

**CHAPTER 81-09-02  
OIL AND GAS GROSS PRODUCTION TAX**

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**81-09-02-01. Definitions.**

As used in this chapter and for the administration of North Dakota Century Code chapter 57-51, unless the context otherwise requires:

1. "Casinghead gas" means gas as produced from a well classified as an oil well by the industrial commission.
2. "Commissioner" means the tax commissioner of the state of North Dakota.
3. "Gross value at the well" means fair market value at the time of production.
4. "Natural gas" means gas as produced from a well classified as a gas well by the industrial commission.
5. "Nonoperating interest" means an interest in production from a mineral property which does not share in operating rights. A nonoperating interest includes an overriding royalty interest, a net profit interest, and a carried interest.
6. "Oil" means petroleum, crude oil (including condensate), mineral oil, and casinghead gasoline.

7. "Operator" means the person responsible for the actual physical operation of the producing property.
8. "Person" means an individual, partnership, corporation, association, fiduciary, trustee, and any combination thereof.
9. "Producer" means the owner of a working interest or a nonoperating interest, in a well capable of producing oil or gas, or both.
10. "Purchaser" means any buyer of oil or gas after it has been produced, or any processor of gas. Purchaser does not include one who acquires oil or gas in place in the earth through a lease, estate, or other interest.
11. "Return" means any statement, report, or return required by North Dakota Century Code chapter 57-51 to be filed with the commissioner. To constitute a timely filed original or amended return, a return must be filed on or before the due date and must contain sufficient information by which the commissioner can process the return and determine the correct tax due. In the case of an information return, a return must be filed on or before the due date and must contain sufficient information by which the commissioner can process the return and determine the correct oil and gas volumes to be reported and, where applicable, the gross value of oil produced.
12. "Take-in-kind" means a nonoperator elects to receive production in lieu of proceeds from the sale of production.
13. "Tax" means the oil and gas gross production tax.
14. "Taxpayer" means any person that is responsible for filing a report or paying the tax.
15. "Trunkline" means a pipeline for the transportation of oil or gas from producing areas to refineries or terminals.
16. "Working interest" means a mineral interest which includes the rights granted to a lessee of property to explore for, produce and own, oil or gas.

**History:** Effective July 1, 1982; amended effective August 1, 1986; July 1, 1989; June 1, 1992; April 1, 1995; September 1, 1997.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51

**81-09-02-02. Procedure for review of commissioner's determination of additional tax, penalty, and interest.**

1. The commissioner will review or audit the returns filed pursuant to North Dakota Century Code chapter 57-51.
2.
  - a. If it is determined that additional tax is due, the commissioner shall notify the taxpayer of this determination within the applicable time period specified in North Dakota Century Code section 57-51-09.
  - b. For the purpose of determining whether there has been a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, the change in tax liability must be determined on a well or unit basis, as reported on the return. If no tax has been paid on production from a well or unit for any production month, the requirement of a change in the liability in excess of twenty-five percent is automatically met.

- c. The notice of determination must be sent by certified mail with a return receipt requested and it must state the statutory basis for the determination, the reasons for the determination, and the amount of additional tax due along with the applicable penalty and interest.
3. The notice of determination becomes final and irrevocable unless the taxpayer files a protest and statement of grounds with the commissioner pursuant to section 81-01.1-01-06. If a taxpayer protests only a portion of the commissioner's determination, the portion which is not protested becomes finally and irrevocably fixed. The commissioner shall provide a detailed response to the statement of grounds pursuant to section 81-01.1-01-07.
4. Upon request, the commissioner may grant the taxpayer an informal conference.
5. If a protest and statement of grounds are filed, the commissioner shall reconsider the notice of determination. This reconsideration may include further examination by the commissioner of the taxpayer's books, papers, records, or memoranda, pursuant to section 81-01.1-01-03 and North Dakota Century Code sections 57-01-02 and 57-51-07.
6. Pursuant to section 81-01.1-01-08, the commissioner shall send a notice of reconsideration to the taxpayer by certified mail with a return receipt requested stating the amount of additional tax due, along with the applicable penalty and interest.
7. The notice of reconsideration becomes final and irrevocable unless the taxpayer seeks formal administrative review of the notice by filing a complaint and requesting an administrative hearing pursuant to sections 81-01.1-02-01 and 81-01.1-02-02.1. The complaint must be served personally or by certified mail. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing, including any appeal from a decision rendered by the commissioner.

