

## TAX REVENUE COLLECTIONS AND ALLOCATIONS FOR WIND, COAL, AND OIL AND GAS

This memorandum provides information on the tax revenue collections and allocations for wind, coal, and oil and gas.

### WIND TAXATION AND ALLOCATIONS

#### Taxation

Wind turbine electrical generation units are either subject to property tax, pursuant to North Dakota Century Code Section 57-06-14.1, or payments in lieu of property tax based on capacity and generation, 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. 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.

#### Allocations

The taxable value of centrally assessed electrical generation units is subject to the mill levies of the taxing districts in which the property is located. Property tax revenue from centrally assessed electrical generation units is collected by the county and distributed to taxing districts at the same time as locally assessed property tax revenue is collected and distributed.

Revenue collected from the generation and capacity tax under Section 57-33.2-04 is collected by the Tax Commissioner and transferred to the State Treasurer for deposit in the electric generation, transmission, and distribution tax fund. The State Treasurer allocates the revenue deposited in the electric generation, transmission, and distribution fund to counties by April 1<sup>st</sup> of each year pursuant to Section 57-33.2-19. Revenue allocated to counties pursuant to Section 57-33.2-19 must be further allocated by the county auditor among each taxing district in which the wind farm is located in proportion to the respective taxing district's most recent property tax mill rate that applies to the land on which the wind farm is located. If generation turbines are located in more than one county or other taxing district, allocations of capacity tax revenue must be based on the capacity of the turbines within each county or other taxing district. The electricity output for the generation tax must be allocated according to the proportionate share of wind generation capacity within each county or other taxing district in relation to the total capacity of the wind farm.

The following table provides a list of wind companies subject to property tax and includes the county in which the wind company is located, the year in which the wind company was first assessed, the year in which the wind company will transition to paying tax based on generation and capacity pursuant to Section 57-33.2-04, the rated capacity of the wind company, the 2017 taxable value and average mill rate, and the estimated 2017 tax applied to the wind company. The data contained in the table was provided by the Tax Department.

| Companies Subject to Property Tax Under Section 57-06-14.1 | County   | Year of First Assessment | Year of Conversion to Generation and Capacity Tax Under Section 57-33.2-04 | Rated Capacity in Megawatts | Rated Capacity in Kilowatts | 2017 Taxable Value | 2017 Average Mill Rate | Estimated 2017 Tax |
|--|----------|--------------------------|--|-----------------------------|-----------------------------|--------------------|------------------------|--------------------|
| North Dakota Wind LLC                                      | Lamoure  | 2004                     | 2024   | 61.50                       | 61,500                      | \$463,160          | 213.90                 | \$99,070           |
| Velva Windfarm LLC   | McHenry  | 2006                     | 2026   | 11.88                       | 11,880                      | 52,640             | 189.80                 | 9,991              |
| Wilton Wind I (Burleigh Wind)                              | Burleigh | 2006                     | 2026   | 49.50                       | 49,500                      | 346,780            | 217.80                 | 75,529             |
| Oliver Wind I LLC  | Oliver   | 2007                     | 2027   | 50.60                       | 50,600                      | 554,600            | 172.60                 | 95,724             |
| Langdon Wind I LLC   | Cavalier | 2008                     | 2028   | 118.50                      | 118,500                     | 1,391,720          | 211.50                 | 294,349            |
| Oliver Wind II LLC   | Oliver   | 2008                     | 2028   | 48.00                       | 48,000                      | 592,890            | 172.60                 | 102,333            |
| Otter Tail Power - Langdon                                 | Cavalier | 2008                     | 2028   | 40.50                       | 40,500                      | 658,670            | 211.50                 | 139,309            |
| Tatanka Wind Power LLC <sup>1</sup>                        | Dickey   | 2008                     | 2028   | 137.25                      | 137,250                     | 881,910            | 226.10                 | 199,400            |
| Ashtabula Wind I, LLC                                      | Barnes   | 2009                     | 2029   | 148.50                      | 148,500                     | 1,703,220          | 232.00                 | 395,147            |
| Langdon Wind II  | Cavalier | 2009                     | 2029   | 40.50                       | 40,500                      | 598,090            | 211.50                 | 126,496            |
| Otter Tail Power - Ashtabula                               | Barnes   | 2009                     | 2029   | 48.00                       | 48,000                      | 906,740            | 232.00                 | 210,364            |
| Ashtabula Wind II, LLC                                     | Griggs   | 2010                     | 2030   | 120.00                      | 120,000                     | 1,545,210          | 202.70                 | 313,214            |
| Cedar Hills Wind (Montana Dakota Utilities)                | Bowman   | 2010                     | 2030   | 19.50                       | 19,500                      | 343,905            | 165.70                 | 56,985             |
| Otter Tail Power - Luverne                                 | Steele   | 2010                     | 2030   | 49.50                       | 49,500                      | 643,110            | 198.90                 | 127,914            |
| Prairie Winds ND 1 (Basin Electric)                        | Ward     | 2010                     | 2030   | 122.60                      | 122,600                     | 1,326,420          | 292.70                 | 388,243            |
| Rugby Wind LLC   | Pierce   | 2010                     | 2030   | 149.10                      | 149,100                     | 1,134,340          | 219.20                 | 248,647            |
| Wilton Wind II LLC   | Burleigh | 2010                     | 2030   | 49.50                       | 49,500                      | 776,220            | 217.80                 | 169,061            |
| Ashtabula Wind III, LLC                                    | Barnes   | 2011                     | 2031   | 62.40                       | 62,400                      | 1,068,070          | 232.00                 | 247,792            |
| Baldwin Wind LLC   | Burleigh | 2011                     | 2031   | 102.40                      | 102,400                     | 1,077,760          | 217.80                 | 234,736            |
| Total  |          |                          |  | 1,429.73                    | 1,429,730                   | \$16,065,455       |                        | \$3,534,304        |

<sup>1</sup>Tatanka Wind Power LLC has 42.75 megawatts of its total 180 megawatts located in South Dakota.

