ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - CARBON DIOXIDE CAPTURE AND INJECTION SALES TAX EXEMPTION

Pursuant to North Dakota Century Code Section 54-35-26, created by Senate Bill No. 2057 (2015), a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee every 6 years. The purpose of the review is to ensure economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum is provided to assist in the review of the carbon dioxide capture and injection sales tax exemption and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE CARBON DIOXIDE CAPTURE AND INJECTION SALES TAX EXEMPTION

Sections 57-39.2-04.14 and 57-40.2-03.3 provide a sales and use tax exemption for tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. To qualify for the exemption, the tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. The purchase of replacement equipment does not qualify for the exemption unless the replacement creates an expansion of the system.

To receive the exemption at the time of purchase, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system must receive a certificate from the Tax Commissioner verifying the tangible personal property the owner intends to purchase qualifies for the exemption. If a certificate of exemption is not received before the purchase, the owner may apply to the Tax Commissioner for a refund of the applicable amount of tax paid. If a contractor purchases or installs the tangible personal property, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system may apply for a refund of the amount of sales tax paid by the contractor on qualifying items.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE CARBON DIOXIDE CAPTURE AND INJECTION SALES TAX EXEMPTION

The sales and use tax exemption for tangible personal property 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 was enacted in 2015 with the passage of Senate Bill No. 2318. Upon a review of the legislative history for the bill, the perceived goal of the Legislative Assembly in creating the exemption was to provide a green incentive aimed at encouraging investment in costly carbon dioxide capture and injection systems, reducing carbon dioxide emissions, and increasing oil and gas recovery. The exemption also was viewed as a tool to increase jobs and income tax collections as a result of the construction required to complete systems used to compress, gather, collect, store, transport, or inject carbon dioxide.

The only changes to the exemption following its enactment were made by House Bill No. 1439 (2019), which expanded the exemption to materials used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage. The estimated fiscal impact of the exemption could not be determined during the 2015 legislative session. The amended 2019 provisions are not expected to have a fiscal impact during the 2019-21 biennium.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE CARBON DIOXIDE CAPTURE AND INJECTION SALES TAX EXEMPTION

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department;
3. The North Dakota Economic Development Foundation;
4. EmPower North Dakota; and
5. Coal and oil industry representatives.