**History:** Effective July 1, 1982; amended effective August 1, 1986; July 1, 1989; May 1, 1991; June 1, 1992.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 28-01-16, 57-01-02, 57-01-11, 57-51-07, 57-51-09

**81-09-02-03. Procedure for refund of overpayments, duplicate payments, and erroneous payments of tax.**

1. For purposes of this section, "taxpayer" means the party who has actually remitted an overpayment, duplicate payment, or erroneous payment of tax.
2. A claim for credit or refund must be made by filing an amended return with the commissioner.
3. A claim for credit or refund must be made within the applicable time period specified in North Dakota Century Code section 57-51-19. For the purpose of determining whether there has been a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, the change in tax liability must be determined on a well or unit basis, as reported on the return. If no tax has been paid on production from a well or unit for any production month, the requirement of a change in the liability in excess of twenty-five percent is automatically met.
4. The commissioner shall notify the taxpayer as to the amount of refund or credit granted within a reasonable time of the claim. If the commissioner decides to deny the taxpayer's claim for refund or credit, in part or in full, a notice of refund change must be sent by certified mail with a return receipt requested, and it must state the reasons for the decision.
5. The notice of refund change becomes final and irrevocable unless the taxpayer files a protest and statement of grounds with the commissioner pursuant to section 81-01.1-01-06. If a

taxpayer protests only a portion of the commissioner's decision, the portion which is not protested becomes finally and irrevocably fixed. The commissioner shall provide a detailed response to the statement of grounds pursuant to section 81-01.1-01-07.

6. Upon request, the commissioner may grant the taxpayer an informal conference.
7. If a protest and statement of grounds are filed, the commissioner shall reconsider the notice of refund change. This reconsideration may include further examination by the commissioner of the taxpayer's books, papers, records, or memoranda, pursuant to section 81-01.1-01-03 and North Dakota Century Code sections 57-01-02 and 57-01-07.
8. Pursuant to section 81-01.1-01-08, the commissioner shall send a notice of reconsideration to the taxpayer by certified mail with a return receipt requested stating the amount of refund or credit denied.
9. The notice of reconsideration becomes final and irrevocable unless the taxpayer seeks formal administrative review of the notice by filing a complaint and requesting an administrative hearing pursuant to sections 81-01.1-02-01 and 81-01.1-02-02.1. The complaint must be served personally or by certified mail. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing procedure, including an appeal from any decision rendered by the commissioner.

**History:** Effective October 1, 1987; amended effective July 1, 1989; May 1, 1991; June 1, 1992; April 1, 1995; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-01-02, 57-01-07, 57-51-19

#### **81-09-02-03.1. Interest on refunds.**

The commissioner does not have the authority to pay interest on a claim for credit of tax. Interest of ten percent per annum must be paid on tax refunds. The daily interest rate is .000277. Interest accrues from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later, through the date the refund is mailed to the taxpayer.

**History:** Effective July 1, 1989; amended effective June 1, 1992; August 1, 1994; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-19

#### **81-09-02-03.2. Procedure for limited review of amended returns submitted with claim for credit or refund.**

1. Upon receipt of an amended return submitted with a claim for credit or refund, the commissioner shall perform a limited review to determine that tax was paid with a previously filed return and that the amended return is completed properly.
2. Mathematical or clerical errors as defined in section 81-01.1-01-02 may be corrected by the commissioner after notification is provided to the taxpayer.
3. When the tax commissioner grants a tax credit, the taxpayer will be notified by written confirmation of the amount of the tax credit which may be used to reduce a future tax liability.
4. When the tax commissioner grants a tax refund, a refund check will be issued to the taxpayer.
5. Nothing in this rule is intended to preclude the commissioner's authority to audit the information reported on the amended return or to assess tax due.

**History:** Effective June 1, 1992; amended effective April 1, 1995; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-19

**81-09-02-04. Due dates for filing a return and paying tax.**

If the due date for filing a return and paying the tax owed falls on a Saturday, Sunday, or legal holiday, the return and payment are due on the next business day. If a taxpayer is required to file an amended return, this return is due on the date set by the commissioner. A return is delinquent if it is postmarked or transmitted after the due date. A payment is delinquent if it is postmarked, or an electronic payment is initiated, after the due date.

