

## HOUSE BILL NO. 1064

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact section 57-51-02.2, subsection 2 of section 57-51-05,  
2 subsection 2 of section 57-51-09, section 57-51-19, subsections 3 and 10 of section  
3 57-51.1-01, and subsection 3 of section 57-51.1-03 of the North Dakota Century Code, relating  
4 to publication of the gas base rate adjustment, tax payment, computation of tax on incorrect  
5 returns, time for claim of credits or refunds, and date limitations under the oil and gas gross  
6 production tax and oil extraction tax.

7 **SECTION 1. AMENDMENT.** Section 57-51-02.2 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **57-51-02.2. Gross production tax - Gas.** A gross production tax is levied upon all gas  
10 produced within North Dakota less any part thereof, the ownership or right to which is exempt  
11 from taxation. The tax levied must attach to the whole production, including the royalty interest.  
12 The tax on gas must be calculated by taking the taxable production in mcf times the gas tax  
13 rate.

14 1. ~~For fiscal year beginning July 1, 1991, the gas tax rate is four cents; for fiscal years~~  
15 ~~beginning July 1, 1992, and subsequent years, the~~ The gas tax rate is four cents  
16 times the gas base rate adjustment for ~~the~~ each fiscal year as calculated ~~pursuant~~  
17 ~~to~~ under subsection 2.

18 2. a. ~~On or before May 15, 1992, and annually thereafter, the~~ The tax department  
19 shall annually determine the gas base rate adjustment and the resulting gas  
20 tax rate for ~~the~~ each fiscal year beginning on ~~the following~~ July first.

21 b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of  
22 which is the annual average of the gas fuels producer price index, commodity  
23 code 05-3, as calculated and published by the United States department of  
24 labor, bureau of labor statistics, for the previous calendar year, and the  
25 denominator of which is seventy-five and seven-tenths.

- 1           c. The tax department shall provide the gas base rate adjustment and the gas  
2 tax rate for the fiscal year, as determined under this subsection, to affected  
3 producers by written notice mailed on or before June first. ~~In addition, the tax~~  
4 ~~department shall publish the adjustment as a rule in the North Dakota~~  
5 ~~Administrative Code.~~
- 6           d. If the index used to determine the gas base rate adjustment is substantially  
7 revised, or if the base year for the index is changed, the department by  
8 administrative rule shall make appropriate adjustment to the method used to  
9 determine the gas base rate adjustment to ensure a result which is  
10 reasonably consistent with the result which would have been obtained had the  
11 index not been revised or the base year changed.
- 12           e. If the gas fuels producer price index is discontinued, a comparable index must  
13 be adopted by the department by an administrative rule.

14           **SECTION 2. AMENDMENT.** Subsection 2 of section 57-51-05 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16           2. On oil or gas produced and sold ~~at the time of production~~, the gross production tax  
17 thereon must be paid by the purchaser, and the purchaser ~~shall and is hereby~~  
18 authorized to deduct in making settlement with the producer or royalty owner, the  
19 amount of tax paid; provided, that in the event oil ~~on which the gross production tax~~  
20 ~~becomes due~~ produced is not sold ~~at the time of production~~ but is retained by the  
21 producer, the tax on the oil not sold must be paid by the producer including the tax  
22 due on royalty oil not sold; provided further, that in settlement with the royalty  
23 owner the producer has the right to deduct the amount of the tax paid on royalty oil  
24 or to deduct therefrom royalty oil equivalent in value at the time the tax becomes  
25 due with the amount of the tax paid.

26           **SECTION 3. AMENDMENT.** Subsection 2 of section 57-51-09 of the North Dakota  
27 Century Code is amended and reenacted as follows:

- 28           2. ~~For taxable periods beginning before January 1, 1991, the tax commissioner has~~  
29 ~~six years after the due date of the original return or six years after the original~~  
30 ~~return is filed, whichever period expires later, to assess additional tax found due.~~  
31 ~~For taxable periods beginning after December 31, 1990, and before January 1,~~

1           ~~1993, the time to assess is five years. For taxable periods beginning after~~  
2           ~~December 31, 1992, and before January 1, 1995, the time to assess is four years.~~  
3           ~~Effective for taxable periods beginning after December 31, 1994, the~~ The time to  
4           assess additional tax found due is three years after the due date of the original  
5           return or three years after the original return is filed, whichever period expires later.  
6           However, if there is a change in tax liability on any return by an amount in excess  
7           of twenty-five percent of the amount of tax liability reported on a return, any  
8           additional tax determined to be due may be assessed any time within six years  
9           after the due date of the return or six years after the return was filed, whichever  
10          period expired later.

