

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1304  
(Representatives Skarphol, Hatlestad, Wald)  
(Senators Lyson, Wardner)

AN ACT to amend and reenact section 57-51-15 of the North Dakota Century Code, relating to allocation of oil and gas gross production taxes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-15. Apportionment and use of proceeds of tax.** The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall ~~credit~~:
  - a. Credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding ~~six~~ eight million dollars per biennium; ~~including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit~~;
  - b. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; and
  - c. Credit the remaining revenues to the state general fund.
2. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated as follows:
  - a. ~~The first one two million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated to that~~ the county.
  - b. ~~The second next one million dollars of annual revenue after the deduction for the amount provided for in subsection 1 from oil and gas produced in any county must be allocated seventy-five percent to that~~ the county and twenty-five percent to the state general fund.
  - c. ~~The third next one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated fifty percent to that~~ the county and fifty percent to the state general fund. ~~All annual revenue after the deduction of the amount provided for in subsection 1 above three million dollars from oil or gas produced in any county~~

- d. The next fourteen million dollars must be allocated twenty-five percent to that the county and seventy-five percent to the state general fund. However, the
- e. All annual revenue remaining after the allocation in subdivision d must be allocated ten percent to the county and ninety percent to the state general fund.

3. The amount to which each county is entitled pursuant to this under subsection 2 must be limited based upon the population of allocated within the county according to the last official decennial federal census as follows:

- a. ~~Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year; however, a county may receive up to four million nine hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm to market and federal aid road, and county road purposes. Any amount received by a county exceeding three million nine hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.~~
- b. ~~Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year; however, a county may receive up to five million one hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm to market and federal aid road, and county road purposes. Any amount received by a county exceeding four million one hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.~~
- e. ~~Counties having a population of six thousand or more shall receive no more than so the first four million six hundred thousand dollars is allocated under subsection 4 for each fiscal year; however, a county may receive up to five million six hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of ten mills or more for combined levies for county road and bridge, farm to market and federal aid road, and county road purposes. Any and any amount received by a county exceeding four million six hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general infrastructure fund and allocated under subsection 5.~~

~~Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.~~

3. 4. a. ~~Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes.~~
- b. Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount

under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.

The countywide allocation to school districts under this subdivision is subject to the following:

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.
- (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
- (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.
- (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
- (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
  - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
  - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
  - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.

- c. Twenty percent of all revenues allocated to any county hereunder for allocation under this subsection must be paid apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than seven hundred fifty dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general

fund. ~~Provided, however, that in~~ In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of ~~determining the per capita limitation in this section subdivision~~ must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. ~~Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.~~
- b. ~~Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.~~
- e. ~~The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:~~
  - (1) ~~The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or~~
  - (2) Four hundred twenty eight hundred percent. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

- 5.
  - a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 3 and 4 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
  - b. Thirty-five percent of all revenues allocated to the county infrastructure fund under subsections 3 and 4 must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.
  - c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections 3 and 4 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a

fiscal year under this subsection and subsection 4 which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be entitled must be deposited instead in that county's general fund. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

6. Within sixty days after the end of each fiscal year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the fiscal year with the tax commissioner, in a format prescribed by the tax commissioner, showing:

- a. The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year; and
- b. The amount available in the county infrastructure fund for allocation to or for the benefit of townships or school districts, the amount allocated to each organized township or school district and the amount expended from each such allocation by that township or school district, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships or school districts which remained unexpended at the end of the fiscal year.

Within sixty days after the time when reports under this subsection were due, the tax commissioner shall provide a report to the legislative council compiling the information from reports received under this subsection.

In developing the format for reports under this subsection, the tax commissioner shall consult the energy development impact office and at least two county auditors from oil-producing counties.

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

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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 Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1304.

House Vote:      Yeas    92      Nays    0      Absent    2

Senate Vote:    Yeas    46      Nays    0      Absent    1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State