**History:** Effective July 1, 1989; amended effective June 1, 2002; April 1, 2006.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-05, 57-51-06, 57-51-10

**81-09-02-05. Extension of due date for filing a return or paying tax.**

1. A taxpayer may request that the due date for payment of the tax be extended by a maximum of fifteen days. In addition, a taxpayer may request that the due date for filing a return be extended. However, if tax is due with the return, the due date for filing will only be extended by a maximum of fifteen days.
2. A taxpayer may request an extension of time either verbally or in writing. A verbal request must be made on or before the due date for paying the tax or filing the return. A written request must be received by the commissioner on or before the due date for paying the tax or filing the return. Both a verbal and written request must advise the commissioner as to why the extension of time is needed.
3. If a request for an extension of time is approved verbally, the taxpayer shall submit written notice to the commissioner confirming this fact within five days of the date the request was approved. If a request is not approved verbally, the commissioner shall promptly notify the taxpayer in writing as to whether the request is approved or denied.
4. If a request for an extension of time for filing a return is approved, the taxpayer shall compute and pay with the return extension interest at the rate of twelve percent per annum. The daily interest rate is .000333. Interest is computed from the original due date of the return to the date the tax is paid, which is the date the payment is mailed or an electronic payment is initiated.

**History:** Effective July 1, 1989; amended effective June 1, 1992; April 1, 2006.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-05, 57-51-06

**81-09-02-06. Penalty for failure to file a return and procedure for review of imposition of penalty.**

1. The term "taxpayer" includes any person or entity that is responsible for filing a tax or information return.
2. For purposes of this section, the terms "tax return" and "information return" have the meanings provided in section 81-09-02-01.
3. A taxpayer is subject to a penalty of twenty-five dollars per day for each well or unit for which a tax or information return has not been filed. This penalty must be collected in the same manner as gross production taxes and apportioned as other gross production tax penalties.

4. The commissioner shall notify the taxpayer of imposition of the failure to file penalty by certified mail, return receipt requested. The notice of imposition of failure to file penalty must specify the wells or units for which a return was not filed, the reporting periods for which a return was not filed, and the amount of penalty assessed. If the taxpayer objects to the imposition of the penalty, the taxpayer may protest by filing an administrative complaint with the commissioner within thirty days of the notice of imposition of penalty for failure to file a return. The taxpayer will be granted an automatic extension of thirty days to file a complaint, provided the taxpayer makes a request for extension within thirty days of the notice. If the taxpayer fails to protest within thirty days of the notice and the penalty remains unpaid, the commissioner may bring an action to collect the penalty for failure to file a return. The two-year statute of limitations on actions under North Dakota Century Code section 28-01-18 applies to imposition of this penalty by the commissioner and to protest of this penalty by the taxpayer.
5. The taxpayer may request a hearing before the commissioner relating to the imposition of the penalty for failure to file a return. An administrative complaint filed by the taxpayer must be served personally or by certified mail. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing, including any appeal from a decision rendered by the commissioner.

**History:** Effective July 1, 1989; amended effective April 1, 1995; April 1, 2006.

**General Authority:** NDCC 28-01-18, 57-51-21

**Law Implemented:** NDCC 57-51-06

#### **81-09-02-06.1. Penalty and interest on delinquent tax.**

1. A penalty is imposed on delinquent tax in the amount of five percent of the delinquent tax or five dollars, whichever is greater. This penalty does not apply to delinquent tax reported on an amended return if:
  - a. Ninety percent of the total combined tax liability, reported on the original return and amended returns, was paid with the taxpayer's original return; and
  - b. The amended return is filed and all delinquent tax is paid within sixty days of the due date of the original return.
2. Interest is imposed on delinquent tax at a rate of one percent per month for each calendar month or any part of a month in which the tax remains unpaid, except that interest is not imposed in the month the delinquent tax became due.

The commissioner will consider a taxpayer's oral or written request for a waiver of penalty and interest and may grant a waiver in accordance with sections 81-01.1-01-09 and 81-01.1-01-10.

Penalty and interest collected by the commissioner on delinquent tax must be apportioned in the same manner as the delinquent tax.

The amount of penalty and interest due will be determined in the following manner:

- a. The penalty and interest rates must be applied to delinquent tax for each production period. Multiple tax underpayments for different production periods will not be combined to calculate penalty and interest. Tax overpayments and tax underpayments for different production periods will not be offset to calculate penalty and interest.
- b. The penalty and interest rates must be applied to the delinquent tax computed on an original or amended return. Tax overpayments and tax underpayments for individual well or unit entries on a single return will be offset and the penalty and interest computed on

the net delinquent tax. Tax overpayments and tax underpayments reported on separate returns for the same production period will not be offset.

