

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1467

Introduced by

Representatives Kempenich, Thoreson, S. Meyer, Onstad

Senators Schaible, Wardner

1 A BILL for an Act to amend and reenact section 57-51.1-03 of the North Dakota Century Code,
2 relating to a triggered oil extraction tax rate reduction; to provide an effective date; and to
3 provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-51.1-03. (Effective through June 30, 20122013) Exemptions from oil extraction tax.**

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

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

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

30 **(Effective after June 30, 20122013) Exemptions from oil extraction tax.** The following
31 activities are specifically exempted from the oil extraction tax:

- 1 1. The activity of extracting from the earth any oil that is exempt from the gross
2 production tax imposed by chapter 57-51.
- 3 2. The activity of extracting from the earth any oil from a stripper well property.
- 4 3. For a well drilled and completed as a vertical well, the initial production of oil from the
5 well is exempt from any taxes imposed under this chapter for a period of fifteen
6 months, except that oil produced from any well drilled and completed as a horizontal
7 well is exempt from any taxes imposed under this chapter for a period of twenty-four
8 months. Oil recovered during testing prior to well completion is exempt from the oil
9 extraction tax. The exemption under this subsection becomes ineffective if the average
10 price of a barrel of crude oil exceeds the trigger price for each month in any
11 consecutive five-month period. However, the exemption is reinstated if, after the
12 trigger provision becomes effective, the average price of a barrel of crude oil is less
13 than the trigger price for each month in any consecutive five-month period.
- 14 4. The production of oil from a qualifying well that was worked over is exempt from any
15 taxes imposed under this chapter for a period of twelve months, beginning with the
16 first day of the third calendar month after the completion of the work-over project. The
17 exemption provided by this subsection is only effective if the well operator establishes
18 to the satisfaction of the industrial commission upon completion of the project that the
19 cost of the project exceeded sixty-five thousand dollars or production is increased at
20 least fifty percent during the first two months after completion of the project. A
21 qualifying well under this subsection is a well with an average daily production of no
22 more than fifty barrels of oil during the latest six calendar months of continuous
23 production. A work-over project under this subsection means the continuous
24 employment of a work-over rig, including recompletions and reentries. The exemption
25 provided by this subsection becomes ineffective if the average price of a barrel of
26 crude oil exceeds the trigger price for each month in any consecutive five-month
27 period. However, the exemption is reinstated if, after the trigger provision becomes
28 effective, the average price of a barrel of crude oil is less than the trigger price for
29 each month in any consecutive five-month period.
- 30 5. a. The incremental production from a secondary recovery project which has been
31 certified as a qualified project by the industrial commission after July 1, 1991, is

1 exempt from any taxes imposed under this chapter for a period of five years from
2 the date the incremental production begins.

3 b. The incremental production from a tertiary recovery project that does not use
4 carbon dioxide and which has been certified as a qualified project by the
5 industrial commission is exempt from any taxes imposed under this chapter for a
6 period of ten years from the date the incremental production begins. Incremental
7 production from a tertiary recovery project that uses carbon dioxide and which
8 has been certified as a qualified project by the industrial commission is exempt
9 from any taxes imposed under this chapter from the date the incremental
10 production begins.

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

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

23 (2) 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 prior to July 1, 1991, and where the industrial commission cannot establish
26 an accurate production decline curve, incremental production means the
27 difference between the total amount of oil produced from the unit during a
28 new secondary recovery project and the amount of production which would
29 be equivalent to the average monthly production from the unit during the
30 most recent twelve months of normal production reduced by a production
31 decline rate of ten percent for each year. The industrial commission shall

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

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

24 (4) For purposes of determining the exemption provided for in subdivision b and
25 with respect to a unit where there has not been a secondary recovery
26 project, incremental production means the difference between the total
27 amount of oil produced from the unit during the tertiary recovery project and
28 the amount of primary production from the unit. For purposes of this
29 paragraph, primary production means the amount of oil which would have
30 been produced from the unit if the tertiary recovery project had not been
31 commenced. The industrial commission shall determine the amount of

- 1 primary production in a manner which conforms to the practice and
2 procedure used by the commission at the time the project is certified.
- 3 (5) 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, incremental production means the difference between the total
6 amount of oil produced during the tertiary recovery project and the amount
7 of production which would be equivalent to the average monthly production
8 from the unit during the most recent twelve months of normal production
9 reduced by a production decline rate of ten percent for each year. The
10 industrial commission shall determine the average monthly production from
11 the unit during the most recent twelve months of normal production and
12 must upon request or upon its own motion hold a hearing to make this
13 determination. For purposes of this paragraph, when determining the most
14 recent twelve months of normal production the industrial commission is not
15 required to use twelve consecutive months. In addition, the production
16 decline rate of ten percent must be applied from the last month in the
17 twelve-month period of time.
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19 with respect to a unit where there is or has been a secondary recovery
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21 production decline curve, incremental production means the difference
22 between the total amount of oil produced from the unit during the tertiary
23 recovery project and the total amount of oil that would have been produced
24 from the unit if the tertiary recovery project had not been commenced. For
25 purposes of this paragraph, the total amount of oil that would have been
26 produced from the unit if the tertiary recovery project had not been
27 commenced includes both primary production and production that occurred
28 as a result of any secondary recovery project. The industrial commission
29 shall determine the amount of oil that would have been produced from the
30 unit if the tertiary recovery project had not been commenced in a manner

1 that conforms to the practice and procedure used by the commission at the
2 time the tertiary recovery project is certified.

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

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7 commission and certified to the state tax commissioner, for a period of ten years after
8 the date of receipt of the certification. The exemption under this subsection becomes
9 ineffective if the average price of a barrel of crude oil exceeds the trigger price for
10 each month in any consecutive five-month period. However, the exemption is
11 reinstated if, after the trigger provision becomes effective, the average price of a barrel
12 of crude oil is less than the trigger price for each month in any consecutive five-month
13 period.

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

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

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

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

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

29 9. The first seventy-five thousand barrels of oil produced during the first eighteen months
30 after completion, from a horizontal well drilled and completed in the Bakken formation
31 after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two

1 percent of the gross value at the well of the oil extracted under this chapter. A well
2 eligible for a reduced tax rate under this subsection is eligible for the exemption for
3 horizontal wells under subsection 3, if the exemption under subsection 3 is effective
4 during all or part of the first twenty-four months after completion.

5 **SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable
6 events occurring after June 30, 2011, and is effective through June 30, 2013, and is thereafter
7 ineffective.