

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Department of Commerce)

1 A BILL for an Act to amend and reenact subsection 5 of section 57-51.1-03 of the North
2 Dakota Century Code, relating to exemption from oil extraction tax on tertiary recovery
3 projects; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 5 of section 57-51.1-03 of the North
6 Dakota Century Code is amended and reenacted as follows:

7 5. a. The incremental production from a secondary recovery project which has
8 been certified as a qualified project by the industrial commission after July 1,
9 1991, is exempt from any taxes imposed under this chapter for a period of
10 five years from the date the incremental production begins.

11 b. The incremental production from a tertiary recovery project which has
12 been certified as a qualified project by the industrial commission subsequent
13 to June 30, 1991, is exempt from any taxes imposed under this chapter for a
14 period of ten years from the date the incremental production begins.

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

17 (1) For purposes of determining the exemption provided for in subdivision a
18 and with respect to a unit where there has not been a secondary
19 recovery project, incremental production means the difference between
20 the total amount of oil produced from the unit during the secondary
21 recovery project and the amount of primary production from the unit. For
22 purposes of this paragraph, primary production means the amount of oil

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1 which would have been produced from the unit if the secondary recovery
2 project had not been commenced. The industrial commission shall
3 determine the amount of primary production in a manner which conforms
4 to the practice and procedure used by the commission at the time the
5 project is certified.

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

23 (3) For purposes of determining the exemption provided for in subdivision a
24 and with respect to a unit where a secondary recovery project was in

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

16 (4) For purposes of determining the exemption provided for in subdivision b
17 and with respect to a unit where there has not been a secondary
18 recovery project, incremental production means the difference between
19 the total amount of oil produced from the unit during the tertiary recovery
20 project and the amount of primary production from the unit. For
21 purposes of this paragraph, primary production means the amount of oil
22 which would have been produced from the unit if the tertiary recovery
23 project had not been commenced. The industrial commission shall
24 determine the amount of primary production in a manner which conforms

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1 to the practice and procedure used by the commission at the time the
2 project is certified.

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

18 (6) For purposes of determining the exemption provided for in subdivision b
19 and with respect to a unit where there is or has been a secondary
20 recovery project and where the industrial commission can establish an
21 accurate production decline curve, incremental production means the
22 difference between the total amount of oil produced from the unit during
23 the tertiary recovery project and the total amount of oil that would have
24 been produced from the unit if the tertiary recovery project had not been

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1 commenced. For purposes of this paragraph, the total amount of oil that
2 would have been produced from the unit if the tertiary recovery project
3 had not been commenced includes both primary production and
4 production that occurred as a result of any secondary recovery project.

5 The industrial commission shall determine the amount of oil that would
6 have been produced from the unit if the tertiary recovery project had not
7 been commenced in a manner that conforms to the practice and
8 procedure used by the commission at the time the tertiary recovery
9 project is certified.

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

13 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring
14 after June 30, 2009.