The following table provides a list of the wind companies subject to a capacity and generation tax in lieu of property tax and includes the county in which the wind company is located, the rated capacity of the wind company, and the generation and capacity tax applied to the company. The data contained in the table was provided by the Tax Department.

| Companies Subject to Generation and Capacity Tax Under Section 57-33.2-04 | County    | Rated Capacity in Megawatts | Rated Capacity in Kilowatts | Tax From Capacity | Tax From Generation | Total 2017 Generation and Capacity Tax |
|---|-----------|-----------------------------|-----------------------------|-------------------|---------------------|--|
| ALLETE, Inc. <sup>1</sup>   | Morton    | 496.60                      | 49,660                      | \$1,241,500       | \$875,683           | \$2,117,183                            |
| Brady Wind, LLC   | Stark     | 149.64                      | 14,964                      | 374,100           | 47,435              | 421,535                                |
| Brady Wind II, LLC  | Hettinger | 0                           | 0                           | 372,420           | 9,284               | 381,704                                |
| BWF Wind (Northern States Power Co.)                                      | Rollete   | 150.00                      | 15,000                      | 375,000           | 311,113             | 686,113                                |
| Courtney Wind (Northern States Power Co.)                                 | Stutsman  | 200.00                      | 20,000                      | 500,000           | 43,191              | 543,191                                |
| Minnkota Power Cooperative  | Nelson    | 1.80                        | 180                         | 4,500             | 2,605               | 7,105                                  |
| Montana-Dakota Utilities Co. (Thunderspirit)                              | Adams     | 107.50                      | 10,750                      | 268,750           | 218,472             | 487,222                                |
| Oliver Wind III, LLC  | Oliver    | 99.20                       | 9,920                       | 248,040           | 2,331               | 250,371                                |
| Total   |           | 1,204.74                    | 120,474                     | \$3,384,310       | \$1,510,114         | \$4,894,424                            |

<sup>1</sup>ALLETE, Inc., is doing business as Minnesota Power.

## COAL TAXATION AND ALLOCATIONS

### Taxation

The tax on coal includes a coal severance tax and a coal conversion facilities privilege tax. The coal severance tax is imposed on the act of removing coal from the earth and is applied at a rate of 37.5 cents per ton pursuant to Chapter 57-61. An additional 2 cent per ton tax also is levied for the lignite research fund.

The coal conversion facilities privilege tax is imposed on the operator of each coal conversion facility pursuant to Chapter 57-60. The tax rate varies based on the type of coal conversion facility. Electrical generating plants are subject to a levy of .65 mill times 60 percent of the installed capacity of the plant times the number of hours in the taxable period, plus a levy of .25 mill per kilowatt-hour of electricity produced for sale. Coal gasification plants are subject to a monthly tax 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 that convert coal to products other than gas are subject to a tax equal to 2 percent of gross receipts. Coal beneficiation plants are subject to a tax equal to 20 cents per ton of beneficiated coal produced for sale, or 1.25 percent of gross receipts, whichever is greater.

### Allocations

Coal severance tax revenue and coal conversion privilege tax revenue is collected by the Tax Commissioner and paid to the State Treasurer. The State Treasurer allocates severance tax revenue collections to the coal development trust fund, lignite research fund, and political subdivisions in accordance with the formula provided in Section 57-62-02. Collections from the additional 2 cent tax are allocated to the lignite research fund.

Pursuant to Section 57-60-14, the State Treasurer allocates 85 percent of coal conversion facilities privilege tax revenue collections received from facilities in each county to the general fund and the remaining 15 percent to the county. Of the amount allocated to the general fund, 5 percent must be allocated to the lignite research fund. The amount allocated to each county under Section 57-60-14 must be further apportioned between the county general fund and the school districts and cities within the county pursuant to Section 57-60-15.

Information regarding the allocation of 2017-19 biennium estimated coal tax revenue collections can be found in the Legislative Council memorandum entitled *2017-19 Biennium Estimated Coal Tax Revenue - Allocation Flowchart* ([Appendix A](#)).

## OIL AND GAS TAXATION AND ALLOCATIONS

### Taxation

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 also is levied upon all gas produced in the state, subject to certain exemptions, and is calculated by multiplying taxable production by an annually adjusted flat rate per thousand cubic feet of gas.

The oil extraction tax is levied on the extraction of oil from the earth, subject to certain exemptions and rate reductions, pursuant to Chapter 57-51.1. 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 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 for 3 consecutive months, at which time the rate reverts to 5 percent on all oil extracted. The trigger price is \$90 as adjusted by the Tax Commissioner each year based on the producer price index for industrial commodities.

### Allocations

Oil and gas gross production tax revenue and oil extraction tax revenue is collected by the Tax Commissioner and paid to the State Treasurer. The State Treasurer allocates the revenue collections pursuant to the formulas provided in Chapters 57-51, 57-51.1, and 57-51.2. Information regarding the allocation of 2017-19 biennium estimated oil and gas tax revenue collections can be found in the Legislative Council memorandum entitled *2017-19 Biennium Estimated Oil and Gas Tax Revenue - Allocation Flowchart* ([Appendix B](#)).