# STATE TAX INCENTIVES FOR COAL, OIL AND GAS, AND WIND

This memorandum provides information on the availability of state tax incentives for coal, oil and gas, and wind resources.

## COAL SEVERANCE TAX

The coal severance tax is imposed on the act of removing coal from the earth pursuant to North Dakota Century Code Chapter 57-61. The tax is in lieu of both the sales and use taxes on coal and the property tax on minerals in the earth. The coal severance tax applies to all coal severed for sale or industrial purposes, except coal used for heating buildings in the state, coal used by the state or any political subdivision of the state, and coal used in agricultural processing facilities in the state or adjacent states. The tax is applied at a rate of 37.5 cents per ton. An additional 2 cents per ton tax is levied for the lignite research fund. A 50 percent reduction of the 37.5 cent tax is allowed for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output. A county may grant a partial or complete exemption from the county's 70 percent portion of the 37.5 cent tax for coal that is shipped out of state.

## COAL CONVERSION PRIVILEGE TAX

The coal conversion tax is imposed in lieu of property taxes on the operator of each coal conversion facility pursuant to Chapter 57-60. The land on which the facility is located remains subject to property taxes. The privilege tax on coal conversion facilities is applied based on the type of coal conversion facility as follows:

- **Electrical generating plants** - Electrical generating plants are subject to two separate levies. One levy is a .65 mill times 60 percent of installed capacity times the number of hours in the taxable period, and the other levy is .25 mill per kilowatt-hour of electricity produced for sale. Installed capacity means the number of kilowatts a power unit can produce as displayed on the nameplate assigned to the turbine of the power unit.
- **Other coal conversion plants:**

  **Coal gasification plants** - A coal gasification plant is subject to a monthly tax in the amount of 13.5 cents per thousand cubic feet of synthetic natural gas produced for sale, or 2 percent of gross receipts, whichever is greater.

  **Plants converting coal to products other than gas** - These plants are taxed at a rate of 2 percent of gross receipts.

  **Coal beneficiation plants** - The tax rate for a coal beneficiation plant is 20 cents per ton of beneficiated coal produced for sale, or 1.25 percent of gross receipts, whichever is greater.

Exemptions to the coal conversion tax include:

- Beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility.
- A new or repowered coal-burning electrical generation plant is exempt from the general fund portion of both levies for 5 years. The county may grant an exemption for up to 5 years from the county's 15 percent share of the levy on installed capacity.
- All new coal conversion plants other than electrical generating plants are exempt from the general fund's 85 percent share of the tax for 5 years. The county may grant a partial or complete exemption from the county's 15 percent share for up to 5 years.
- A coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions during a taxable period receives a 20 percent reduction in the general fund share of the tax, and an additional reduction of 1 percent for every additional 2 percentage points of carbon dioxide emissions captured, up to a 50 percent reduction for 80 percent or more capture. The reduction is available for 10 years from the date of the first capture or from the date the facility is eligible to receive the credit. A coal conversion facility that met the carbon dioxide capture requirements before January 1, 2017, is not eligible for the reduction.

Additional state tax incentives pertaining to coal include:

- A sales and use tax exemption for machinery or equipment used to produce coal from a new mine. The exemption for each mine is limited to the first $5 million of sales and use tax paid pursuant to Section 57-39.2-04.8.

- A sales tax exemption for materials used to construct or expand a facility used to extract or process byproducts associated with coal gasification pursuant to Section 57-39.2-04.11.
- A sales and use tax exemption for materials used to construct, expand, repower, or add environmental upgrades to an electrical generation plant, and all additions thereto, which processes or converts coal into electrical power pursuant to Sections 57-39.2-04.2 and 57-40.2-04.2.
- A sales and use tax exemption on gross receipts from the initial sale of beneficiated coal and the sale of coal that is exempt from the coal severance tax pursuant to Sections 57-39.2-04 and 57-40.2-04.
- A property tax exemption for each coal conversion facility and any carbon dioxide capture system located at a coal conversion facility pursuant to Section 57-60-06. The property tax exemption does not apply to the land on which the facility or capture system is located.

