

Sixty-second
Legislative Assembly
of North Dakota

HOUSE/SENATE BILL NO. XXXX

Version 6: 08-23-10

Introduced by

1 **A BILL for an Act** to create a new subsection to section 57-39.2-04 of the North Dakota
2 Century Code, relating to a sales tax exemption for subsurface minerals and byproducts of
3 subsurface minerals; to create and enact a new chapter 57-65 to title 57 of the North Dakota
4 Century Code, relating to the taxation of subsurface minerals and byproducts of subsurface
5 minerals; to amend and reenact subsection 32 of section 57-02-08 of the North Dakota Century
6 Code relating to exemption of minerals subject to in lieu of taxes; and to provide an effective
7 date.

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

9 **SECTION 1.** Subsection 32 of section 57-02-08 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 Minerals in place in the earth which at the time of removal from the earth are then subject
12 to taxes imposed under chapter 57-51, ~~or 57-61,~~ or 57-65.

13 **SECTION 2.** A new subsection to subsection 57-39.2-04 of the North Dakota Century
14 Code is created and enacted as follows:

15 Gross receipts from the sale of any subsurface minerals or subsurface mineral byproducts
16 taxable under chapter 57-65.

17 **SECTION 3.** Chapter 57-65 of the North Dakota Century Code is created and enacted as
18 follows:

19 **57-65-01. Definitions.** As used in this chapter:

1. “Byproducts” include any mineral product, combination or compound thereof produced during the processing of a subsurface mineral that is sold and includes aluminum, antimony, arsenic, barium, beryllium, bismuth, boron, cadmium, calcium, cerium, cesium, chromium, cobalt, columbium, copper, gallium, germanium, gold, gypsum, gem stones, hafnium, indium, iridium, iron, lanthanum, lead, lithium, manganese, magnesium, mercury, molybdenum, nickel, osmium, palladium, platinum, praseodymium, rare earth metals, rhenium, rhodium, rubidium, ruthenium, samarium, scandium, selenium, silicon, silver, sodium, strontium, tantalum, tellurium, thallium, thorium, tin, titanium, tungsten, vanadium, yttrium, zinc, and zirconium. Byproducts do not include oil, natural gas, or liquid hydrocarbon, individually or in any combination, coal, carbon dioxide or severed sand or gravel subject to an extraction or severance tax under any other provisions of this title.
2. “Commissioner” means the state tax commissioner.
3. “Gross receipts” means all revenue valued in money, whether received in money or otherwise, realized by the taxpayer for sale of the subsurface minerals or byproducts, whether the sale is before or after transportation, manufacturing, and processing of the product.
4. “Mining facility” includes contiguous land and all structures and improvements on the permit area used for mining subsurface minerals and byproducts and includes the act, process, or work of extracting minerals from their naturally occurring environment or from a mine, and transporting or moving those minerals to the point of processing, use, or sale. Mining includes the process of leaching

minerals from their naturally occurring deposit. "Mining facility" also includes an "extraction facility" as defined in chapter 38-12.

5. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, fiduciary, trustee, receiver, administrator, representative of any kind, or any other group or combination acting as a unit.

6. "Processing" includes breaking, crushing, cleaning, drying, sizing, milling, treating, heating, separating, compressing, beneficiation, or loading or unloading for any purpose.

7. "Processing plant" means any facility in North Dakota in which subsurface minerals or byproducts are extracted, recovered, or produced from a mineral resource, and includes any facility in North Dakota associated with the mine in which the primary production from the mining facility is processed or refined.

8. "Subsurface minerals" includes:

a. "Potash" includes muriate of potash [the chemical compound potassium chloride, KCl], sulfate of potash [the chemical compound sulfate, K_2SO_4], and langbeinite [the chemical compound potassium magnesium sulfate, $K_2SO_4 \cdot 2MgSO_4$], or any other potassium, magnesium or mixed-potassium salts, and includes ores, intermediates, products and reaction products of such compounds.

b. (placeholder) "Uranium" means the chemical compound triuranium octoxide [U_3O_8].

c. (placeholder) "Diamonds"

d. (placeholder) "Volcanic Ash"

1 e. (placeholder) "Kaolinite Clay"

2 9. "Taxpayer" includes any person that is a producer of a subsurface mineral or
3 byproduct subject to the tax imposed under this chapter.

4 10. "Uranium satellite facility" means a uranium recovery or ion exchange facility
5 set up at a remote distance from a central processing plant that extracts uranium
6 from an in situ recovery fluid by loading it on an ion exchange resin that is then
7 transported to a central processing plant where the uranium is removed from the
8 resin and processed into yellowcake.

