

**FIRST ENGROSSMENT
with Conference Committee 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, 57-51.1-02, and
4 57-51.1-03, subsection 1 of section 57-51.1-03.1, and section 57-51.2-02 of the North Dakota
5 Century Code, relating to oil extraction tax definitions, rates, and exemptions and the state-tribal
6 oil tax agreement; to provide for a study; 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 section this 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 ~~4.3.~~ "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 ~~5.4.~~ "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 ~~6.5.~~ "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 ~~7.6.~~ "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 8-7. "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 ~~9-8.~~ "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 ~~10-9.~~ "Stripper well" means a well drilled and completed, or reentered and recompleted as a
7 horizontal well, during the time the rate of tax for new wells is six percent under
8 section 57-51.1-02, whose average daily production of oil during any preceding
9 consecutive twelve-month period, excluding condensate recovered in nonassociated
10 production, per well did not exceed ten barrels per day for wells of a depth of six
11 thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of
12 more than six thousand feet [1828.80 meters] but not more than ten thousand feet
13 [3048 meters], and thirty barrels per day for wells of a depth of more than ten
14 thousand feet [3048 meters] outside the Bakken and Three Forks formations, and
15 thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048
16 meters] in the Bakken or Three Forks formation.

17 10. "Stripper well property" means wells drilled and completed, or a well reentered and
18 recompleted as a horizontal well, before the time the rate of tax for new wells is six
19 percent under section 57-51.1-02, on a "property" whose average daily production of
20 oil, excluding condensate recovered in nonassociated production, per well did not
21 exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters]
22 or less, fifteen barrels per day for wells of a depth of more than six thousand feet
23 [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels
24 per day for wells of a depth of more than ten thousand feet [3048 meters] during any
25 preceding consecutive twelve-month period. Wells which did not actually yield or
26 produce oil during the qualifying twelve-month period, including disposal wells, dry
27 wells, spent wells, and shut-in wells, are not production wells for the purpose of
28 determining whether the stripper well property exemption applies.

29 11. "Trigger price" means ~~thirty-five~~ an average price per barrel for crude oil of less than
30 fifty-two dollars and fifty-four cents, as indexed for inflation for a full calendar month. By
31 December thirty-first of each year, the tax commissioner shall compute an indexed-

1 trigger price by applying to the current trigger price the rate of change of the producer-
2 price index for industrial commodities as calculated and published by the United-
3 States department of labor, bureau of labor statistics, for the twelve months ending-
4 June thirtieth of that year and the indexed trigger price so determined is the trigger-
5 price for the following calendar year The trigger price definition in this subsection is
6 effective only during the time the rate of tax for new wells is six percent under section
7 57-51.1-02.

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

13 **SECTION 5. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **57-51.1-02. Imposition of oil extraction tax.**

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

20 The rate of tax is six and one-half percent of the gross value at the well of the oil extracted
21 for wells drilled and completed before July 1, 2013, and six percent of the gross value at the
22 well of the oil extracted for wells drilled and completed after June 30, 2013, except that the rate
23 of tax is four percent of the gross value at the well of the oil extracted in the following situations:

- 24 1. For oil produced from wells drilled and completed after April 27, 1987, commonly
25 referred to as new wells, and not otherwise exempt under section 57-51.1-03;
26 2. For oil produced from a secondary or tertiary recovery project that was certified as
27 qualifying by the industrial commission before July 1, 1991;
28 3. For oil that does not qualify as incremental oil but is produced from a secondary or
29 tertiary recovery project that is certified as qualifying by the industrial commission after
30 June 30, 1991;

- 1 4. For incremental oil produced from a secondary or tertiary recovery project that is
2 certified as qualifying by the industrial commission after June 30, 1991, and which
3 production is not otherwise exempt under section 57-51.1-03; or
- 4 5. For oil produced from a well that receives an exemption pursuant to subsection 4 of
5 section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt
6 under section 57-51.1-03.

7 However, if the average price of a barrel of crude oil exceeds the trigger price for each month in
8 any consecutive five-month period, then the rate of tax on oil extracted from all taxable wells is
9 six and one-half percent of the gross value at the well of the oil extracted for wells drilled and
10 completed before July 1, 2013, and six percent of the gross value at the well of the oil extracted
11 for wells drilled and completed after June 30, 2013, until the average price of a barrel of crude
12 oil is less than the trigger price for each month in any consecutive five-month period, in which
13 case the rate of tax reverts to four percent of the gross value at the well of the oil extracted for
14 any wells subject to a reduced rate under subsections 1 through 5.

