

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

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

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

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

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

22 b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of
23 which is the annual average of the gas fuels producer price index, commodity
24 code 05-3, as calculated and published by the United States department of

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

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

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

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

- 30 2. ~~For taxable periods beginning before January 1, 1991, the tax commissioner has~~
31 ~~six years after the due date of the original return or six years after the original~~

1 ~~return is filed, whichever period expires later, to assess additional tax found due.~~
2 ~~For taxable periods beginning after December 31, 1990, and before January 1,~~
3 ~~1993, the time to assess is five years. For taxable periods beginning after~~
4 ~~December 31, 1992, and before January 1, 1995, the time to assess is four years.~~
5 ~~Effective for taxable periods beginning after December 31, 1994, the~~ The time to
6 assess additional tax found due is three years after the due date of the original
7 return or three years after the original return is filed, whichever period expires later.
8 However, if there is a change in tax liability on any return by an amount in excess
9 of twenty-five percent of the amount of tax liability reported on a return, any
10 additional tax determined to be due may be assessed any time within six years
11 after the due date of the return or six years after the return was filed, whichever
12 period expired later.

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

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

25 A taxpayer may file a claim for credit or refund of an overpayment of tax. ~~For taxable~~
26 ~~periods beginning before January 1, 1991, the claim must be filed within six~~ three years of the
27 due date of the return or ~~six~~ three years after the return was filed. ~~For taxable periods~~
28 ~~beginning after December 31, 1990, and before January 1, 1993, the taxpayer must file a claim~~
29 ~~within five years. For taxable periods beginning after December 31, 1992, and before~~
30 ~~January 1, 1995, the taxpayer must file a claim within four years. For taxable periods beginning~~
31 ~~after December 31, 1994, the taxpayer must file the claim within three years.~~ However, if there

1 is a change in tax liability on any return by an amount in excess of twenty-five percent of the
2 amount of tax liability reported on a return, a claim for refund of tax may be filed within six years
3 after the due date of the return or six years after the return was filed, whichever period expires
4 last.

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

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

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

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

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

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