

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1234**

Introduced by

Representatives Streyle, Owens, Thoreson

Senator Armstrong

1 A BILL for an Act to create and enact a new section to chapter 57-38 of the North Dakota
2 Century Code, relating to income tax withholding for oil and gas royalties; to amend and reenact
3 section 15-05-10, subsection 4 of section 38-08-04, sections 57-51.1-01 and 57-51.1-03,
4 subsection 1 of section 57-51.1-03.1, and section 57-51.2-02 of the North Dakota Century
5 Code, relating to oil extraction tax definitions and exemptions and the state-tribal oil tax
6 agreement; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Section 15-05-10 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **15-05-10. Royalties from oil leases - Rents from other leases - Rules.**

11 Oil leases must be made by the board of university and school lands at such annual
12 minimum payments as are determined by the board, but the royalty shall be not less than
13 twelve and one-half percent of the gross output of oil from the lands leased. Oil leases made by
14 the board may authorize a royalty of less than twelve and one-half percent for production from
15 stripper well properties or individual stripper wells and qualifying secondary recovery and
16 qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal,
17 cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical
18 substances, metallic ores, or colloidal or other clays must be made by the board in such annual
19 payments as are determined by the board. The board may adopt rules regarding annual
20 payments and royalties under this section.

21 **SECTION 2. AMENDMENT.** Subsection 4 of section 38-08-04 of the North Dakota Century
22 Code is amended and reenacted as follows:

23 4. To classify wells as oil or gas wells for purposes material to the interpretation or
24 enforcement of this chapter, to classify and determine the status and depth of wells

1 that are stripper well property as defined in subsection 8 of section 57-51.1-01, to
2 certify to the tax commissioner which wells are stripper wells and the depth of those
3 wells, to recertify stripper wells that are reentered and recompleted as horizontal wells,
4 and to certify to the tax commissioner which wells involve secondary or tertiary
5 recovery operations under section 57-51.1-01, and the date of qualification for the
6 reduced rate of oil extraction tax for secondary and tertiary recovery operations.

7 **SECTION 3.** A new section to chapter 57-38 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Withholding requirement for oil and gas royalty payments to nonresidents.**

- 10 1. For purposes of this section:
- 11 a. "Publicly traded partnership" means a publicly traded partnership as defined in
12 section 7704 of the Internal Revenue Code [26 U.S.C. 7704] which is not treated
13 as a corporation.
- 14 b. "Remitter" means any person who distributes royalty payments to royalty owners.
- 15 c. "Royalty owner" means a person or entity entitled to receive periodic royalty
16 payments for a nonworking interest in the production of oil or gas.
- 17 2. Except as provided in subsection 3, each remitter shall deduct and withhold from the
18 net amount of the royalty payment made to each nonresident individual or business
19 entity that does not have its commercial domicile in this state at the highest marginal
20 rate provided in sections 57-38-30 and 57-38-30.3. Sections 57-38-59 and 57-38-60
21 apply to the filing of the returns and payment of the tax under this subsection.
- 22 3. This section does not apply to royalty payments made to a royalty owner if the royalty
23 owner is:
- 24 a. The United States or an agency of the federal government, this state or a political
25 subdivision of this state, or another state or a political subdivision of another
26 state;
- 27 b. A federally recognized Indian tribe with respect to on-reservation oil and gas
28 production pursuant to a lease entered under the Indian Mineral Leasing Act of
29 1938 [25 U.S.C. 396a through 396g];
- 30 c. The United States as trustee for individual Indians;
- 31 d. A publicly traded partnership;