9 11. "Yellowcake" means a processed oxide of uranium [U₃O₈] that is extracted and
10 concentrated from uranium ore.

11 **57-65-02. Imposition of tax on subsurface minerals.**

12 1. **Potash.** A subsurface mineral tax at the rate of five percent is imposed upon all
13 potash produced within North Dakota. The tax levied attaches to the whole
14 production of potash except any byproducts of potash as outlined in section 57-
15 65-03.

16 a. The tax on potash is calculated by taking the ton of two thousand pounds
17 [907.18 kilograms] of potash produced times the potash tax rate times the
18 annual average price of potash. The "annual average price of potash" is the
19 potash producer price index commodity code xxx-x, as calculated and
20 published by the United States department of labor, bureau of labor statistics,
21 for the previous calendar year. For taxable production beginning after June 30,
22 2011, the annual average price of potash as published in the producer price
23 index is three hundred fifty seven dollars and ten cents.

(NOTE: the 2009 average price using the potash, soda, and borate mineral mining PPI series Id: PCU212391212391 was \$357.10).

b. The tax department shall provide the annual average price of potash for the fiscal year to affected taxpayers by written notice mailed on or before June first.

c. If the potash producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

2. *(placeholder) Uranium. taxed at, (leave rate blank for now), link to an index.*

*(*South Dakota language: "Uranium ore taxed on triuranium octa-oxide content. The taxable value of severed and saved uranium-bearing material is the sales price per pound of the content of triuranium octa-oxide contained in the severed and saved uranium ore or processed yellow-cake concentrate, regardless of the form in which the product is actually disposed of. However, if the severed and saved uranium ore or processed uranium yellow-cake concentrate is not sold, the taxable value is the market value of the triuranium octa-oxide in such material.")*

3. *(placeholder) Diamonds.*

4. *(placeholder) Volcanic Ash.*

5. *(placeholder) Kaolinite Clay.*

57-65-03. Imposition of tax on byproducts of subsurface minerals. A subsurface

mineral tax rate of four percent is imposed upon the gross value of all subsurface mineral

byproducts produced within North Dakota. The tax levied attaches to the whole production of

byproducts. Inventory is not taxable until it is sold. The gross value at the processing plant is the

1 price paid for the byproducts under an arm's-length contract between the taxpayer and the
2 purchaser less, when applicable, transportation costs associated with moving the minerals or
3 byproducts from the point of production to the point of sale under the contract. In the absence of
4 an arm's-length contract, the gross value at the processing plant is established by the following
5 method: the price paid under an arm's-length contract, to which the person paying the tax is a
6 party, for the purchase or sale of byproducts of like kind, character, and quality, less, when
7 applicable, transportation costs associated with moving the byproducts to the point of sale.

8 **57-65-04. Type of tax.** For purposes of interpreting section 5, article 10 of the
9 Constitution of North Dakota, relating to federal land bank taxation and to the taxation of other
10 governmental entities if their immunity from taxation has been waived, the subsurface mineral
11 tax is a real property tax on subsurface mineral-producing estates and interests.

12 **57-65-05. Subsurface minerals tax to be in lieu of other taxes.** The payment of the
13 taxes imposed by this chapter is in lieu of all ad valorem taxes imposed by the state, counties,
14 cities, towns, townships, school districts and other municipalities, upon any processing plant,
15 mining facility, or satellite facility producing subsurface minerals or subsurface mineral
16 byproducts. The land on which the processing plant, mining facility, or satellite facility is located
17 must be assessed and taxed as other property within the taxing district in which the property is
18 situated. It is expressly provided that the subsurface mineral tax is not in lieu of income taxes nor
19 excise taxes upon the sale of minerals or byproducts at retail.

20 **57-65-06. Duties of tax commissioner and state treasurer.** It is the duty of the tax
21 commissioner to deposit with the state treasurer all moneys collected by the tax commissioner
22 under this chapter and to accompany each remittance, when possible, with a certificate showing
23 the county where the subsurface minerals and byproducts are processed. The state treasurer, no

1 less than monthly, shall pay over to the county treasurer and city auditor of the several counties
2 the money to which they are entitled.

3 **57-65-07. Apportionment and use of proceeds of tax.** The subsurface minerals tax
4 provided for in this chapter must be apportioned as follows:

- 5 1. The tax revenue collected under this chapter equal to four-fifths of the tax on
6 subsurface minerals and byproducts must be deposited with the state treasurer
7 immediately thereafter and must be credited to the state general fund.
- 8 2. The tax revenue collected under this chapter equal to one-fifth of the tax on
9 subsurface minerals and byproducts must be allocated to the mineral and
10 byproduct producing counties in the proportion as the volume of minerals
11 removed in each county bears to the total volume of minerals removed in the state
12 during the monthly period.

