

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1439

(Representatives Porter, Delzer, Dockter, Headland, Howe, Mock, Pollert)
(Senators Cook, Dotzenrod, Meyer, Unruh, Wardner)

AN ACT to amend and reenact sections 57-06-17.1 and 57-39.2-04.14, subsection 3 of section 57-51.1-03, and section 57-60-06 of the North Dakota Century Code, relating to a property tax exemption for pipelines used for secure geologic storage, a sales and use tax exemption for materials used for secure geologic storage, an oil extraction tax exemption for the incremental production from tertiary recovery projects using carbon dioxide, and property classification of secure geologic storage equipment for coal conversion tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-06-17.1. Carbon dioxide pipeline exemption.

Property, not including land, is exempt from taxation during construction and for the first ten full taxable years following initial operation if it consists of a pipeline, constructed after 1996, and necessary associated equipment for the transportation or storage of carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas.

SECTION 2. AMENDMENT. Section 57-39.2-04.14 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.14. Sales and use tax exemption for materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas.

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. Tangible personal property used to replace an existing system to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system must receive from the tax commissioner a certificate that the tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas qualifies for the exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system may apply to the tax commissioner for a refund of the difference between the amount remitted by the contractor and the exemption imposed or

allowed by this section. Application for a refund must be made at the time and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

4. This chapter and chapter 57-40.2 apply to the exemption under this section.

SECTION 3. AMENDMENT. Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
- b. The incremental production from a tertiary recovery project which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks formations which has been certified as a qualified project by the industrial commission is not exempt from July 1, 2015, through June 30, 2017, and is thereafter exempt from any taxes imposed under this chapter for a period of five years from July 1, 2017, or the date the incremental production begins, whichever is later.
- c. The incremental production from a tertiary recovery project that injects more than fifty percent carbon dioxide produced from coal and has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of twenty years from the date the incremental production begins or from the date the project is certified by the industrial commission as meeting the fifty percent or more carbon dioxide produced from coal injection requirement, whichever is later. To qualify for the exemption under this subsection, the project must be located outside the Bakken or Three Forks formations and must use carbon dioxide produced from coal. The incremental production that has been certified by the industrial commission under this section must be used to calculate the exemption under this subdivision.
- d. The incremental production from a tertiary recovery project that injects more than fifty percent carbon dioxide produced from coal and has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins or from the date the project is certified by the industrial commission as meeting the fifty percent or more carbon dioxide produced from coal injection requirement, whichever is later. To qualify for the exemption under this subsection, the project must be located within the Bakken or Three Forks formations and must use carbon dioxide produced from coal. The incremental production that has been certified by the industrial commission under this section must be used to calculate the exemption under this subdivision.
- e. For purposes of this subsection, incremental production is defined in the following manner:
 - (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to

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

- (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.
- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate

of ten percent must be applied from the last month in the twelve-month period of time.

- (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- (7) For purposes of determining the exemption provided for in subdivisions c and d, and with respect to a unit where a tertiary recovery project was in existence, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and shall upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, in determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (8) For purposes of determining the exemption provided for in subdivisions c and d, and with respect to a unit where a tertiary recovery project was in existence, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new tertiary recovery project and the total amount of oil that would have been produced from the unit if the new tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of the tertiary recovery project that was previously in existence. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new tertiary recovery project is certified.

d-f. The industrial commission shall adopt rules relating to this exemption ~~that~~which must include procedures for determining incremental production as defined in subdivision ee.

SECTION 4. AMENDMENT. Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes.

Each coal conversion facility and any carbon dioxide capture system located at the coal conversion facility, and any equipment directly used for secure geologic storage of carbon dioxide or enhanced recovery of oil or natural gas must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which the facility, capture system, or equipment is located. The exemption provided by this section may not be interpreted to apply to tangible personal property incorporated as a component part of a carbon dioxide pipeline but this restriction does not affect eligibility of such a pipeline for the exemption under section 57-06-17.1. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property.

SECTION 5. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 2019. Sections 1 and 4 of this Act are effective for taxable years beginning after December 31, 2018. Section 2 of this Act is effective for taxable events occurring after June 30, 2019.

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-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1439.

House Vote: Yeas 81 Nays 10 Absent 3

Senate Vote: Yeas 45 Nays 2 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State