- 1 e. An organization that is exempt from the tax under this chapter; or
2 f. The same person or entity as the remitter.
3 4. a. This section does not apply to a remitter that produced less than three hundred
4 fifty thousand barrels of oil or less than five hundred million cubic feet of gas in
5 the preceding calendar year as certified to the tax commissioner in the manner
6 and on forms prescribed by the tax commissioner.
7 b. Each remitter that is exempt from withholding under this subsection shall make
8 an annual return to report royalty payments that exceed the dollar amounts in
9 subsection 6 and must be reported in the same manner as provided in section
10 57-38-60.
11 5. a. Each year, a publicly traded partnership that is exempt from withholding under
12 subsection 3 shall transmit to the tax commissioner, in an electronic format
13 approved by the tax commissioner, each partner's United States department of
14 the treasury schedule K-1, form 1065, or form 1065-B, as applicable, filed
15 electronically for the year with the United States internal revenue service.
16 b. A royalty owner that is a publicly traded partnership, or an organization exempt
17 from taxation under section 57-38-09, shall report to the remitter and tax
18 commissioner under oath, on a form prescribed by the tax commissioner, all
19 information necessary to establish that the remitter is not required under
20 subsection 2 to withhold royalty payments made to the partnership or
21 organization.
22 6. If the royalty payment made to a royalty owner under this section is less than six
23 hundred dollars for the current withholding period, or is less than one thousand dollars
24 if the payment is annualized, the tax commissioner may grant a remitter's request to
25 forego withholding the tax from the royalty payment made to that royalty owner for the
26 current withholding period or, if applicable, the royalty payments for the annual period.

27 **SECTION 4. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **57-51.1-01. Definitions for oil extraction tax.**

30 For the purposes of the oil extraction tax law, the following words and terms shall have the
31 meaning ascribed to them in this sectionthis chapter:

- 1 1. "Average daily production" of a well means the qualified maximum total production of
2 oil from the well during a calendar month period divided by the number of calendar
3 days in that period, and "qualified maximum total production" of a well means that the
4 well must have been maintained at the maximum efficient rate of production as
5 defined and determined by rule adopted by the industrial commission in furtherance of
6 its authority under chapter 38-08.
- 7 2. "Average price" of a barrel of crude oil means the monthly average of the daily closing
8 price for a barrel of west Texas intermediate cushing crude oil, as those prices appear
9 in the Wall Street Journal, midwest edition, minus two dollars and fifty cents. When
10 computing the monthly average price, the most recent previous daily closing price
11 must be considered the daily closing price for the days on which the market is closed.
- 12 3. "Horizontal reentry well" means a well that was not initially drilled and completed as a
13 horizontal well, including any well initially plugged and abandoned as a dry hole, which
14 is reentered and recompleted as a horizontal well.
- 15 4. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at
16 an angle of at least eighty degrees within the productive formation of at least three
17 hundred feet [91.44 meters].
- 18 5. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid
19 hydrocarbons that are recovered from gas on the lease incidental to the production of
20 the gas.
- 21 6. "Property" means the right which arises from a lease or fee interest, as a whole or any
22 designated portion thereof, to produce oil. A producer shall treat as a separate
23 property each separate and distinct producing reservoir subject to the same right to
24 produce crude oil; provided, that such reservoir is recognized by the industrial
25 commission as a producing formation that is separate and distinct from, and not in
26 communication with, any other producing formation.
- 27 7. "Qualifying secondary recovery project" means a project employing water flooding. To
28 be eligible for the tax reduction provided under section 57-51.1-02, a secondary
29 recovery project must be certified as qualifying by the industrial commission and the
30 project operator must have achieved for six consecutive months an average
31 production level of at least twenty-five percent above the level that would have been

1 recovered under normal recovery operations. To be eligible for the tax exemption
2 provided under section 57-51.1-03 and subsequent thereto the rate reduction provided
3 under section 57-51.1-02, a secondary recovery project must be certified as qualifying
4 by the industrial commission and the project operator must have obtained incremental
5 production as defined in subsection 5 of section 57-51.1-03.