13 **57-65-08. Returns and payment of tax on monthly basis – Due date – When**
14 **delinquent – Extensions.**

- 15 1. Any person engaged in the production, within this state, of subsurface minerals or
16 byproducts shall on or before the twenty-fifth day of the next succeeding month
17 after production, file with the tax commissioner a statement upon forms
18 prescribed by the tax commissioner.
- 19 2. The subsurface minerals tax and the byproducts tax must be paid on a monthly
20 basis. The tax is due and payable on the twenty-fifth day of the month succeeding
21 the month of production. If the tax is not paid as required by this section, it
22 becomes delinquent and must be collected as provided in this chapter.

- 1 3. The tax commissioner, upon request and a proper showing of good cause may
2 grant an extension of time, not to exceed fifteen days, for paying the tax. When
3 the request is granted, the tax is not delinquent until the extended period has
4 expired. A taxpayer who is granted an extension of time for filing a return shall
5 pay, with the tax, interest at the rate of twelve percent per annum from the date
6 the tax was due to the date the tax is paid.
- 7 4. All calculations of the subsurface mineral tax or byproducts tax, including
8 production, distribution, and claims for credit or refund, are based on the month of
9 production and must be credited to that month.
- 10 5. The tax commissioner may prescribe alternative methods for signing, subscribing,
11 or verifying a return filed by electronic means, including telecommunications, that
12 shall have the same validity and consequence as the actual signature and written
13 declaration for a paper return.

14 **57-65-09. Tax commissioner to audit returns and correct tax.**

- 15 1. The tax commissioner may determine whether a return required to be filed with
16 the tax commissioner is a true and correct return of gross products, and of the
17 value, of the subsurface mineral and byproducts. If a return required by this
18 chapter is not filed, or if a return when filed is incorrect or insufficient, the tax
19 commissioner shall determine the amount of tax due from any information as the
20 tax commissioner may be able to obtain, and, if necessary, may estimate the tax
21 on the basis of external indices.
- 22 2. The tax commissioner shall have three years after the due date of the original
23 return or three years after the original return is filed, whichever period expires

1 later, to assess the tax and if additional tax is due, provide notice of the
2 determination of the additional tax to the taxpayer. If there is a change in tax
3 liability on any return by an amount in excess of twenty-five percent of the
4 amount of tax before any credits, any additional tax determined to be due may be
5 assessed anytime within six years after the due date of the return or six years after
6 the return was filed, whichever period expires later.

7 3. If a taxpayer files an amended return, the tax commissioner has two years after
8 the return is filed to audit the return and assess any additional tax attributable to
9 the changes or corrections even though other time periods prescribed in this
10 section for the assessment of tax may have expired. The provisions of this section
11 do not limit or restrict any other time period prescribed in this section for the
12 assessment of tax that has not expired as of the end of the two-year period
13 prescribed in this section.

14 4. If false or fraudulent information is given in the return, or if the failure to file a
15 return is due to the fraudulent intent or the willful attempt of the taxpayer in any
16 manner to evade the tax, the time limitations in this section do not apply, and the
17 tax may be assessed at any time.

18 5. If before the expiration of the time periods prescribed in subsections 1, 2, and 3
19 the tax commissioner and a person consent in writing to an extension of time for
20 the assessment of the tax, an assessment of additional tax may be made at any
21 time prior to the expiration of the period agreed upon. The period so agreed upon
22 may be extended by subsequent agreements in writing made before the expiration
23 of the period previously agreed upon. If a person refuses to consent to an

1 extension of time or a renewal thereof, the tax commissioner may make an
2 assessment based on the best information available. The period agreed upon in
3 this subsection, including extensions, expires upon issuance of an assessment by
4 the tax commissioner.

- 5 6. Any person who consents to an extension of time for assessment of tax must be
6 presumed to have consented to a similar extension for refund.

7 **57-65-10. Interest and penalties.**

- 8 1. Reports from the taxpayer are delinquent after the last day fixed for their filing,
9 and every person required to file a report is subject to a penalty of twenty-five
10 dollars per day for each property upon which the person fails or refuses to file the
11 reports. The penalties under this subsection are for failure to file reports and are in
12 addition to the penalties imposed by subsection 3 and constitute a lien against the
13 assets of the person failing or refusing to file the reports. The penalties prescribed
14 under this section must be collected in the same manner as subsurface mineral
15 taxes and must be apportioned as other subsurface mineral tax penalties.
- 16 2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject
17 to penalties as follows:
- 18 a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
19 fail to pay the amount shown as tax due on any return filed on or before the
20 due date or extended due date prescribed, there shall be added to the tax a
21 penalty of five percent of the tax due, or five dollars, whichever is greater.
- 22 b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
23 fail to file a return on or before the due date or extended due date prescribed,

1 there shall be added a penalty equal to five percent of the tax required to be
2 reported, or five dollars, whichever is greater.