15 **SECTION 6. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **57-51.1-03. (~~Effective through June 30, 2013~~) Exemptions from oil extraction tax.**

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

- 19 1. The activity of extracting from the earth any oil that is exempt from the gross
20 production tax imposed by chapter 57-51.
- 21 2. The activity of extracting from the earth any oil from a stripper well property or
22 individual stripper well.
- 23 3. For a well drilled and completed as a vertical well, the initial production of oil from the
24 well is exempt from any taxes imposed under this chapter for a period of fifteen
25 months, except that oil produced from any well drilled and completed as a horizontal
26 well is exempt from any taxes imposed under this chapter for a period of twenty-four
27 months. Oil recovered during testing prior to well completion is exempt from the oil
28 extraction tax. The exemption under this subsection becomes ineffective if the average
29 price of a barrel of crude oil exceeds the trigger price for each month in any
30 consecutive five-month period. However, the exemption is reinstated if, after the

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

- 3 4. The production of oil from a qualifying well that was worked over is exempt from any
4 taxes imposed under this chapter for a period of twelve months, beginning with the
5 first day of the third calendar month after the completion of the work-over project. The
6 exemption provided by this subsection is only effective if the well operator establishes
7 to the satisfaction of the industrial commission upon completion of the project that the
8 cost of the project exceeded sixty-five thousand dollars or production is increased at
9 least fifty percent during the first two months after completion of the project. A
10 qualifying well under this subsection is a well with an average daily production of no
11 more than fifty barrels of oil during the latest six calendar months of continuous
12 production. A work-over project under this subsection means the continuous
13 employment of a work-over rig, including recompletions and reentries. The exemption
14 provided by this subsection becomes ineffective if the average price of a barrel of
15 crude oil exceeds the trigger price for each month in any consecutive five-month
16 period. However, the exemption is reinstated if, after the trigger provision becomes
17 effective, the average price of a barrel of crude oil is less than the trigger price for
18 each month in any consecutive five-month period.

- 19 5. a. The incremental production from a secondary recovery project which has been
20 certified as a qualified project by the industrial commission after July 1, 1991, is
21 exempt from any taxes imposed under this chapter for a period of five years from
22 the date the incremental production begins.
- 23 b. The incremental production from a tertiary recovery project that does not use
24 carbon dioxide and which has been certified as a qualified project by the
25 industrial commission is exempt from any taxes imposed under this chapter for a
26 period of ten years from the date the incremental production begins. Incremental
27 production from a tertiary recovery project that uses carbon dioxide and which
28 has been certified as a qualified project by the industrial commission is exempt
29 from any taxes imposed under this chapter from the date the incremental
30 production begins.

1 c. For purposes of this subsection, incremental production is defined in the following
2 manner:

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

29 (3) 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 before July 1, 1991, and where the industrial commission can establish an

1 accurate production decline curve, incremental production means the
2 difference between the total amount of oil produced from the unit during the
3 new secondary recovery project and the total amount of oil that would have
4 been produced from the unit if the new secondary recovery project had not
5 been commenced. For purposes of this paragraph, the total amount of oil
6 that would have been produced from the unit if the new secondary recovery
7 project had not been commenced includes both primary production and
8 production that occurred as a result of the secondary recovery project that
9 was in existence before July 1, 1991. The industrial commission shall
10 determine the amount of oil that would have been produced from the unit if
11 the new secondary 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 new secondary recovery project is certified.

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

24 (5) 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, incremental production means the difference between the total
27 amount of oil produced during the tertiary recovery project and the amount
28 of production which would be equivalent to the average monthly production
29 from the unit during the most recent twelve months of normal production
30 reduced by a production decline rate of ten percent for each year. The
31 industrial commission shall determine the average monthly production from

1 the unit during the most recent twelve months of normal production and
2 must upon request or upon its own motion hold a hearing to make this
3 determination. For purposes of this paragraph, when determining the most
4 recent twelve months of normal production the industrial commission is not
5 required to use twelve consecutive months. In addition, the production
6 decline rate of ten percent must be applied from the last month in the
7 twelve-month period of time.