6 8. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil
7 which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as
8 amended through December 31, 1986, and includes the following methods for
9 recovery:

- 10 a. Miscible fluid displacement.
- 11 b. Steam drive injection.
- 12 c. Microemulsion.
- 13 d. In situ combustion.
- 14 e. Polymer augmented water flooding.
- 15 f. Cyclic steam injection.
- 16 g. Alkaline flooding.
- 17 h. Carbonated water flooding.
- 18 i. Immiscible carbon dioxide displacement.
- 19 j. New tertiary recovery methods certified by the industrial commission.

20 It does not include water flooding, unless the water flooding is used as an element of
21 one of the qualifying tertiary recovery techniques described in this subsection, or
22 immiscible natural gas injection. To be eligible for the tax reduction provided under
23 section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the
24 industrial commission, the project operator must continue to operate the unit as a
25 qualifying tertiary recovery project, and the project operator must have achieved for at
26 least one month a production level of at least fifteen percent above the level that would
27 have been recovered under normal recovery operations. To be eligible for the tax
28 exemption provided under section 57-51.1-03 and subsequent thereto the rate
29 reduction provided under section 57-51.1-02, a tertiary recovery project must be
30 certified as qualifying by the industrial commission, the project operator must continue
31 to operate the unit as a qualifying tertiary recovery project, and the project operator

1 must have obtained incremental production as defined in subsection 5 of section
2 57-51.1-03.

3 9. "Royalty owner" means an owner of what is commonly known as the royalty interest
4 and shall not include the owner of any overriding royalty or other payment carved out
5 of the working interest.

6 10. "Stripper well" means a well drilled and completed, or reentered and recompleted as a
7 horizontal well, after June 30, 2013, whose average daily production of oil during any
8 preceding consecutive twelve-month period, excluding condensate recovered in
9 nonassociated production, per well did not exceed ten barrels per day for wells of a
10 depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of
11 a depth of more than six thousand feet [1828.80 meters] but not more than ten
12 thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more
13 than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations,
14 and forty barrels per day for wells of a depth of more than ten thousand feet [3048
15 meters] in the Bakken or Three Forks formation.

16 11. "Stripper well property" means wells drilled and completed, or a well reentered and
17 recompleted as a horizontal well, before July 1, 2013, on a "property" whose average
18 daily production of oil, excluding condensate recovered in nonassociated production,
19 per well did not exceed ten barrels per day for wells of a depth of six thousand feet
20 [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six
21 thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters],
22 and thirty barrels per day for wells of a depth of more than ten thousand feet [3048
23 meters] during any preceding consecutive twelve-month period. Wells which did not
24 actually yield or produce oil during the qualifying twelve-month period, including
25 disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for
26 the purpose of determining whether the stripper well property exemption applies.

27 ~~11.~~ 12. "Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By
28 December thirty-first of each year, the tax commissioner shall compute an indexed
29 trigger price by applying to the current trigger price the rate of change of the producer
30 price index for industrial commodities as calculated and published by the United
31 States department of labor, bureau of labor statistics, for the twelve months ending

1 June thirtieth of that year and the indexed trigger price so determined is the trigger
2 price for the following calendar year.

3 ~~12.13.~~ "Two-year inactive well" means any well certified by the industrial commission that did
4 not produce oil in more than one month in any consecutive twenty-four-month period
5 before being recompleted or otherwise returned to production after July 31, 1995. A
6 well that has never produced oil, a dry hole, and a plugged and abandoned well are
7 eligible for status as a two-year inactive well.