11          **SECTION 4. AMENDMENT.** Section 57-51-19 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13          **57-51-19. Claim for credit or refund.** In all cases of overpayment, duplicate payment,  
14          or payment made in error, the commissioner may issue a certificate stating therein the facts and  
15          the amount of the refund to which the taxpayer may be entitled. Upon presentation of the  
16          certificate to the office of management and budget, a warrant shall be issued to the taxpayer for  
17          the purpose of refunding any overpayment, duplicate payment, or payment made in error out of  
18          the unapportioned gross production tax in the state treasury and a pro rata share thereof must  
19          be charged against the county entitled to share in the tax. Interest arising from refunds of  
20          overpayments, duplicate payments, and erroneous payments must be allowed and paid at the  
21          rate of ten percent per annum and accrues for payment from sixty days after the due date of the  
22          return or after the return was filed or after the tax was fully paid, whichever comes later.

23          A taxpayer may file a claim for credit or refund of an overpayment of tax. ~~For taxable~~  
24          ~~periods beginning before January 1, 1991, the claim must be filed within six~~ three years of the  
25          due date of the return or ~~six~~ three years after the return was filed. ~~For taxable periods~~  
26          ~~beginning after December 31, 1990, and before January 1, 1993, the taxpayer must file a claim~~  
27          ~~within five years. For taxable periods beginning after December 31, 1992, and before~~  
28          ~~January 1, 1995, the taxpayer must file a claim within four years. For taxable periods beginning~~  
29          ~~after December 31, 1994, the taxpayer must file the claim within three years.~~ However, if there  
30          is a change in tax liability on any return by an amount in excess of twenty-five percent of the  
31          amount of tax liability reported on a return, a claim for refund of tax may be filed within six years

1 after the due date of the return or six years after the return was filed, whichever period expires  
2 last.

3 **SECTION 5. AMENDMENT.** Subsections 3 and 10 of section 57-51.1-01 of the North  
4 Dakota Century Code are amended and reenacted as follows:

5 3. "Horizontal reentry well" means a well that was not initially drilled and completed as  
6 a horizontal well, including any well initially plugged and abandoned as a dry hole,  
7 which is reentered and recompleted as a horizontal well ~~after March 31, 1995.~~

8 10. "Stripper well property" means a "property" whose average daily production of oil,  
9 excluding condensate recovered in nonassociated production, per well did not  
10 exceed ten barrels per day for wells of a depth of six thousand feet [1828.80  
11 meters] or less, fifteen barrels per day for wells of a depth of more than six  
12 thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters],  
13 and thirty barrels per day for wells of a depth of more than ten thousand feet [3048  
14 meters] during any preceding consecutive twelve-month period ~~beginning after~~  
15 ~~December 31, 1972.~~ Wells which did not actually yield or produce oil during the  
16 qualifying twelve-month period, including disposal wells, dry wells, spent wells, and  
17 shut-in wells, are not production wells for the purpose of determining whether the  
18 stripper well property exemption applies.

19 **SECTION 6. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21 3. For a well drilled and completed ~~after April 27, 1987~~ as a vertical well, the initial  
22 production of oil from the well is exempt from any taxes imposed under this chapter  
23 for a period of fifteen months, except that oil produced from any well drilled and  
24 completed as a horizontal well ~~after March 31, 1995~~, is exempt from any taxes  
25 imposed under this chapter for a period of twenty-four months. Oil recovered  
26 during testing prior to well completion is exempt from the oil extraction tax. The  
27 exemption under this subsection becomes ineffective if the average price of a  
28 barrel of crude oil for any consecutive five-month period in any year is thirty-three  
29 dollars or more. However, the exemption is reinstated if, after the aforementioned  
30 trigger provision becomes effective, the average price of a barrel of crude oil is less  
31 than thirty-three dollars for any consecutive five-month period in any year.