

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1476

Introduced by

Representatives Carlson, Belter, Headland

Senators Cook, Wardner

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to amend and reenact subsection 4 of section 38-08-04 and sections
2 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to oil
3 extraction tax rates and exemptions; to provide legislative intent; and to provide an effective
4 date.

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

6 **SECTION 1. AMENDMENT.** Subsection 4 of section 38-08-04 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 4. To classify wells as oil or gas wells for purposes material to the interpretation or
9 enforcement of this chapter, to classify and determine the status and depth of wells
10 that are stripper well property as defined in ~~subsection 8 of section 57-51.1-01~~, to
11 certify to the tax commissioner which wells are stripper wells as defined in section
12 57-51.1-01 and the depth of those wells, ~~to recertify stripper wells that are reentered~~
13 ~~and recompleted as horizontal wells~~, and to certify to the tax commissioner which
14 wells involve secondary or tertiary recovery operations ~~under~~as defined in section
15 57-51.1-01, and the date of qualification for the ~~reduced rate of oil extraction tax~~
16 exemption for secondary and tertiary recovery operations.

17 **SECTION 2. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-51.1-01. Definitions for oil extraction tax.**

20 For the purposes of this chapter:

21 1. "Average daily production" of a well means the qualified maximum total production of
22 oil from the well during a calendar month period divided by the number of calendar
23 days in that period, and "qualified maximum total production" of a well means that the
24 well must have been maintained at the maximum efficient rate of production as

1 defined and determined by rule adopted by the industrial commission in furtherance of
2 its authority under chapter 38-08.

3 2. ~~"Average price" of a barrel of crude oil means the monthly average of the daily closing~~
4 ~~price for a barrel of west Texas intermediate cushioning crude oil, as those prices appear~~
5 ~~in the Wall Street Journal, midwest edition, minus two dollars and fifty cents. When~~
6 ~~computing the monthly average price, the most recent previous daily closing price~~
7 ~~must be considered the daily closing price for the days on which the market is closed.~~

8 3. ~~"Horizontal reentry well" means a well that was not initially drilled and completed as a~~
9 ~~horizontal well, including any well initially plugged and abandoned as a dry hole, which~~
10 ~~is reentered and recompleted as a horizontal well.~~

11 4. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at
12 an angle of at least eighty degrees within the productive formation of at least three
13 hundred feet [91.44 meters].

14 ~~5.3.~~ "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid
15 hydrocarbons that are recovered from gas on the lease incidental to the production of
16 the gas.

17 ~~6.4.~~ "Property" means the right which arises from a lease or fee interest, as a whole or any
18 designated portion thereof, to produce oil. A producer shall treat as a separate
19 property each separate and distinct producing reservoir subject to the same right to
20 produce crude oil; provided, that such reservoir is recognized by the industrial
21 commission as a producing formation that is separate and distinct from, and not in
22 communication with, any other producing formation.

23 ~~7.5.~~ "Qualifying secondary recovery project" means a project employing water flooding. ~~To~~
24 ~~be eligible for the tax reduction provided under section 57-51.1-02, a secondary~~
25 ~~recovery project must be certified as qualifying by the industrial commission and the~~
26 ~~project operator must have achieved for six consecutive months an average~~
27 ~~production level of at least twenty-five percent above the level that would have been~~
28 ~~recovered under normal recovery operations. To be eligible for the tax exemption~~
29 ~~provided under section 57-51.1-03 and subsequent thereto the rate reduction provided~~
30 ~~under section 57-51.1-02, a secondary recovery project must be certified as qualifying~~

1 by the industrial commission and the project operator must have obtained incremental
2 production as defined in subsection 53 of section 57-51.1-03.

3 ~~8-6.~~ "Qualifying tertiary recovery project" means a project for enhancing recovery of oil
4 which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as
5 amended through December 31, 1986, and includes the following methods for
6 recovery:

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

17 It does not include water flooding, unless the water flooding is used as an element of
18 one of the qualifying tertiary recovery techniques described in this subsection, or
19 immiscible natural gas injection. ~~To be eligible for the tax reduction provided under~~
20 ~~section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the~~
21 ~~industrial commission, the project operator must continue to operate the unit as a~~
22 ~~qualifying tertiary recovery project, and the project operator must have achieved for at~~
23 ~~least one month a production level of at least fifteen percent above the level that would~~
24 ~~have been recovered under normal recovery operations. To be eligible for the tax~~
25 ~~exemption provided under section 57-51.1-03 and subsequent thereto the rate~~
26 ~~reduction provided under section 57-51.1-02, a tertiary recovery project must be~~
27 ~~certified as qualifying by the industrial commission, the project operator must continue~~
28 ~~to operate the unit as a qualifying tertiary recovery project, and the project operator~~
29 ~~must have obtained incremental production as defined in subsection 53 of section~~
30 ~~57-51.1-03.~~

1 ~~9-7.~~ "Royalty owner" means an owner of what is commonly known as the royalty interest
2 and shall not include the owner of any overriding royalty or other payment carved out
3 of the working interest.