8 **SECTION 5. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-51.1-03. (~~Effective through June 30, 2013~~) Exemptions from oil extraction tax.**

11 The following activities are specifically exempted from the oil extraction tax:

- 12 1. The activity of extracting from the earth any oil that is exempt from the gross
13 production tax imposed by chapter 57-51.
- 14 2. The activity of extracting from the earth any oil from a stripper well property or
15 individual stripper well.
- 16 3. For a well drilled and completed as a vertical well, the initial production of oil from the
17 well is exempt from any taxes imposed under this chapter for a period of fifteen
18 months, except that oil produced from any well drilled and completed as a horizontal
19 well is exempt from any taxes imposed under this chapter for a period of twenty-four
20 months. Oil recovered during testing prior to well completion is exempt from the oil
21 extraction tax. The exemption under this subsection becomes ineffective if the average
22 price of a barrel of crude oil exceeds the trigger price for each month in any
23 consecutive five-month period. However, the exemption is reinstated if, after the
24 trigger provision becomes effective, the average price of a barrel of crude oil is less
25 than the trigger price for each month in any consecutive five-month period.
- 26 4. The production of oil from a qualifying well that was worked over is exempt from any
27 taxes imposed under this chapter for a period of twelve months, beginning with the
28 first day of the third calendar month after the completion of the work-over project. The
29 exemption provided by this subsection is only effective if the well operator establishes
30 to the satisfaction of the industrial commission upon completion of the project that the
31 cost of the project exceeded sixty-five thousand dollars or production is increased at

1 least fifty percent during the first two months after completion of the project. A
2 qualifying well under this subsection is a well with an average daily production of no
3 more than fifty barrels of oil during the latest six calendar months of continuous
4 production. A work-over project under this subsection means the continuous
5 employment of a work-over rig, including recompletions and reentries. The exemption
6 provided by this subsection becomes ineffective if the average price of a barrel of
7 crude oil exceeds the trigger price for each month in any consecutive five-month
8 period. However, the exemption is reinstated if, after the trigger provision becomes
9 effective, the average price of a barrel of crude oil is less than the trigger price for
10 each month in any consecutive five-month period.

- 11 5. a. The incremental production from a secondary recovery project which has been
12 certified as a qualified project by the industrial commission after July 1, 1991, is
13 exempt from any taxes imposed under this chapter for a period of five years from
14 the date the incremental production begins.
- 15 b. The incremental production from a tertiary recovery project that does not use
16 carbon dioxide and which has been certified as a qualified project by the
17 industrial commission is exempt from any taxes imposed under this chapter for a
18 period of ten years from the date the incremental production begins. Incremental
19 production from a tertiary recovery project that uses carbon dioxide and which
20 has been certified as a qualified project by the industrial commission is exempt
21 from any taxes imposed under this chapter from the date the incremental
22 production begins.
- 23 c. For purposes of this subsection, incremental production is defined in the following
24 manner:
- 25 (1) For purposes of determining the exemption provided for in subdivision a and
26 with respect to a unit where there has not been a secondary recovery
27 project, incremental production means the difference between the total
28 amount of oil produced from the unit during the secondary recovery project
29 and the amount of primary production from the unit. For purposes of this
30 paragraph, primary production means the amount of oil which would have
31 been produced from the unit if the secondary recovery project had not been

1 commenced. The industrial commission shall determine the amount of
2 primary production in a manner which conforms to the practice and
3 procedure used by the commission at the time the project is certified.

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

20 (3) For purposes of determining the exemption provided for in subdivision a and
21 with respect to a unit where a secondary recovery project was in existence
22 before July 1, 1991, and where the industrial commission can establish an
23 accurate production decline curve, incremental production means the
24 difference between the total amount of oil produced from the unit during the
25 new secondary recovery project and the total amount of oil that would have
26 been produced from the unit if the new secondary recovery project had not
27 been commenced. For purposes of this paragraph, the total amount of oil
28 that would have been produced from the unit if the new secondary recovery
29 project had not been commenced includes both primary production and
30 production that occurred as a result of the secondary recovery project that
31 was in existence before July 1, 1991. The industrial commission shall

1 determine the amount of oil that would have been produced from the unit if
2 the new secondary recovery project had not been commenced in a manner
3 that conforms to the practice and procedure used by the commission at the
4 time the new secondary recovery project is certified.

