industrial commission's certification is not submitted to the tax commissioner within the  
16 eighteen-month period provided in this section, then the exemption or rate reduction does not  
17 apply for the production periods in which the certification is not on file with the tax  
18 commissioner. When the industrial commission's certification is submitted to the tax  
19 commissioner after the eighteen-month period, the tax exemption or rate reduction applies to  
20 prospective production periods only and the exemption or rate reduction is effective the first day  
21 of the month in which the certification is received by the tax commissioner.

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