

**FIRST ENGROSSMENT  
with Senate 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 and 57-51.1-03,  
4 subsection 1 of section 57-51.1-03.1, and section 57-51.2-02 of the North Dakota Century  
5 Code, relating to oil extraction tax definitions and exemptions and the state-tribal oil tax  
6 agreement; 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. "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. "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. "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. "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. "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. "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. "Stripper well" means a well drilled and completed, or reentered and recompleted as a  
7 horizontal well, after June 30, 2013, whose average daily production of oil during any  
8 preceding consecutive twelve-month period, excluding condensate recovered in  
9 nonassociated production, per well did not exceed ten barrels per day for wells of a  
10 depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of  
11 a depth of more than six thousand feet [1828.80 meters] but not more than ten  
12 thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more  
13 than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations,  
14 and forty barrels per day for wells of a depth of more than ten thousand feet [3048  
15 meters] in the Bakken or Three Forks formation.

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

27 ~~11.~~ 12. "Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By  
28 December thirty-first of each year, the tax commissioner shall compute an indexed  
29 trigger price by applying to the current trigger price the rate of change of the producer  
30 price index for industrial commodities as calculated and published by the United  
31 States department of labor, bureau of labor statistics, for the twelve months ending

1 June thirtieth of that year and the indexed trigger price so determined is the trigger  
2 price for the following calendar year.

3 ~~12.13.~~ "Two-year inactive well" means any well certified by the industrial commission that did  
4 not produce oil in more than one month in any consecutive twenty-four-month period  
5 before being recompleted or otherwise returned to production after July 31, 1995. A  
6 well that has never produced oil, a dry hole, and a plugged and abandoned well are  
7 eligible for status as a two-year inactive well.

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

10 **57-51.1-03. (~~Effective through June 30, 2013~~) Exemptions from oil extraction tax.**

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

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

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

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



1 commenced. The industrial commission shall determine the amount of  
2 primary production in a manner which conforms to the practice and  
3 procedure used by the commission at the time the project is certified.

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

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

1 determine the amount of oil that would have been produced from the unit if  
2 the new secondary recovery project had not been commenced in a manner  
3 that conforms to the practice and procedure used by the commission at the  
4 time the new secondary recovery project is certified.

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

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

30 (6) For purposes of determining the exemption provided for in subdivision b and  
31 with respect to a unit where there is or has been a secondary recovery

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

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

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

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

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

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

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

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

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

11 9. The first seventy-five thousand barrels or the first four million five hundred thousand  
12 dollars of gross value at the well, whichever is less, of oil produced during the first  
13 eighteen months after completion, from a horizontal well drilled and completed after  
14 April 30, 2009, and before July 1, 2015, is subject to a reduced tax rate of two percent  
15 of the gross value at the well of the oil extracted under this chapter. A well eligible for a  
16 reduced tax rate under this subsection is eligible for the exemption for horizontal wells  
17 under subsection 3, if the exemption under subsection 3 is effective during all or part  
18 of the first twenty-four months after completion. The rate reduction under this  
19 subsection becomes effective on the first day of the month following a month for which  
20 the average price of a barrel of crude oil is less than fifty-five dollars. The rate  
21 reduction under this subsection becomes ineffective on the first day of the month  
22 following a month in which the average price of a barrel of crude oil exceeds seventy  
23 dollars. If the rate reduction under this subsection is effective on the date of  
24 completion of a well, the rate reduction applies to production from that well for up to  
25 eighteen months after completion, subject to the other limitations of this subsection. If  
26 the rate reduction under this subsection is ineffective on the date of completion of a  
27 well, the rate reduction under this subsection does not apply to production from that  
28 well at any time.

29 10. The first seventy-five thousand barrels of oil produced during the first eighteen months  
30 after completion, from a well drilled and completed outside the Bakken and Three  
31 Forks formations, 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           ~~(Effective after June 30, 2013) Exemptions from oil extraction tax.~~ The following  
6 activities are specifically exempted from the oil extraction tax:

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

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

5           5. a. The incremental production from a secondary recovery project which has been  
6           certified as a qualified project by the industrial commission after July 1, 1991, is  
7           exempt from any taxes imposed under this chapter for a period of five years from  
8           the date the incremental production begins.

9           b. The incremental production from a tertiary recovery project that does not use  
10          carbon dioxide and which has been certified as a qualified project by the  
11          industrial commission is exempt from any taxes imposed under this chapter for a  
12          period of ten years from the date the incremental production begins. Incremental  
13          production from a tertiary recovery project that uses carbon dioxide and which  
14          has been certified as a qualified project by the industrial commission is exempt  
15          from any taxes imposed under this chapter from the date the incremental  
16          production begins.