5 (4) For purposes of determining the exemption provided for in subdivision b and
6 with respect to a unit where there has not been a secondary recovery
7 project, incremental production means the difference between the total
8 amount of oil produced from the unit during the tertiary recovery project and
9 the amount of primary production from the unit. For purposes of this
10 paragraph, primary production means the amount of oil which would have
11 been produced from the unit if the tertiary recovery project had not been
12 commenced. The industrial commission shall determine the amount of
13 primary production in a manner which conforms to the practice and
14 procedure used by the commission at the time the project is certified.

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

30 (6) For purposes of determining the exemption provided for in subdivision b and
31 with respect to a unit where there is or has been a secondary recovery

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

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

17 6. The production of oil from a two-year inactive well, as determined by the industrial
18 commission and certified to the state tax commissioner, for a period of ten years after
19 the date of receipt of the certification. The exemption under this subsection becomes
20 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
21 each month in any consecutive five-month period. However, the exemption is
22 reinstated if, after the trigger provision becomes effective, the average price of a barrel
23 of crude oil is less than the trigger price for each month in any consecutive five-month
24 period.

25 7. The production of oil from a horizontal reentry well, as determined by the industrial
26 commission and certified to the state tax commissioner, for a period of nine months
27 after the date the well is completed as a horizontal well. The exemption under this
28 subsection becomes ineffective if the average price of a barrel of crude oil exceeds the
29 trigger price for each month in any consecutive five-month period. However, the
30 exemption is reinstated if, after the trigger provision becomes effective, the average

1 price of a barrel of crude oil is less than the trigger price for each month in any
2 consecutive five-month period.

3 8. The initial production of oil from a well is exempt from any taxes imposed under this
4 chapter for a period of sixty months if:

5 a. The well is drilled and completed before July 1, 2013, on nontrust lands located
6 within the boundaries of an Indian reservation;

7 b. The well is drilled and completed before July 1, 2013, on lands held in trust by
8 the United States for an Indian tribe or individual Indian; or

9 c. The well is drilled and completed before July 1, 2013, on lands held by an Indian
10 tribe if the interest is in existence on August 1, 1997.

11 9. The first seventy-five thousand barrels or the first four million five hundred thousand
12 dollars of gross value at the well, whichever is less, of oil produced during the first
13 eighteen months after completion, from a horizontal well drilled and completed after
14 April 30, 2009, and before July 1, 2015, is subject to a reduced tax rate of two percent
15 of the gross value at the well of the oil extracted under this chapter. A well eligible for a
16 reduced tax rate under this subsection is eligible for the exemption for horizontal wells
17 under subsection 3, if the exemption under subsection 3 is effective during all or part
18 of the first twenty-four months after completion. The rate reduction under this
19 subsection becomes effective on the first day of the month following a month for which
20 the average price of a barrel of crude oil is less than fifty-five dollars. The rate
21 reduction under this subsection becomes ineffective on the first day of the month
22 following a month in which the average price of a barrel of crude oil exceeds seventy
23 dollars. If the rate reduction under this subsection is effective on the date of
24 completion of a well, the rate reduction applies to production from that well for up to
25 eighteen months after completion, subject to the other limitations of this subsection. If
26 the rate reduction under this subsection is ineffective on the date of completion of a
27 well, the rate reduction under this subsection does not apply to production from that
28 well at any time.

29 10. The first seventy-five thousand barrels of oil produced during the first eighteen months
30 after completion, from a well drilled and completed outside the Bakken and Three
31 Forks formations, is subject to a reduced tax rate of two percent of the gross value at

1 the well of the oil extracted under this chapter. A well eligible for a reduced tax rate
2 under this subsection is eligible for the exemption under subsection 3, if the exemption
3 under subsection 3 is effective during all or part of the first twenty-four months after
4 completion.

