

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1427

Introduced by

Representatives Headland, D. Anderson, Bosch, Dockter

Senators Kannianen, Meyer, Patten

1 A BILL for an Act to create and enact a new subsection to section 57-51.1-03 of the North
2 Dakota Century Code, relating to an oil extraction tax rate reduction on production from a
3 restimulation well; to amend and reenact sections 57-51.1-01 and 57-51.1-03.1 of the North
4 Dakota Century Code, relating to the definition and certification of a restimulation well; and to
5 provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-51.1-01. Definitions for oil extraction tax.**

10 For the purposes of this chapter:

- 11 1. "Average daily production" of a well means the qualified maximum total production of
12 oil from the well during a calendar month period divided by the number of calendar
13 days in that period, and "qualified maximum total production" of a well means that the
14 well must have been maintained at the maximum efficient rate of production as
15 defined and determined by rule adopted by the industrial commission in furtherance of
16 its authority under chapter 38-08.
- 17 2. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at
18 an angle of at least eighty degrees within the productive formation of at least three
19 hundred feet [91.44 meters].
- 20 3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid
21 hydrocarbons that are recovered from gas on the lease incidental to the production of
22 the gas.
- 23 4. "Property" means the right which arises from a lease or fee interest, as a whole or any
24 designated portion thereof, to produce oil. A producer shall treat as a separate

property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax exemption provided under section 57-51.1-03, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 3 of section 57-51.1-03.

6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:

- a. Miscible fluid displacement.
- b. Steam drive injection.
- c. Microemulsion.
- d. In situ combustion.
- e. Polymer augmented water flooding.
- f. Cyclic steam injection.
- g. Alkaline flooding.
- h. Carbonated water flooding.
- i. Immiscible carbon dioxide displacement.
- j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax exemption provided under section 57-51.1-03, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection 3 of section 57-51.1-03.

- 1 7. "Restimulation well" means a previously completed oil or gas well that, following
2 completion and production of oil, has been treated with an application of fluid under
3 pressure for the purpose of initiating or propagating fractures in a target geologic
4 formation to enhance production of oil. The term does not include a well that:
5 a. Has less than sixty months of production or is producing more than one hundred
6 and twenty-five barrels of oil per day reported to the industrial commission before
7 completion of the restimulation treatment;
8 b. Is part of a qualifying secondary recovery project, qualifying tertiary recovery
9 project, or stripper well or stripper well property as defined under this section; or
10 c. Is drilled but not completed and does not have a record of oil production reported
11 to the industrial commission.

- 12 8. "Royalty owner" means an owner of what is commonly known as the royalty interest
13 and shall not include the owner of any overriding royalty or other payment carved out
14 of the working interest.

- 15 ~~8-9.~~ "Stripper well" means a well drilled and completed, or re-entered and recompleted as
16 a horizontal well, after June 30, 2013, whose average daily production of oil during any
17 preceding consecutive twelve-month period, excluding condensate recovered in
18 nonassociated production, per well did not exceed ten barrels per day for wells of a
19 depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of
20 a depth of more than six thousand feet [1828.80 meters] but not more than ten
21 thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more
22 than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations,
23 and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048
24 meters] in the Bakken or Three Forks formation.

- 25 ~~9-10.~~ "Stripper well property" means wells drilled and completed, or a well re-entered and
26 recompleted as a horizontal well, before July 1, 2013, on a "property" whose average
27 daily production of oil, excluding condensate recovered in nonassociated production,
28 per well did not exceed ten barrels per day for wells of a depth of six thousand feet
29 [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six
30 thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters],
31 and thirty barrels per day for wells of a depth of more than ten thousand feet [3048

meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

SECTION 2. A new subsection to section 57-51.1-03 of the North Dakota Century Code is created and enacted as follows:

The ~~incremental~~ production from a restimulation well that has been certified as a qualified well by the industrial commission after August 1, 2023, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter for the first seventy-five thousand barrels of ~~incremental~~ production or for a period of eighteen months ~~from the date the incremental period begins~~ after the month in which oil was first produced from the restimulation well, whichever occurs first. The tax rate reduction under this subsection does not apply to a well located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57-51.2-02, or a straddle well located on reservation trust land as defined in section 57-51.1-07.10, unless a tribe makes an irrevocable election to opt-in to the tax rate reduction by providing written notice to the tax commissioner. If a tribe provides notice of its election to opt-in to the tax rate reduction, the tax commissioner shall apply the tax rate reduction beginning in the month of production after the notice is received by the tax commissioner.

~~a. For purposes of determining the tax rate reduction in this subsection:~~

~~(1) "Incremental production" means the difference between the total amount of oil produced from the well during the restimulation well recovery and the amount of primary production from the well.~~

~~(2) "Primary production" means the amount of oil that would have been produced from the well if the restimulation had not begun.~~

~~b. The industrial commission shall determine the amount of primary~~
production
certify whether the well qualifies as a restimulation well under section 1 of this Act in a manner that conforms to the practice and procedure used by the
commission at the time the restimulation well is certified.

1 ~~c. The industrial commission shall adopt rules relating to the tax rate reduction~~
2 ~~which must include procedures for determining incremental production.~~

3 **SECTION 3. AMENDMENT.** Section 57-51.1-03.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-51.1-03.1. Stripper well, new well, and secondary or tertiary project, and**
6 **restimulation well certification for tax exemption or rate reduction - Filing requirement.**

- 7 1. To receive the benefits of a tax exemption or tax rate reduction, a certification of
8 qualifying well status prepared by the industrial commission must be submitted to the
9 tax commissioner as follows:
- 10 a. To receive, from the first day of eligibility, a tax exemption on production from a
11 stripper well property or individual stripper well under subsection 2 of section
12 57-51.1-03, the industrial commission's certification must be submitted to the tax
13 commissioner within eighteen months after the end of the stripper well property's
14 or stripper well's qualification period.
- 15 b. To receive, from the first day of eligibility, a tax exemption under subsection 3 of
16 section 57-51.1-03 on production from a secondary or tertiary project, the
17 industrial commission's certification must be submitted to the tax commissioner
18 within eighteen months after the month in which the first incremental oil was
19 produced.
- 20 c. To receive, from the first day of eligibility, a tax exemption or the reduction on
21 production for which any other tax exemption or rate reduction may apply, the
22 industrial commission's certification must be submitted to the tax commissioner
23 within eighteen months of the completion, recompletion, or other qualifying date.
- 24 d. To receive, from the first day of eligibility, a tax rate reduction under section 2 of
25 this Act on production from a restimulation well, the industrial commission's
26 certification must be submitted to the tax commissioner within ~~eighteen~~six
27 months after the month in which the first ~~incremental~~ oil was produced.
- 28 2. If the industrial commission's certification is not submitted to the tax commissioner
29 within the eighteen-month period provided in this section, then the exemption or rate
30 reduction does not apply for the production periods in which the certification is not on
31 file with the tax commissioner. When the industrial commission's certification is

1 submitted to the tax commissioner after the eighteen-month period, the tax exemption
2 or rate reduction applies to prospective production periods only and the exemption or
3 rate reduction is effective the first day of the month in which the certification is
4 received by the tax commissioner.

5 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable production beginning after
6 June 30, 2023.