17          e. For purposes of this subsection, incremental production is defined in the following  
18          manner:

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

29          (2) 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          prior to July 1, 1991, and where the industrial commission cannot establish

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

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

30 (4) For purposes of determining the exemption provided for in subdivision b and  
31 with respect to a unit where there has not been a secondary recovery

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

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

24 (6) 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 and where the industrial commission can establish an accurate  
27 production decline curve, incremental production means the difference  
28 between the total amount of oil produced from the unit during the tertiary  
29 recovery project and the total amount of oil that would have been produced  
30 from the unit if the tertiary recovery project had not been commenced. For  
31 purposes of this paragraph, the total amount of oil that would have been



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

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

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

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

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

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

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

1 e. ~~The well is drilled and completed on lands held by an Indian tribe if the interest is~~  
2 ~~in existence on August 1, 1997.~~

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

10 **SECTION 6. AMENDMENT.** Subsection 1 of section 57-51.1-03.1 of the North Dakota  
11 Century Code is amended and reenacted as follows:

12 1. To receive, from the first day of eligibility, a tax exemption on production from a  
13 stripper well property or individual stripper well under subsection 2 of section  
14 57-51.1-03, the industrial commission's certification must be submitted to the tax  
15 commissioner within eighteen months after the end of the stripper well property's or  
16 stripper well's qualification period.

17 **SECTION 7. AMENDMENT.** Section 57-51.2-02 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **57-51.2-02. Agreement requirements.**

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

- 21 1. The only taxes subject to agreement are the state's oil and gas gross production and  
22 oil extraction taxes attributable to production from wells located within the exterior  
23 boundaries of the Fort Berthold Reservation.
- 24 2. The state's oil and gas gross production tax under chapter 57-51 and oil extraction tax  
25 under chapter 57-51.1 must apply to all wells located within the Fort Berthold  
26 Reservation.
- 27 3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas  
28 production ~~attributable to trust lands~~ on the Fort Berthold Reservation may not exceed  
29 six and one-half percent but may be reduced through negotiation between the  
30 governor and the Three Affiliated Tribes.

- 1       4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and  
2       57-51.1 do not apply to production within the boundaries of the Fort Berthold  
3       Reservation except as otherwise provided in the agreement.
- 4       5. The allocation of revenue from oil and gas production taxes on the Fort Berthold  
5       Reservation must be as follows:
  - 6       a. Production attributable to trust lands. All revenues and exemptions from all oil  
7       and gas gross production and oil extraction taxes attributable to production from  
8       trust lands on the Fort Berthold Reservation must be evenly divided between the  
9       tribe and the state.
  - 10      b. All other production. ~~The tribe must receive twenty percent of the total oil and gas~~  
11      ~~gross production taxes collected from all production~~All revenues and exemptions  
12      from all oil and gas gross production and oil extraction taxes attributable to  
13      production from nontrust lands on the Fort Berthold Reservation must be evenly  
14      divided between the tribe and the state in lieu of the application of the Three  
15      Affiliated Tribes' fees and taxes related to production on such lands. ~~The state~~  
16      ~~must receive the remainder.~~
  - 17      c. The state's share of the revenue as divided in subdivisions a and b is subject to  
18      distribution among political subdivisions as provided in chapters 57-51 and  
19      57-51.1.
- 20      6. An oil or gas well that is drilled and completed during the time of an agreement under  
21      this chapter must be subject to the terms of the agreement for the life of the well.
- 22      7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future  
23      production of oil and gas on the Fort Berthold Reservation during the term of the  
24      agreement.
- 25      8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the  
26      agreement must allow the tax commissioner to offset future distributions to the tribe.
- 27      9. The tax commissioner must retain authority to administer and enforce chapters 57-51  
28      and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
- 29      10. An oil or gas well that is drilled and completed during the time an agreement under this  
30      chapter is in effect is subject to state regulatory provisions for the life of the well in  
31      addition to any other applicable regulatory provisions.

1        11.    The federal district court for the western division of North Dakota is the venue for any  
2                dispute arising from a revenue-sharing agreement between the state and the Three  
3                Affiliated Tribes.

4        **SECTION 8. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable years  
5 beginning after December 31, 2013, and the remainder of this Act is effective for taxable events  
6 occurring after June 30, 2013.