5 ~~(Effective after June 30, 2013) Exemptions from oil extraction tax.~~ The following
6 activities are specifically exempted from the oil extraction tax:

- 7 1. ~~The activity of extracting from the earth any oil that is exempt from the gross~~
8 ~~production tax imposed by chapter 57-51.~~
- 9 2. ~~The activity of extracting from the earth any oil from a stripper well property.~~
- 10 3. ~~For a well drilled and completed as a vertical well, the initial production of oil from the~~
11 ~~well is exempt from any taxes imposed under this chapter for a period of fifteen~~
12 ~~months, except that oil produced from any well drilled and completed as a horizontal~~
13 ~~well is exempt from any taxes imposed under this chapter for a period of twenty-four~~
14 ~~months. Oil recovered during testing prior to well completion is exempt from the oil~~
15 ~~extraction tax. The exemption under this subsection becomes ineffective if the average~~
16 ~~price of a barrel of crude oil exceeds the trigger price for each month in any~~
17 ~~consecutive five-month period. However, the exemption is reinstated if, after the~~
18 ~~trigger provision becomes effective, the average price of a barrel of crude oil is less~~
19 ~~than the trigger price for each month in any consecutive five-month period.~~
- 20 4. ~~The production of oil from a qualifying well that was worked over is exempt from any~~
21 ~~taxes imposed under this chapter for a period of twelve months, beginning with the~~
22 ~~first day of the third calendar month after the completion of the work-over project. The~~
23 ~~exemption provided by this subsection is only effective if the well operator establishes~~
24 ~~to the satisfaction of the industrial commission upon completion of the project that the~~
25 ~~cost of the project exceeded sixty-five thousand dollars or production is increased at~~
26 ~~least fifty percent during the first two months after completion of the project. A~~
27 ~~qualifying well under this subsection is a well with an average daily production of no~~
28 ~~more than fifty barrels of oil during the latest six calendar months of continuous~~
29 ~~production. A work-over project under this subsection means the continuous~~
30 ~~employment of a work-over rig, including recompletions and reentries. The exemption~~
31 ~~provided by this subsection becomes ineffective if the average price of a barrel of~~

1 crude oil exceeds the trigger price for each month in any consecutive five-month-
2 period. However, the exemption is reinstated if, after the trigger provision becomes-
3 effective, the average price of a barrel of crude oil is less than the trigger price for-
4 each month in any consecutive five-month period.

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

9 b. The incremental production from a tertiary recovery project that does not use-
10 carbon dioxide and which has been certified as a qualified project by the-
11 industrial commission is exempt from any taxes imposed under this chapter for a-
12 period of ten years from the date the incremental production begins. Incremental-
13 production from a tertiary recovery project that uses carbon dioxide and which-
14 has been certified as a qualified project by the industrial commission is exempt-
15 from any taxes imposed under this chapter from the date the incremental-
16 production begins.

17 e. For purposes of this subsection, incremental production is defined in the following-
18 manner:

19 (1) For purposes of determining the exemption provided for in subdivision a and-
20 with respect to a unit where there has not been a secondary recovery-
21 project, incremental production means the difference between the total-
22 amount of oil produced from the unit during the secondary recovery project-
23 and the amount of primary production from the unit. For purposes of this-
24 paragraph, primary production means the amount of oil which would have-
25 been produced from the unit if the secondary recovery project had not been-
26 commenced. The industrial commission shall determine the amount of-
27 primary production in a manner which conforms to the practice and-
28 procedure used by the commission at the time the project is certified.

29 (2) For purposes of determining the exemption provided for in subdivision a and-
30 with respect to a unit where a secondary recovery project was in existence-
31 prior to July 1, 1991, and where the industrial commission cannot establish-

1 an accurate production decline curve, incremental production means the
2 difference between the total amount of oil produced from the unit during a
3 new secondary recovery project and the amount of production which would
4 be equivalent to the average monthly production from the unit during the
5 most recent twelve months of normal production reduced by a production
6 decline rate of ten percent for each year. The industrial commission shall
7 determine the average monthly production from the unit during the most
8 recent twelve months of normal production and must upon request or upon
9 its own motion hold a hearing to make this determination. For purposes of
10 this paragraph, when determining the most recent twelve months of normal
11 production the industrial commission is not required to use twelve
12 consecutive months. In addition, the production decline rate of ten percent
13 must be applied from the last month in the twelve-month period of time.