3 c. If upon audit of a taxpayer's return additional tax is found to be due, there
4 shall be added to the tax the penalty provided in subdivision a or b.

5 3. In addition to other increases to tax and penalty provided in this chapter, a
6 taxpayer is subject to interest as follows:

7 a. Any taxpayer who requests and is granted an extension of time for filing a
8 return shall pay, with the tax, interest on the tax at the rate of twelve percent
9 per annum from the date the tax would have been due if the extension had not
10 been granted to the date the tax is paid.

11 b. If any amount of tax imposed by this chapter is not paid on or before the due
12 date or extended due date for the payment, there must be added to the tax
13 interest at the rate of one percent per month or fraction of a month during
14 which the return was required to be filed or the tax became due.

15 c. If upon audit an additional tax is found to be due, there must be added to the
16 additional tax due interest at the rate of one percent of the additional tax for
17 each month or fraction of a month during which the tax remains unpaid,
18 computed from the due date of the return to the date paid, excepting the month
19 in which the return was required to be filed or the tax became due.

20 d. If the mathematical verification of a taxpayer's return results in additional tax
21 due, there must be added to the additional tax interest at the rate of one
22 percent of the additional tax due for each month or fraction of a month during
23 which the return was required to be filed or the tax became due.

- 1 4. The tax commissioner, for good cause shown, may waive the penalty or the
2 interest provided in this section.

3 **57-65-11. Refund claims.**

- 4 1. A taxpayer may file a claim for credit or refund of an overpayment of tax within
5 three years of the due date of the return or three years after the return was filed.
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 before any credits, a claim for refund
8 of tax may be filed within six years after the due date of the return or six years
9 after the return was filed, whichever period expires last.
- 10 2. If any taxpayer consents to an extension of time for the assessment of tax, under
11 subsection 5 of section 57-65-09, the period of time for filing a claim for credit or
12 refund will be similarly extended. If an assessment is issued under this
13 circumstance, the taxpayer has sixty days from the assessment to file a claim for
14 refund. If a claim for refund is filed in any year extended by an agreement under
15 subsection 5 of section 57-65-09, the tax commissioner may assess additional tax
16 for any year extended by the same agreement which has otherwise expired. The
17 additional assessment is limited to the issues raised in the claim for credit or
18 refund.
- 19 3. Every claim for credit or refund must be made by filing with the tax
20 commissioner an amended return, or other report as prescribed by the tax
21 commissioner, accompanied by a statement outlining the specific grounds upon
22 which the claim is based.

4. In all cases of overpayment, duplicate payment, or payment made in error, the tax commissioner shall issue a certificate containing the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the office of management and budget, a warrant must be issued to the taxpayer for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned subsurface mineral tax in the state treasury and a pro rata share must be charged against the county entitled to share in the tax. Interest arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and paid at the rate of ten percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

57-65-12. Minimum refunds and collections.

1. A refund may not be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. The tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the same manner as other revenue under this chapter.
2. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalties and interest.

57-65-13. Protest and appeal.

1. If upon audit the tax commissioner finds additional tax due or disallows a credit or a claim for refund, the tax commissioner shall notify the person of that finding.

1 The notice must inform the person of the reasons for assessment of additional tax
2 or the change in refund or credit claimed. Notice of deficiency must be sent by
3 first-class mail and must set forth the reasons for the finding.

4 2. A person has thirty days, ninety days if the person is outside the United States, to
5 file a written protest objecting to the tax commissioner's assessment of additional
6 tax due or disallowance of a credit or a claim for refund. The protest must set
7 forth the basis for the protest and any other information which may be required by
8 the tax commissioner. If a person fails to file a written protest within the time
9 provided, the tax commissioner's finding becomes finally and irrevocably fixed.
10 If a person protests only a portion of the tax commissioner's finding, the portion
11 which is not protested becomes finally and irrevocably fixed.

12 3. If a protest is filed, the tax commissioner shall reconsider the assessment of
13 additional tax due or disallowance of a credit or claim for refund. The
14 reconsideration may include further examination by the tax commissioner or the
15 tax commissioner's representative of a person's books, papers, records, or
16 memoranda. The tax commissioner, upon request, may grant the person an
17 informal conference.