4 ~~10-8.~~ "Stripper well" means a well drilled and completed, or reentered and recompleted as a
5 horizontal well, after June 30, 2013, whose average daily production of oil during any
6 preceding consecutive twelve-month period, excluding condensate recovered in
7 nonassociated production, per well did not exceed ten barrels per day for wells of a
8 depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of
9 a depth of more than six thousand feet [1828.80 meters] but not more than ten
10 thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more
11 than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations,
12 and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048
13 meters] in the Bakken or Three Forks formation.

14 ~~11-9.~~ "Stripper well property" means wells drilled and completed, or a well reentered and
15 recompleted as a horizontal well, before July 1, 2013, on a "property" whose average
16 daily production of oil, excluding condensate recovered in nonassociated production,
17 per well did not exceed ten barrels per day for wells of a depth of six thousand feet
18 [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six
19 thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters],
20 and thirty barrels per day for wells of a depth of more than ten thousand feet [3048
21 meters] during any preceding consecutive twelve-month period. Wells which did not
22 actually yield or produce oil during the qualifying twelve-month period, including
23 disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for
24 the purpose of determining whether the stripper well property exemption applies.

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

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

6 **SECTION 3. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-51.1-02. Imposition of oil extraction tax.**

9 There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the
10 activity in this state of extracting oil from the earth, and every owner, including any royalty
11 owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged
12 in the activity of extracting that oil.

13 The rate of tax is ~~six~~four and one-half percent of the gross value at the well of the oil
14 extracted, ~~except that the rate of tax is four percent of the gross value at the well of the oil~~
15 ~~extracted in the following situations:~~

- 16 1. ~~For oil produced from wells drilled and completed after April 27, 1987, commonly~~
17 ~~referred to as new wells, and not otherwise exempt under section 57-51.1-03;~~
- 18 2. ~~For oil produced from a secondary or tertiary recovery project that was certified as~~
19 ~~qualifying by the industrial commission before July 1, 1991;~~
- 20 3. ~~For oil that does not qualify as incremental oil but is produced from a secondary or~~
21 ~~tertiary recovery project that is certified as qualifying by the industrial commission after~~
22 ~~June 30, 1991;~~
- 23 4. ~~For incremental oil produced from a secondary or tertiary recovery project that is~~
24 ~~certified as qualifying by the industrial commission after June 30, 1991, and which~~
25 ~~production is not otherwise exempt under section 57-51.1-03; or~~
- 26 5. ~~For oil produced from a well that receives an exemption pursuant to subsection 4 of~~
27 ~~section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt~~
28 ~~under section 57-51.1-03.~~

29 ~~However, if the average price of a barrel of crude oil exceeds the trigger price for each month in~~
30 ~~any consecutive five-month period, then the rate of tax on oil extracted from all taxable wells is~~
31 ~~six and one-half percent of the gross value at the well of the oil extracted until the average price~~

1 of a barrel of crude oil is less than the trigger price for each month in any consecutive-
2 five-month period, in which case the rate of tax reverts to four percent of the gross value at the
3 well of the oil extracted for any wells subject to a reduced rate under subsections 1 through 5.

4 **SECTION 4. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-51.1-03. Exemptions from oil extraction tax.**

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

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

1 ~~employment of a work-over rig, including recompletions and reentries. The exemption-~~
2 ~~provided by this subsection becomes ineffective if the average price of a barrel of~~
3 ~~crude oil exceeds the trigger price for each month in any consecutive five-month-~~
4 ~~period. However, the exemption is reinstated if, after the trigger provision becomes~~
5 ~~effective, the average price of a barrel of crude oil is less than the trigger price for~~
6 ~~each month in any consecutive five-month period.~~