14 (3) For purposes of determining the exemption provided for in subdivision a and
15 with respect to a unit where a secondary recovery project was in existence
16 before July 1, 1991, and where the industrial commission can establish an
17 accurate production decline curve, incremental production means the
18 difference between the total amount of oil produced from the unit during the
19 new secondary recovery project and the total amount of oil that would have
20 been produced from the unit if the new secondary recovery project had not
21 been commenced. For purposes of this paragraph, the total amount of oil
22 that would have been produced from the unit if the new secondary recovery
23 project had not been commenced includes both primary production and
24 production that occurred as a result of the secondary recovery project that
25 was in existence before July 1, 1991. The industrial commission shall
26 determine the amount of oil that would have been produced from the unit if
27 the new secondary recovery project had not been commenced in a manner
28 that conforms to the practice and procedure used by the commission at the
29 time the new secondary recovery project is certified.

30 (4) For purposes of determining the exemption provided for in subdivision b and
31 with respect to a unit where there has not been a secondary recovery

1 project, incremental production means the difference between the total
2 amount of oil produced from the unit during the tertiary recovery project and
3 the amount of primary production from the unit. For purposes of this
4 paragraph, primary production means the amount of oil which would have
5 been produced from the unit if the tertiary recovery project had not been
6 commenced. The industrial commission shall determine the amount of
7 primary production in a manner which conforms to the practice and
8 procedure used by the commission at the time the project is certified.

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

24 (6) For purposes of determining the exemption provided for in subdivision b and
25 with respect to a unit where there is or has been a secondary recovery
26 project and where the industrial commission can establish an accurate
27 production decline curve, incremental production means the difference
28 between the total amount of oil produced from the unit during the tertiary
29 recovery project and the total amount of oil that would have been produced
30 from the unit if the tertiary recovery project had not been commenced. For
31 purposes of this paragraph, the total amount of oil that would have been

1 produced from the unit if the tertiary recovery project had not been
2 commenced includes both primary production and production that occurred
3 as a result of any secondary recovery project. The industrial commission
4 shall determine the amount of oil that would have been produced from the
5 unit if the tertiary recovery project had not been commenced in a manner
6 that conforms to the practice and procedure used by the commission at the
7 time the tertiary recovery project is certified.

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

11 6. The production of oil from a two-year inactive well, as determined by the industrial
12 commission and certified to the state tax commissioner, for a period of ten years after
13 the date of receipt of the certification. The exemption under this subsection becomes
14 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
15 each month in any consecutive five-month period. However, the exemption is
16 reinstated if, after the trigger provision becomes effective, the average price of a barrel
17 of crude oil is less than the trigger price for each month in any consecutive five-month
18 period.

19 7. The production of oil from a horizontal reentry well, as determined by the industrial
20 commission and certified to the state tax commissioner, for a period of nine months
21 after the date the well is completed as a horizontal well. The exemption under this
22 subsection becomes ineffective if the average price of a barrel of crude oil exceeds the
23 trigger price for each month in any consecutive five-month period. However, the
24 exemption is reinstated if, after the trigger provision becomes effective, the average
25 price of a barrel of crude oil is less than the trigger price for each month in any
26 consecutive five-month period.

