

DISTRIBUTION OF ESTIMATED OIL EXTRACTION AND OIL AND GAS GROSS PRODUCTION TAXES FOR THE 2009-11 BIENNIUM (AMOUNTS ARE SHOWN IN MILLIONS OF DOLLARS)

Tax	General Fund ³	Permanent Oil Tax Trust Fund ³	Common Schools Trust Fund ⁴	Foundation Aid Stabilization Fund ⁴	Resources Trust Fund	Oil and Gas Impact Grant Fund ⁵	Counties, Cities, and School Districts ⁶	Oil and Gas Research Fund ⁷	Total
2009-11 Executive Forecast¹									
Oil extraction tax ⁷	\$50.60	\$231.21	\$47.36	\$47.36	\$94.72			\$2.33	\$473.58
Oil and gas gross production tax ⁸	59.40	335.29				\$20.00	\$75.17	2.67	492.53
Total	\$110.00	\$566.50	\$47.36	\$47.36	\$94.72	\$20.00	\$75.17	\$5.00	\$966.11
2009-11 Forecast Based on Current Law²									
Oil extraction tax ⁸	\$31.69	\$251.05	\$47.36	\$47.36	\$94.72			\$1.40	\$473.58
Oil and gas gross production tax ⁹	39.31	378.15				\$6.00	\$67.47	1.60	492.53
Total	\$71.00	\$629.20	\$47.36	\$47.36	\$94.72	\$6.00	\$67.47	\$3.00	\$966.11

¹The amounts shown are as recommended in the 2009-11 executive budget.

²The amounts shown reflect distributions based on current law using the 2009-11 forecasted revenue collections.

³North Dakota Century Code Section 57-51.1-07.2 (1997 Senate Bill No. 2366) establishes a permanent oil tax trust fund and provides that all revenues deposited in the general fund during a biennium derived from taxes imposed on oil and gas under Chapters 57-51 (Oil and Gas Gross Production Tax) and 57-51.1 (Oil Extraction Tax) which exceed \$71 million are to be transferred by the State Treasurer to the permanent oil tax trust fund. The State Treasurer is to transfer the interest earnings on the fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may only be spent upon a two-thirds vote of the members elected to each house of the Legislative Assembly. The executive budget recommends increasing the general fund share of oil and gas taxes from the current level of \$71 million to \$110 million.

The revised revenue forecast for the 2007-09 biennium projects oil and gas gross production tax and oil extraction tax revenues deposited into the general fund to exceed \$71,000,000 by \$564,985,026. Therefore, \$564,985,026 is projected to be transferred to the permanent oil tax trust fund during the 2007-09 biennium.

The revenue forecast for the 2009-11 biennium projects oil and gas gross production tax and oil extraction tax revenues deposited in the general fund to exceed \$110,000,000 by \$566,508,000. Therefore, \$566,508,000 is projected to be transferred to the permanent oil tax trust fund during the 2009-11 biennium.

⁴The 1993 Legislative Assembly passed Senate Concurrent Resolution No. 4011, which contained a constitutional amendment relating to the distribution of oil extraction tax revenues. The constitutional amendment was approved by the voters in the November 1994 general election. The constitutional amendment provides that 20 percent of the oil extraction tax revenues are to be allocated as follows:

Fifty percent (of the 20 percent) to the common schools trust fund.

Fifty percent (of the 20 percent) to a foundation aid stabilization fund.

⁵North Dakota Century Code Section 57-51-15 provides an allocation of up to \$6 million of gross production tax to the oil and gas impact grant fund. The executive budget recommends increasing the allocation to a maximum of \$20 million.

⁶The executive budget recommends increasing the caps used to allocate gross production taxes to individual counties by \$1 million per year. This results in an estimated increase of \$7.7 million available for distribution to counties during the 2009-11 biennium. North Dakota Century Code Section 57-51-15 provides a formula for distribution of the oil and gas gross production tax to counties and other political subdivisions. Up to 35 percent of all revenues allocated to counties must be apportioned to school districts within the county on the average daily attendance distribution basis. Up to 20 percent of all revenues allocated to counties must be apportioned to incorporated cities in the county based on population.

⁷North Dakota Century Code Section 57-51.1-07.3 (2003 Senate Bill No. 2311) establishes an oil and gas research fund and provides that 2 percent of the state's share of oil and gas gross production tax and oil extraction tax revenues, up to \$3 million per biennium, are to be deposited in the oil and gas research fund. All money deposited in the oil and gas research fund is appropriated as a continuing appropriation to the Oil and Gas Research Council. The executive budget recommends increasing the appropriation to the oil and gas research fund from the current level of \$3 million to \$5 million.

⁸The oil extraction tax rate is 6.5 percent of the gross value at the well for wells drilled prior to April 27, 1987. For oil produced from wells drilled after April 27, 1987, there is no extraction tax levied for 15 months, and thereafter the rate is 4 percent. The initial production of oil from a well is exempt from any oil extraction tax for a period of 60 months if it meets any of the following conditions: (1) is located within the boundaries of an Indian reservation; (2) is on lands held in trust for an Indian tribe or individual Indian; or (3) is on lands held by an Indian tribe as of August 1, 1997. For oil produced from any well drilled and completed as a horizontal well after April 27, 1987, there is no extraction tax levied for 24 months, and thereafter the rate is 4 percent. The oil extraction tax rate is 4 percent for qualifying secondary and tertiary recovery projects, and production from stripper wells and enhanced oil production methods is exempt. If the average price of a barrel of oil exceeds the trigger price for each month in any consecutive five-month period, the oil extraction tax will become 6.5 percent. The tax rate reverts to 4 percent if the average price of a barrel of oil is less than the trigger price for each month in any consecutive five-month period. The trigger price is defined in statute as \$35.50, as indexed for inflation, and the Tax Commissioner computes the indexed trigger price by December 31 of each year to be applied for the following calendar year.

The average price per barrel of oil exceeded the trigger price throughout the 2007-09 biennium, resulting in an oil extraction tax rate of 6.5 percent for the biennium. The adjusted trigger price for calendar year 2008 is \$43.92 and the adjusted trigger price for 2009 is anticipated to be \$47.66. In November 2008 the average North Dakota price used to determine the trigger was \$57.44

The oil extraction tax is allocated 20 percent to the resources trust fund for water development projects, 10 percent to the common schools trust fund, 10 percent to the foundation aid stabilization fund, and 60 percent to the state general fund.

⁹The gross production tax on oil is 5 percent of the gross value at the well on oil produced. The gross production tax on gas is four cents times the gas base rate adjustment for each fiscal year as calculated by the Tax Department.

The oil and gas gross production tax is distributed per formula to the oil and gas impact grant fund (up to \$6 million per biennium), to the state general fund, and to political subdivisions within producing counties. North Dakota Century Code Section 57-51-15.1 (effective after June 30, 2007) (2005 House Bill No. 1404) changes the cap for distribution to the oil and gas impact grant fund from \$5 million per biennium to \$6 million per biennium. The executive budget recommends increasing the maximum allocation to the oil and gas impact grant fund from the current level of \$6 million to \$20 million.