8 (6) For purposes of determining the exemption provided for in subdivision b and
9 with respect to a unit where there is or has been a secondary recovery
10 project and where the industrial commission can establish an accurate
11 production decline curve, incremental production means the difference
12 between the total amount of oil produced from the unit during the tertiary
13 recovery project and the total amount of oil that would have been produced
14 from the unit if the tertiary recovery project had not been commenced. For
15 purposes of this paragraph, the total amount of oil that would have been
16 produced from the unit if the tertiary recovery project had not been
17 commenced includes both primary production and production that occurred
18 as a result of any secondary recovery project. The industrial commission
19 shall determine the amount of oil that would have been produced from the
20 unit if the tertiary recovery project had not been commenced in a manner
21 that conforms to the practice and procedure used by the commission at the
22 time the tertiary recovery project is certified.

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

26 6. The production of oil from a two-year inactive well, as determined by the industrial
27 commission and certified to the state tax commissioner, for a period of ten years after
28 the date of receipt of the certification. The exemption under this subsection becomes
29 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
30 each month in any consecutive five-month period. However, the exemption is
31 reinstated if, after the trigger provision becomes effective, the average price of a barrel

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

3 7. The production of oil from a horizontal reentry well, as determined by the industrial
4 commission and certified to the state tax commissioner, for a period of nine months
5 after the date the well is completed as a horizontal well. The exemption under this
6 subsection becomes ineffective if the average price of a barrel of crude oil exceeds the
7 trigger price for each month in any consecutive five-month period. However, the
8 exemption is reinstated if, after the trigger provision becomes effective, the average
9 price of a barrel of crude oil is less than the trigger price for each month in any
10 consecutive five-month period.

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

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

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

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

19 9. ~~The first seventy-five thousand barrels or the first four million five hundred thousand~~
20 ~~dollars of gross value at the well, whichever is less, of oil produced during the first~~
21 ~~eighteen months after completion, from a horizontal well drilled and completed after~~
22 ~~April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the~~
23 ~~well of the oil extracted under this chapter. A well eligible for a reduced tax rate under~~
24 ~~this subsection is eligible for the exemption for horizontal wells under subsection 3, if~~
25 ~~the exemption under subsection 3 is effective during all or part of the first twenty-four~~
26 ~~months after completion. The rate reduction under this subsection becomes effective~~
27 ~~on the first day of the month following a month for which the average price of a barrel~~
28 ~~of crude oil is less than fifty-five dollars. The rate reduction under this subsection~~
29 ~~becomes ineffective on the first day of the month following a month in which the~~
30 ~~average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction~~
31 ~~under this subsection is effective on the date of completion of a well, the rate reduction~~

1 applies to production from that well for up to eighteen months after completion, subject
2 to the other limitations of this subsection. If the rate reduction under this subsection is
3 ineffective on the date of completion of a well, the rate reduction under this subsection
4 does not apply to production from that well at any time. The first seventy-five thousand
5 barrels of oil produced during the first eighteen months after completion, from a well
6 drilled and completed before July 1, 2017, outside the Bakken and Three Forks
7 formations and ten miles or more outside an established field in which the industrial
8 commission has defined the pool to include the Bakken or Three Forks formation, is
9 subject to a reduced tax rate of two percent of the gross value at the well of the oil
10 extracted under this chapter. A well eligible for a reduced tax rate under this
11 subsection is eligible for the exemption under subsection 3, if the exemption under
12 subsection 3 is effective during all or part of the first twenty-four months after
13 completion.

14 **(Effective after June 30, 2013) Exemptions from oil extraction tax.** The following
15 activities are specifically exempted from the oil extraction tax:

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

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

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

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

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

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

1 project had not been commenced includes both primary production and
2 production that occurred as a result of the secondary recovery project that
3 was in existence before July 1, 1991. The industrial commission shall
4 determine the amount of oil that would have been produced from the unit if
5 the new secondary 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 new secondary recovery project is certified.

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

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

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

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

18 d. The industrial commission shall adopt rules relating to this exemption that must
19 include procedures for determining incremental production as defined in
20 subdivision e.

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

29 7. The production of oil from a horizontal reentry well, as determined by the industrial
30 commission and certified to the state tax commissioner, for a period of nine months
31 after the date the well is completed as a horizontal well. The exemption under this

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

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

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

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

11 c. The well is drilled and completed on lands held by an Indian tribe if the interest is
12 in existence on August 1, 1997.