- 7 5-3. a. The incremental production from a secondary recovery project which has been
8 certified as a qualified project by the industrial commission after July 1, 1991, is
9 exempt from any taxes imposed under this chapter for a period of five years from
10 the date the incremental production begins.
- 11 b. The incremental production from a tertiary recovery project that does not use
12 carbon dioxide and which has been certified as a qualified project by the
13 industrial commission is exempt from any taxes imposed under this chapter for a
14 period of ten years from the date the incremental production begins. Incremental
15 production from a tertiary recovery project that uses carbon dioxide and which
16 has been certified as a qualified project by the industrial commission is exempt
17 from any taxes imposed under this chapter from the date the incremental
18 production begins.
- 19 c. For purposes of this subsection, incremental production is defined in the following
20 manner:
- 21 (1) For purposes of determining the exemption provided for in subdivision a and
22 with respect to a unit where there has not been a secondary recovery
23 project, incremental production means the difference between the total
24 amount of oil produced from the unit during the secondary recovery project
25 and the amount of primary production from the unit. For purposes of this
26 paragraph, primary production means the amount of oil which would have
27 been produced from the unit if the secondary recovery project had not been
28 commenced. The industrial commission shall determine the amount of
29 primary production in a manner which conforms to the practice and
30 procedure used by the commission at the time the project is certified.

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

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

1 that conforms to the practice and procedure used by the commission at the
2 time the new secondary recovery project is certified.

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

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

28 (6) For purposes of determining the exemption provided for in subdivision b and
29 with respect to a unit where there is or has been a secondary recovery
30 project and where the industrial commission can establish an accurate
31 production decline curve, incremental production means the difference

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

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

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

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

- 1 8. ~~The initial production of oil from a well is exempt from any taxes imposed under this~~
2 ~~chapter for a period of sixty months if:~~
- 3 a. ~~The well is drilled and completed before July 1, 2013, on nontrust lands within the~~
4 ~~boundaries of an Indian reservation;~~
- 5 b. ~~The well is drilled and completed before July 1, 2013, on lands held in trust by~~
6 ~~the United States for an Indian tribe or individual Indian; or~~
- 7 c. ~~The well is drilled and completed before July 1, 2013, on lands held by an Indian~~
8 ~~tribe if the interest is in existence on August 1, 1997.~~
- 9 9. ~~The first seventy-five thousand barrels or the first four million five hundred thousand~~
10 ~~dollars of gross value at the well, whichever is less, of oil produced during the first~~
11 ~~eighteen months after completion, from a horizontal well drilled and completed after~~
12 ~~April 30, 2009, and before July 1, 2015, is subject to a reduced tax rate of two percent~~
13 ~~of the gross value at the well of the oil extracted under this chapter. A well eligible for a~~
14 ~~reduced tax rate under this subsection is eligible for the exemption for horizontal wells~~
15 ~~under subsection 3, if the exemption under subsection 3 is effective during all or part~~
16 ~~of the first twenty-four months after completion. The rate reduction under this~~
17 ~~subsection becomes effective on the first day of the month following a month for which~~
18 ~~the average price of a barrel of crude oil is less than fifty-five dollars. The rate~~
19 ~~reduction under this subsection becomes ineffective on the first day of the month~~
20 ~~following a month in which the average price of a barrel of crude oil exceeds seventy~~
21 ~~dollars. If the rate reduction under this subsection is effective on the date of~~
22 ~~completion of a well, the rate reduction applies to production from that well for up to~~
23 ~~eighteen months after completion, subject to the other limitations of this subsection. If~~
24 ~~the rate reduction under this subsection is ineffective on the date of completion of a~~
25 ~~well, the rate reduction under this subsection does not apply to production from that~~
26 ~~well at any time.~~
- 27 10.4. The first seventy-five thousand barrels of oil produced during the first eighteen months
28 after completion, from a well drilled and completed outside the Bakken and Three
29 Forks formations, and ten miles [16.10 kilometers] or more outside an established field
30 in which the industrial commission has defined the pool to include the Bakken or Three
31 Forks formation, 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 **SECTION 5. LEGISLATIVE INTENT - TERM OF EXEMPTIONS AND RATE**

6 **REDUCTIONS.** It is the intent of the sixty-fourth legislative assembly that the remaining term of
7 any exemption or rate reduction eliminated in section 4 of this Act expires upon the effective
8 date of this Act.

9 **SECTION 6. EFFECTIVE DATE.** This Act becomes effective June 1, 2015, if on that date
10 the exemption under subsection 3 of section 57-51.1-03 is, or would become, effective and, if it
11 is not, this Act becomes effective on the first day of the first subsequent month the exemption
12 under subsection 3 of section 57-51.1-03 would become effective.