**History:** Effective April 1, 1995.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-05(1), 57-51-10

#### **81-09-02-07. Injected oil.**

When produced from and injected into the same well, oil must be reported as production upon recovery after injection.

When produced from one well and transported to a second well, oil injected into the second well must be reported as production from the first well and tax is due at the time the oil is transported to the second well. In determining production from the second well, injected oil must be excluded from production. The amount excluded must be applied against the first oil recovered after injection.

Injected oil includes, but is not limited to, what is commonly known as power oil, frac oil, and load oil.

**History:** Effective June 1, 1992.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02, 57-51-05

#### **81-09-02-08. Determination of gross value.**

Repealed effective June 1, 2002.

#### **81-09-02-09. Definition of arm's length contract.**

As used in North Dakota Century Code chapter 57-51, "arm's length contract" means a contract or agreement executed by a willing buyer and a willing seller, neither party being affiliated. For purposes of this definition, a contract or agreement between affiliated parties is any contract or agreement between a parent and a wholly or partially owned subsidiary, or between entities wholly or partially owned by a common parent, or between persons otherwise affiliated through ownership or economic relationships.

**History:** Effective June 1, 1992.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51-01, 57-51-02.3

#### **81-09-02-09.1. Reduction from gas volumes and reporting.**

1. To determine the volume of gas upon which gross production tax must be paid, the following may be deducted from the total volume of gas produced and must be reported to the commissioner:
  - a. Wet gas and gas products exempt from taxation pursuant to subsection 3 of North Dakota Century Code section 57-51-05. The volume of gas to be deducted for the wet gas and gas products must be computed using the formulas prescribed in forms provided by the commissioner.
  - b. Condensate reported as oil. The volume of gas to be deducted for each barrel of condensate must be computed using the formula prescribed in forms provided by the commissioner.

- c. Gas flared from an oil well by a producer that is not subject to taxation pursuant to North Dakota Century Code section 38-08-06.4.
  - d. In the event a substance is being injected into a reservoir as a part of a tertiary recovery project, and the amount of nonhydrocarbon gas produced from a well is disproportionately increased as a result of the project, the total volume of gas produced from the well may be adjusted subject to the approval of the commissioner in a manner approved by the commissioner.
2. A producer is not required to report exempt lease use gas and gas flared from an oil well that is not connected to a gas gathering line if the producer submits the following to the commissioner:
- a. A chemical analysis of the flared gas, if available;
  - b. After the first year's production, an industrial commission order exempting the producer from the provisions of North Dakota Century Code section 38-08-06.4; and
  - c. A written statement stating the specific use of exempt gas volumes used on the lease.

**History:** Effective June 1, 1992; amended effective April 1, 1995.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-01, 57-51-05

**81-09-02-10. Condensate recovered from a gas stream.**

1. For the purposes of this section, the following definitions apply:
- a. "Condensate" means all liquid hydrocarbons recovered from a gas stream in a gathering system after the custody transfer meter but before processing at a gas plant. Condensate is otherwise referred to as "pigging liquids", "gathering system condensate", or "drip".
  - b. "Gross value" of condensate at the point of recovery means the price paid under an arm's length contract for the sale of oil as defined in North Dakota Century Code section 57-51-02.3.
  - c. "Processing" means any process designed to remove elements or compounds, hydrocarbons and nonhydrocarbons, from gas, including absorption, adsorption, or refrigeration. Field processes that normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing.
2. Gross value at the well includes the value of condensate from associated and nonassociated production. There may be deducted from the gross value of condensate certain costs incurred to recover the condensate from a gas stream after the custody transfer meter. Effective January 1, 1995, the costs of recovery must be calculated and deducted from the gross value of condensate under either of the following methods:
- a. By multiplying fifteen percent times the gross value of the condensate, using a gross value that is finally determined by the commissioner. This method establishes conclusively the costs of recovery of the condensate from a gas stream; or
  - b. By using reasonable actual costs incurred to recover the condensate from a gas stream after the custody transfer meter. Actual costs do not include proceeds retained under a gas sales or gas processing agreement between a producer and a purchaser or processor. If the method under this subdivision is elected, the costs of recovery must be fully substantiated upon request and are subject to audit by the commissioner.



The value of condensate is included in gross value regardless of the point at which it is recovered. This includes condensate recovered at the lease site, gas gathering lines, compressor station, and inlet separator of a processing plant.