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

20 **SECTION 7. AMENDMENT.** Subsection 1 of section 57-51.1-03.1 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 1. To receive, from the first day of eligibility, a tax exemption on production from a
23 stripper well property or individual stripper well under subsection 2 of section
24 57-51.1-03, the industrial commission's certification must be submitted to the tax
25 commissioner within eighteen months after the end of the stripper well property's or
26 stripper well's qualification period.

27 **SECTION 8. AMENDMENT.** Section 57-51.2-02 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **57-51.2-02. Agreement requirements.**

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

- 1 1. The only taxes subject to agreement are the state's oil and gas gross production and
2 oil extraction taxes attributable to production from wells located within the exterior
3 boundaries of the Fort Berthold Reservation.
- 4 2. The state's oil and gas gross production tax under chapter 57-51 and oil extraction tax
5 under chapter 57-51.1 must apply to all wells located within the Fort Berthold
6 Reservation.
- 7 3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas
8 production ~~attributable to trust lands on the Fort Berthold Reservation may not exceed~~
9 ~~six and one-half percent but may be reduced through negotiation between the~~
10 ~~governor and the Three Affiliated Tribes~~ must be applied at the rate established under
11 chapter 57-51.1.
- 12 4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and
13 57-51.1 do not apply to production within the boundaries of the Fort Berthold
14 Reservation except as otherwise provided in the agreement.
- 15 5. The allocation of revenue from oil and gas production and oil extraction taxes on the
16 Fort Berthold Reservation must be as follows:
 - 17 a. Production attributable to trust lands. All revenues and exemptions from all oil
18 and gas gross production and oil extraction taxes attributable to production from
19 trust lands on the Fort Berthold Reservation must be evenly divided between the
20 tribe and the state.
 - 21 b. All other production. ~~The tribe must receive twenty percent of the total oil and gas~~
22 ~~gross production taxes collected from all production~~ All revenues and exemptions
23 from all oil and gas gross production and oil extraction taxes attributable to
24 production from nontrust lands on the Fort Berthold Reservation must be evenly
25 divided between the tribe and the state in lieu of the application of the Three
26 Affiliated Tribes' fees and taxes related to production on such lands. ~~The state~~
27 ~~must receive the remainder.~~
 - 28 c. The state's share of the revenue as divided in subdivisions a and b is subject to
29 distribution among political subdivisions as provided in chapters 57-51 and
30 57-51.1.

- 1 6. An oil or gas well that is drilled and completed during the time of an agreement under
- 2 this chapter must be subject to the terms of the agreement for the life of the well.
- 3 7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future
- 4 production of oil and gas on the Fort Berthold Reservation during the term of the
- 5 agreement.
- 6 8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the
- 7 agreement must allow the tax commissioner to offset future distributions to the tribe.
- 8 9. The tax commissioner must retain authority to administer and enforce chapters 57-51
- 9 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
- 10 10. An oil or gas well that is drilled and completed during the time an agreement under this
- 11 chapter is in effect is subject to state regulatory provisions for the life of the well in
- 12 addition to any other applicable regulatory provisions.
- 13 11. The federal district court for the western division of North Dakota is the venue for any
- 14 dispute arising from a revenue-sharing agreement between the state and the Three
- 15 Affiliated Tribes.
- 16 12. The agreement must require that the Three Affiliated Tribes report annually to the
- 17 budget section of the legislative management and that the report, at a minimum,
- 18 informs the budget section of tribal investments in essential infrastructure and fees,
- 19 expenses, and charges the tribe imposes on the oil industry.

20 **SECTION 9. LEGISLATIVE MANAGEMENT STUDY - ANALYSIS OF FUTURE OIL**
21 **INDUSTRY CHANGES - CONSULTANT ASSISTANCE.** The legislative management shall
22 consider studying the likely changes to oil industry practices, production, impacts, and tax policy
23 within the foreseeable future. To assist with this study, the legislative management may obtain
24 the services of an independent consultant with demonstrated insight into current and future
25 production advances, including use of carbon dioxide and water or other means of enhancing
26 production; effects of mature production areas on state and local tax policy; future infrastructure
27 needs; and environmental considerations. The objective of the study is development of a
28 legislative vision of appropriate long-term policy issues and revenue and expenditure
29 expectations. The legislative management shall report its findings and recommendations,
30 together with any legislation to implement the recommendations, to the sixty-fourth legislative
31 assembly.

- 1 **SECTION 10. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable years
- 2 beginning after December 31, 2013, and the remainder of this Act is effective for taxable events
- 3 occurring after June 30, 2013.