## TAX ON NATURAL GAS ENERGY SOURCES

Generators of electricity from sources other than coal or wind, with a generation capacity of 100 kilowatts or more, are subject to payments in lieu of taxes pursuant to Section 57-33.2-04. Payments in lieu of taxes consist of a tax of 50 cents per kilowatt times the rated capacity of the generation unit, plus a tax of 1 mill per kilowatt-hour of electricity generated by the production unit during the taxable period.

## OIL AND GAS GROSS PRODUCTION TAX

Pursuant to Chapter 57-51, a gross production tax of 5 percent of the gross value at the well is levied upon all oil produced in the state except a royalty interest in oil produced from an interest held by an organized Indian tribe or produced from a state, federal, or municipal holding. A gross production tax is levied upon all gas produced in the state and is calculated by multiplying taxable production by an annually adjusted flat rate per thousand cubic feet.

Exemptions from the gross production tax include:

- Gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding, or from an interest held by an organized Indian tribe.
- Shallow gas produced during the first 24 months of production following the date gas was first sold from a shallow gas well and gas produced from a shallow gas well during testing, but prior to well completion, or during connection to a pipeline pursuant to Section 57-51-02.4.
- Gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well pursuant to Section 57-51-02.5.
- Gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption pursuant to Section 57-51-02.6.

## OIL EXTRACTION TAX

The oil extraction tax is levied on the extraction of oil from the earth pursuant to Chapter 57-51.1. As originally enacted, the tax rate was established at 6.5 percent of the gross value of oil at the well, subject to full or partial exemptions.

Legislation passed during the 2015 legislative session reduced the overall tax rate and eliminated various oil extraction tax exemptions and rate reductions. Beginning January 1, 2016, the oil extraction tax rate was reduced from 6.5 to 5 percent and is subject to change depending on the average price of a barrel of crude oil. If the average price of a barrel of crude oil exceeds the trigger price of $90 for 3 consecutive months, the rate increases to 6 percent on all oil extracted. The rate remains at 6 percent until the average price of a barrel of crude oil falls below the trigger price of $90 for 3 consecutive months, at which time the rate reverts to 5 percent on all oil extracted.

Production that remained exempt from the oil extraction tax after December 31, 2015, includes:

- Liquids produced from a collection system employed to avoid flaring, which are exempt for a period of 2 years and 30 days from the time of first production;
- Production that is exempt from the gross production tax imposed by Chapter 57-51;
- Production from stripper well property or an individual stripper well;
- Incremental production from a secondary recovery project for 5 years from the date incremental production begins;

- Incremental production from a tertiary recovery project for 10 years from the date incremental production begins; and
- Incremental production from a tertiary recovery project for 5 years from the date incremental production begins if the project is located outside the Bakken and Three Forks Formations.

Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks Formations is not exempt from oil extraction tax from July 1, 2015, through June 30, 2017, but is thereafter exempt for a period of 5 years from July 1, 2017, or the date incremental production begins, whichever is later.

Production that continues to be subject to a reduced oil extraction tax rate after December 31, 2015, includes production from wells drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation. The first 75,000 barrels of oil produced during the first 18 months after completion are subject to a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

Additional state tax incentives pertaining to oil and gas include:

- A sales and use tax exemption for materials used to reduce emissions, increase efficiency, or enhance the reliability of equipment at a new or existing oil refinery or gas processing plant pursuant to Sections 57-39.2-04.2 and 57-40.2-04.2.
- A sales and use tax exemption for gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas pursuant to Sections 57-39.2-04 and 57-40.2-04.
- A sales tax exemption for gross receipts from sales of natural gas or sales of fuels used for heating purposes pursuant to Section 57-39.2-04.
- A sales and use tax exemption for materials used to construct or expand a system used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility in this state pursuant to Sections 57-39.2-04.5 and 57-40.2-03.3.
- A sales and use tax exemption for materials used to expand or construct an oil refinery that has a nameplate capacity of processing at least 5,000 barrels of oil per day pursuant to Sections 57-39.2-04.6 and 57-40.2-03.3.
- A sales and use tax exemption for materials used to construct or expand a processing facility to produce liquefied natural gas pursuant to Sections 57-39.2-04.10 and 57-40.2-03.3.
- A sales tax exemption for materials used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for use in enhanced recovery of oil or natural gas pursuant to Sections 57-39.2-04.14 and 57-40.2-03.3.
- A property tax exemption for equipment, machinery, tools, materials, and property necessary, and actually being used at the site of a producing well, for the production of oil and gas pursuant to Section 57-51-04. The property tax exemption expressly does not apply to drilling rigs, gasoline extraction or absorption plants, water systems, fuel systems, hospitals, residences, and various other buildings.
- A property tax exemption for any equipment directly used for enhanced recovery of oil or natural gas pursuant to Section 57-60-06. The property tax exemption does not apply to the land on which the equipment is located.
- A property tax exemption for property, exclusive of land, and necessary associated equipment for the transportation or storage of carbon dioxide for use in enhanced recovery of oil or natural gas pursuant to Section 57-06-17.1. The property tax exemption applies for the first 10 full taxable years following the initial operation of the pipeline, but does not apply to the land on which the property and associated equipment is located.

## TAX ON WIND ENERGY SOURCES

Wind turbine electrical generation units are either subject to property tax, pursuant to Section 57-06-14.1, or payments in lieu of property tax, pursuant to Section 57-33.2-04.

Section 57-06-14.1 provides centrally assessed wind turbine electrical generation units with a nameplate generation capacity of 100 kilowatts or more, on which construction is completed before January 1, 2015, must be valued at 3 percent of assessed value to determine taxable valuation unless the electrical generation unit qualifies for a lower valuation of 1.5 percent of assessed value. A centrally assessed wind turbine electric generation unit is a unit that produces electric power for public use. Electrical generation units with a nameplate generation capacity of 100 kilowatts or more, for which a purchased power agreement was executed after April 30, 2005, and before July 1, 2006, and electrical generation units on which construction is completed after June 30, 2006, and before January 1, 2015, must be valued at 1.5 percent of assessed value to determine taxable valuation.

Electrical generation units with a nameplate generation capacity of 100 kilowatts or more, on which construction is completed after December 31, 2014, or which is 20 years or more from the date of first assessment, are subject to payments in lieu of property taxes pursuant to Section 57-33.2-04. Payments in lieu of taxes consist of a tax of $2.50 per kilowatt times the rated capacity of a wind generator, plus a tax of .5 mill per kilowatt-hour of electricity generated by the wind generator during the taxable period.

Additional state tax incentives pertaining to wind, for which the qualifying periods have recently expired, include:

- A sales and use tax exemption for materials and equipment used to construct or expand a wind-powered electrical generation facility, on which construction was completed before January 1, 2017, which has at least one single electrical energy generation unit with a nameplate capacity of 100 kilowatts or more pursuant to Sections 57-39.2-04.2 and 57-40.2-04.2. An operator that did not receive a sales tax exemption certificate at the time of purchase may apply to the Tax Commissioner for a refund of sales and use tax paid on qualifying materials and equipment.
- An income tax credit, pursuant to Section 57-38-01.8, for the cost of installing a wind energy device on which construction was commenced before January 1, 2015, and which was installed before January 1, 2017. The credit for wind energy devices installed before January 1, 2001, is equal to 5 percent per year for 3 years, and for devices installed after December 31, 2000, is equal to 3 percent per year for 5 years of the actual cost of acquiring and installing the wind energy device. Any credit amount exceeding a taxpayer's liability may be carried forward to each of the 30 succeeding taxable years for credits earned for wind energy devices installed after September 30, 2008, and before January 1, 2012; 10 succeeding taxable years for credits earned for wind energy devices installed after December 31, 2011; and 5 succeeding taxable years for credits earned for wind energy devices installed during all other qualifying periods.