The commissioner shall review the cost of recovery methods under subdivisions a and b of subsection 2 after the cost of recovery provision has been in effect for two years.

**History:** Effective August 1, 1986; amended effective April 1, 1995; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02

**81-09-02-11. Tax reimbursement.**

Repealed effective September 1, 1997.

**81-09-02-12. Postproduction costs for periods prior to July 1, 1991.**

Repealed effective September 1, 1997.

**81-09-02-13. Measurement or determination of oil or gas production.**

The volume of oil or gas to be reported is the gross amount of oil or gas produced. When measuring or determining the amount of oil production, a reasonable deduction may be made for basic sediment and water and a reasonable allowance may be made for correction of the temperature to sixty degrees Fahrenheit [15.55 degrees Celsius]. When measuring or determining the amount of gas production, the measurement must be at a pressure base of 14.73 pounds per square inch absolute and a standard temperature base of sixty degrees Fahrenheit [15.55 degrees Celsius].

The amount of production is generally measured or determined at the lease by tank tables, meters, or other measuring devices. However, the commissioner may verify the accuracy of measurements or determinations made at the lease by comparing those amounts with measurements or determinations made at some other point.

**History:** Effective July 1, 1989.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02

**81-09-02-14. Taxation of volume gains.**

1. An oil purchaser that has realized a volume gain resulting from differing measurements of the oil must report and pay tax on the volume gain. An oil purchaser that has incurred a volume loss resulting from differing measurements of the oil may utilize the volume loss on a first-in first-out basis to offset a volume gain in subsequent periods as follows. An oil purchaser may utilize the loss to offset a gain at another trunkline measuring point. A volume loss may be carried forward for three years after the due date of the return for the production month in which the loss was incurred.
2. The amount of volume gain and volume loss must be calculated for each month and reported. The amount of volume gain must be reported on the oil return in the month succeeding production.
3. A volume gain or volume loss is calculated by subtracting the total amount of oil received by the purchaser as measured at the well from the total amount of oil delivered by the purchaser as measured at the trunkline. If this calculation results in a positive number, there is a volume gain. If this calculation results in a negative number, there is a volume loss. A volume gain or

loss may be adjusted for a volume gain or loss attributable to production outside North Dakota.

4. A volume gain cannot be decreased and a volume loss cannot be increased by oil lost due to spillage, leakage, fire, theft, or any other event resulting in a physical loss of oil.

**History:** Effective June 1, 1992; amended effective September 1, 1997; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02, 57-51-05, 57-51-06

#### **81-09-02-14.1. Taxation of oil pipeline volume gains.**

1. Each operator of an oil pipeline in North Dakota must file a report with the tax commissioner showing its volume gains and volume losses for the calendar year. The report may be filed in the form of the pipeline's "over and short" report compiled during the ordinary course of its business. The annual report must be filed by the twenty-fifth day of February following the end of the calendar year.
2. The volume gains and losses must be calculated on a monthly basis by subtracting the total amount of oil received by the pipeline as measured at the well or at the trunkline from the total amount of oil delivered by the pipeline as measured at a subsequent point. If this calculation results in a positive number, there is a volume gain. If this calculation results in a negative number, there is a volume loss.
3. For purposes of calculating a volume gain or volume loss under this section, a volume gain cannot be decreased and a volume loss cannot be increased by oil lost due to spillage, leakage, fire, theft, or any other event resulting in a physical loss of oil.

**History:** Effective September 1, 1997.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02, 57-51-05, 57-51-06

#### **81-09-02-15. Exempt royalty interests.**

1. A royalty interest in oil or gas is exempt from the gross production tax if the royalty interest is owned by any of the following entities and that entity's immunity from taxation has not been waived by the appropriate governmental authority:
  - a. The federal government or an instrumentality of the federal government.
  - b. The state of North Dakota or its political subdivisions.
  - c. An organized Indian tribe, whose land cannot be alienated without consent of the federal government.
2. A royalty interest in production which is owned by a private or charitable organization, whether profit or nonprofit, is not exempt from the gross production tax.
3. For oil, the value of an exempt royalty interest is limited to the lesser of the following:
  - a. The amount of any royalty payments made to the entities listed in subdivisions a, b, and c of subsection 1.
  - b. The royalty percentage attributable to the entities listed in subdivisions a, b, and c of subsection 1 times the total amount reported as the gross value at the well.