27 8. The initial production of oil from a well is exempt from any taxes imposed under this
28 chapter for a period of sixty months if:

29 a. The well is located within the boundaries of an Indian reservation;

30 b. The well is drilled and completed on lands held in trust by the United States for
31 an Indian tribe or individual Indian; or

1 e. ~~The well is drilled and completed on lands held by an Indian tribe if the interest is~~
2 ~~in existence on August 1, 1997.~~

3 9. ~~The first seventy five thousand barrels of oil produced during the first eighteen months~~
4 ~~after completion, from a horizontal well drilled and completed in the Bakken formation~~
5 ~~after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two~~
6 ~~percent of the gross value at the well of the oil extracted under this chapter. A well~~
7 ~~eligible for a reduced tax rate under this subsection is eligible for the exemption for~~
8 ~~horizontal wells under subsection 3, if the exemption under subsection 3 is effective~~
9 ~~during all or part of the first twenty four months after completion.~~

10 **SECTION 6. AMENDMENT.** Subsection 1 of section 57-51.1-03.1 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. To receive, from the first day of eligibility, a tax exemption on production from a
13 stripper well property or individual stripper well under subsection 2 of section
14 57-51.1-03, the industrial commission's certification must be submitted to the tax
15 commissioner within eighteen months after the end of the stripper well property's or
16 stripper well's qualification period.

17 **SECTION 7. AMENDMENT.** Section 57-51.2-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-51.2-02. Agreement requirements.**

20 An agreement under this chapter is subject to the following:

- 21 1. The only taxes subject to agreement are the state's oil and gas gross production and
22 oil extraction taxes attributable to production from wells located within the exterior
23 boundaries of the Fort Berthold Reservation.
- 24 2. The state's oil and gas gross production tax under chapter 57-51 and oil extraction tax
25 under chapter 57-51.1 must apply to all wells located within the Fort Berthold
26 Reservation.
- 27 3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas
28 production ~~attributable to trust lands~~ on the Fort Berthold Reservation may not exceed
29 six and one-half percent but may be reduced through negotiation between the
30 governor and the Three Affiliated Tribes.

- 1 4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and
2 57-51.1 do not apply to production within the boundaries of the Fort Berthold
3 Reservation except as otherwise provided in the agreement.
- 4 5. The allocation of revenue from oil and gas production taxes on the Fort Berthold
5 Reservation must be as follows:
 - 6 a. Production attributable to trust lands. All revenues and exemptions from all oil
7 and gas gross production and oil extraction taxes attributable to production from
8 trust lands on the Fort Berthold Reservation must be evenly divided between the
9 tribe and the state.
 - 10 b. All other production. ~~The tribe must receive twenty percent of the total oil and gas~~
11 ~~gross production taxes collected from all production~~All revenues and exemptions
12 from all oil and gas gross production and oil extraction taxes attributable to
13 production from nontrust lands on the Fort Berthold Reservation must be evenly
14 divided between the tribe and the state in lieu of the application of the Three
15 Affiliated Tribes' fees and taxes related to production on such lands. ~~The state~~
16 ~~must receive the remainder.~~
 - 17 c. The state's share of the revenue as divided in subdivisions a and b is subject to
18 distribution among political subdivisions as provided in chapters 57-51 and
19 57-51.1.
- 20 6. An oil or gas well that is drilled and completed during the time of an agreement under
21 this chapter must be subject to the terms of the agreement for the life of the well.
- 22 7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future
23 production of oil and gas on the Fort Berthold Reservation during the term of the
24 agreement.
- 25 8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the
26 agreement must allow the tax commissioner to offset future distributions to the tribe.
- 27 9. The tax commissioner must retain authority to administer and enforce chapters 57-51
28 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
- 29 10. An oil or gas well that is drilled and completed during the time an agreement under this
30 chapter is in effect is subject to state regulatory provisions for the life of the well in
31 addition to any other applicable regulatory provisions.

1 11. The federal district court for the western division of North Dakota is the venue for any
2 dispute arising from a revenue-sharing agreement between the state and the Three
3 Affiliated Tribes.

4 **SECTION 8. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable years
5 beginning after December 31, 2013, and the remainder of this Act is effective for taxable events
6 occurring after June 30, 2013.