18 4. Within a reasonable time after protest, the tax commissioner shall notify the
19 taxpayer of the tax commissioner's reconsideration of assessment of additional
20 tax due or disallowance of a credit or claim for refund. The amount set forth in
21 that notice becomes finally and irrevocably fixed unless the person within thirty
22 days commences formal administrative review as provided for in chapter 28-32

1 by the filing of a complaint. The complaint must be personally served on the tax
2 commissioner or sent by certified mail.

- 3 5. Upon written request, the tax commissioner may grant an extension of time to file
4 a protest as provided for in subsection 2 or an extension of time to commence
5 formal review as provided for in subsection 4.

6 **57-65-14. Lien for tax – Preservation of lien – Satisfaction of lien.**

- 7 1. The tax, penalty, and interest assessed under this chapter is, at all times, a first and
8 paramount lien against the taxpayer's property both real and personal. The
9 provisions of this chapter requiring the taxpayer to pay the royalty owner's tax do
10 not release the taxpayer from that liability. If the tax, penalty, and interest is not
11 paid, it may be recovered at the suit of the state, upon relation to the tax
12 commissioner, in any court of competent jurisdiction of the county where any
13 such property, assets, and effects are located.

- 14 2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any
15 property situated in this state, prior to the tax commissioner filing in the central
16 indexing system maintained by the secretary of state, a notice of the lien provided
17 for in this section, takes free of, or has priority over, the lien. The tax
18 commissioner shall index in the central indexing system the following data:

- 19 a. The name of the taxpayer.
20 b. The tax identification number or social security number of the taxpayer.
21 c. The name "State of North Dakota" as claimant.
22 d. The date and time the notice of lien was indexed.
23 e. The amount of the lien.

1 The notice of lien is effective as of eight a.m. of the first day following the
2 indexing of the notice.

3 3. Upon payment of tax, penalty, and interest, if applicable, or a penalty assessed
4 under section 57-65-10, as to which the tax commissioner has indexed a notice in
5 the central indexing system, the tax commissioner shall index a satisfaction of the
6 lien in the central indexing system.

7 4. The tax commissioner is exempt from the payment of the fees otherwise provided
8 for by law for the indexing of the lien or satisfaction.

9 **57-65-15. Delinquent taxes – Sale of property.** When any tax provided for in this
10 chapter becomes delinquent, the tax commissioner shall issue warrants directed to the sheriff of
11 any county where the tax is due, or any part of the tax accrued, for the collection of the tax,
12 interest, and penalty. The sheriff to whom the warrant is directed shall proceed to levy upon the
13 property, assets, and effects of the person liable for such tax, and shall sell the same and make
14 return upon execution. The state of North Dakota, through the tax commissioner, is authorized to
15 make bids at any such sale to the amount of tax, penalty, and costs accrued.

16 **57-65-16. Bond – Reports – Actions.**

17 1. The tax commissioner may require a sufficient bond from any person charged
18 with the making and filing of reports and the payment of the taxes imposed under
19 this chapter. The bond must run to the state of North Dakota and must be
20 conditioned upon the making and filing of reports as required by law, upon
21 compliance with the rules and regulations of the tax commissioner, and for the
22 prompt payment, by the principal, of all taxes justly due the state under this
23 chapter.

2. When any reports required have not been filed, or may be insufficient to furnish all the information required by the tax commissioner, the tax commissioner shall institute, in the name of the state of North Dakota upon relation of the tax commissioner, any necessary action or proceedings in the courts having jurisdiction, to enjoin such person from continuing operations until such reports have been filed as required, and in all proper cases, an injunction must issue without bond from the state of North Dakota. Upon showing that the state is in danger of losing its claims or the property is being mismanaged, dissipated, or concealed, a receiver must be appointed at the suit of the state.

57-65-17. Penalty. Any person intentionally violating any of the provisions of this chapter is guilty of a class A misdemeanor.

57-65-18. Powers of tax commissioner. The tax commissioner is charged with the administration of this chapter and shall enforce the assessment, levy, and collection of taxes imposed under this chapter. The tax commissioner has power to require any person engaged in the production of subsurface minerals or byproducts to furnish any additional information the tax commissioner deems to be necessary for the purpose of correctly computing the amount of subsurface mineral and byproducts tax. The tax commissioner has the power to examine the books, records, and files of such person, and to conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and full authority to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the facts as to the amount of production from any subsurface mineral mining facility, processing plant, or satellite facility, or of any company or other producer for taxing purposes. The tax

- 1 commissioner may prescribe all rules, not inconsistent with the provisions of this chapter,
- 2 necessary and advisable for its detailed and efficient administration.

- 3 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable production
- 4 beginning after June 30, 2011.