4. For gas, the volume of an exempt royalty interest is the royalty interest percentage attributable to the entities listed in subdivisions a, b, and c of subsection 1 times the taxable volume of gas.

**History:** Effective August 1, 1986; amended effective July 1, 1989; March 1, 1990; June 1, 1992.

**General Authority:** NDCC 57-51-21; ND Con X, 5

**Law Implemented:** NDCC 57-51-02, 57-51-02.2

#### **81-09-02-16. Exemption for lease use gas.**

Any gas taken directly from the wellhead or returned to the lease from a treating or processing plant and used in the production of oil or gas is exempt from taxation. This exemption is for gas used in drilling for or producing oil or gas or repressurization of a reservoir. Examples of exempt gas include, but are not limited to, gas used as fuel for heater-treaters or separators or in lift or injection operations.

**History:** Effective August 1, 1986; amended effective July 1, 1989.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-05

#### **81-09-02-17. Definition of gas base rate adjustment and tax rate.**

Repealed effective June 1, 2002.

#### **81-09-02-18. Method for calculating the tax rate on gas.**

The gas tax rate will be calculated by the following method:

1. An annual average of the gas fuels producer price index, commodity code 05-3, as published by the United States department of labor, bureau of labor statistics, will be calculated by dividing the sum of the monthly gas fuels producer price index for January through December of the previous calendar year by the denominator of twelve, with the resultant rounded to one place after the decimal.
2. The gas base rate adjustment will be calculated by dividing the annual average of the gas fuels price index by the denominator of 75.7, with the resultant rounded to six places after the decimal.
3. The gas tax rate will be calculated by multiplying \$.04 times the gas base rate adjustment, with the resultant rounded to four places after the decimal.

**History:** Effective August 1, 1994; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02.2

#### **81-09-02-19. Reporting requirements for producers and purchasers.**

1. The purchaser of oil at the well must file a monthly oil purchaser's report, as follows:
  - a. If the purchase of oil at the well is an arm's length transaction, the first purchaser must file the oil purchaser's report.
  - b. If the first purchase of oil at the well is a non-arm's length transaction and the oil is resold at the well to an arm's length purchaser, the second purchaser must file the oil purchaser's report.

- c. If the first purchase of oil at the well is a non-arm's length transaction and the oil is not resold at the well but is sold downstream, the purchaser at the well must file the oil purchaser's report.
  - d. The term arm's length transaction as used in this section is defined in section 81-09-02-09.
2. The purchaser is primarily responsible for remitting tax due on all oil purchased from an operator or working interest owner when delivery is made at the well. The commissioner may accept payment of the tax from the operator or working interest owner but failure of the operator or working interest owner to pay the tax will not relieve the purchaser of liability for the tax.
  3. Unless the operator and working interest owner have received a waiver of the filing requirement, they shall report as follows:
    - a. The operator must report the sales volume and the gross value at the well of the oil the operator actually sold.
    - b. The working interest owners who take oil in kind must report the sales volume and the gross value at the well of the oil taken in kind.
  4. The operator must report and remit the tax on all oil not sold at the well, including any oil used, lost, stolen, or otherwise unaccounted for after it has been produced.
  5. The person reporting and remitting tax on a new property must submit documentation to support a claim for exempt royalty interests. The documentation must be mailed to the commissioner within ninety days after the first report is filed on the property.

**History:** Effective April 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-05, 57-51-06, 57-51-07

#### **81-09-02-20. Waiver of requirement to file producer's report.**

1. The commissioner may waive the producer's requirement to file a monthly oil or gas report. To qualify for a waiver the producer must file an application for waiver with the commissioner. The producer must receive written approval from the commissioner before a waiver of the filing requirement will become effective.
2. All tax due on oil sold from a producing property, for which the filing requirement has been waived, must be reported and paid on the purchaser's monthly report. A waiver does not release a producer from any responsibility to remit tax due. A producer's period of obligation will be determined by the filing date of the purchaser's return. A producer must continue to maintain production records for inspection by the commissioner.
3. A producer must continue to report and remit the tax on all oil not sold at the well, including any oil used, lost, stolen, or otherwise unaccounted for after it has been produced even though a waiver has been received.
4. The commissioner may terminate the waiver at any time by providing written notice to the producer. The producer will be required to file a return effective for the production month following the month in which the notice of termination is issued. The producer may terminate the waiver by providing the commissioner with written notice that a return will be filed in the next succeeding month.

**History:** Effective July 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-06