



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER

Cory Fong, Commissioner

July 11, 2008

Attention: Producers/Purchasers/Processors

On June 10, 2008, the Three Affiliated Tribes ("Tribes") and the State of North Dakota ("State") entered into an oil and gas tax agreement ("Agreement") that provides for the establishment of a uniform taxation system for oil and gas production within the exterior boundaries of the Fort Berthold Indian Reservation ("FBIR"). This historic Agreement provides for a streamlining of the Tribal and State tax systems into one system administered by the State and will be effective for production periods beginning July 1, 2008. The Tribal and State governments, by entering into this Agreement, hope to encourage development of tribal lands by providing a uniform tax rate structure while recognizing both parties respective tax jurisdiction rights.

The Office of the State Tax Commissioner ("State Tax Commissioner") reviewed the State's administrative obligations under the Agreement and developed reporting procedures required to fulfill those obligations. The following information was used to develop reporting guidelines for the taxation of oil and gas sales and purchases from wells located within the FBIR:

- The State Tax Commissioner will compute, for each well drilled and completed within the FBIR, the mineral acres of Trust and Non-Trust Lands and a Trust and Non-Trust Ratio for each spacing unit. This calculation will be based on records obtained from the Bureau of Indian Affairs in Aberdeen, South Dakota.
 - Trust Lands are defined as all mineral acres in a producing spacing unit held in trust by the United States of America ("USA") for the Tribes or an individual tribal member.
 - Non-Trust Lands are defined as all other mineral acres in a producing spacing unit not classified as Trust Lands.
- Trust Lands – based on the terms of the Agreement, taxation and revenue sharing on a well's allocated Trust Ratio of production will be computed as follows:
 - Oil taxation:
 - Gross production tax rate of 5%; and
 - Oil extraction tax rate of 6.5%.
 - Gas taxation:
 - Gross production tax rate as provided in North Dakota Century Code (N.D.C.C.) § 57-51-02.2
Fiscal year 2009 rate - \$.1476 per mcf.
 - Oil and gas tax exemptions
 - All exemptions under the U.S. Constitution, North Dakota Constitution, or federal law apply, including :
 - Ownership interests paid in trust to USA; and
 - Ownership interests of exempt government agencies.

- All exemptions found in N.D.C.C. chapters 57-51 and § 57-51.1, subject to the trigger limitations contained in those chapters, except
 - N.D.C.C. § 57-51.1-03(8) – Indian Lands; and
 - N.D.C.C. § 57-51.1-03(9) – Bakken new wells shall not apply to Trust Lands.
- Oil and gas revenue sharing:
 - 50% of the gross production and oil extraction taxes collected from Trust Lands must be allocated and paid to the Tribes.
 - 50% of the gross production and oil extraction taxes collected from Trust Lands must be allocated and paid to the State and political subdivisions based on statutory distribution formulas.
- Non-Trust Lands - Based on the terms of the Agreement, taxation and revenue sharing on a well's allocated Non-Trust Ratio of production will be computed as follows:
 - Oil taxation:
 - Gross production tax rate of 5%; and
 - Oil extraction tax rate of 6.5%.
 - Gas taxation:
 - Gross production tax rate as provided in N.D.C.C. § 57-51-02.2.
Fiscal year 2009 rate - \$.1476 per mcf.
 - Oil and gas tax exemptions:
 - All exemptions under the U.S. Constitution, North Dakota Constitution, or federal law apply, including:
 - Ownership interests paid in trust to USA; and
 - Ownership interest of exempt government agencies.
 - All exemptions found in N.D.C.C. chapters 57-51 and § 57-51.1 are available, subject to the trigger limitations contained in those chapters.
 - Oil and gas revenue sharing:
 - 20% of the gross production taxes from Non-Trust Lands must be allocated and paid to the Tribes.
 - 80% of the gross production and 100% of the oil extraction taxes collected from Non-Trust Lands must be allocated and paid to the State and political subdivisions based on statutory distribution formulas.

The State Tax Commissioner has determined that conformance with the requirements of the Agreement may be facilitated without material modification of the existing T12 – Oil Gross Production Tax and Oil Extraction Tax and T13 – Gas Production Tax reports (see “System Changes” at the end of this discussion). The following procedural changes will become effective for production periods beginning July 1, 2008:

- Trust and Non-Trust ratios and their corresponding tax rates will be established for the spacing units of wells drilled and completed within the FBIR, prior to July 1, 2008. These calculations will be based on location and spacing unit information derived from the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division (NDIC).
- Trust and Non-Trust ratios and their corresponding tax rates will be established for the spacing units of new wells spudded on or after July 1, 2008, within the FBIR, utilizing the drilling unit for the target formation. The operator of a well permitted within the FBIR must submit Schedule T-84 providing the following information to the State Tax Commissioner within ten days of the NDIC's issuance of the approved application to drill. Failure to submit the required information may result in a twenty-five dollar per day failure to file penalty.
 - Well name and number;
 - NDIC well file number;
 - American Petroleum Institute (API) number;
 - Legal description of the well's surface location;
 - Target formation or pool name;
 - Legal description of the drilling or spacing unit;
 - Total acres in the drilling or spacing unit; and
 - A copy of the NDIC's approved application for permit to drill.
 - An amended Schedule T-84 must be submitted with a copy of the completion report, recompletion report, or a NDIC spacing order for any applicable changes to the approved application for permit to drill.
- A notification letter titled "Reporting Procedures Pursuant to the Tribal and State Oil and Gas Tax Agreement" will be sent to the well's operator and, when applicable, carbon copied to the well's purchaser(s) of record as indicated on the latest monthly tax reports filed with the State Tax Commissioner for the well. The notification letter will contain the following information:
 - Well name and number;
 - NDIC well file number;
 - American Petroleum Institute (API) number;
 - Legal description of the well's surface location
 - Pool name(s);
 - Legal description of each pool's spacing unit(s);
 - Total acres in the spacing unit - detailed as Trust acres and Non-Trust acres; and
 - Trust Ratio.
 - The computed Trust Lands decimal interest (expressed as a number carried to a precision of eight places) for each pool's spacing unit.
 - The applicable Trust Lands extraction tax rate and applicable well code for each pool's spacing unit:

Trust interests will be reported using a newly created well code "TT" which will reflect 6.5% oil extraction tax rate. If an existing well has qualified for a tax incentive, the rate will be the effective rate at the time of the determination.

Tax rate changes - the State Tax Commissioner, in a separate incentive qualification letter issued to the well's operator, will address reporting procedures and tax rate changes for each pool's spacing unit affected by an applicable tax incentive.

- The pool code to be used for tax reporting the trust interests of each pool's spacing unit:

A 400 series pool code will be assigned to trust interests (i.e., Bakken Tribal Trust will be reported using pool code 451).

- Non-Trust Ratio:

- The computed Non-Trust Lands decimal interest (expressed as a number carried to a precision of eight places) for each pool's spacing unit.
- The applicable Non-Trust Lands extraction tax rate, in effect at the time of the determination, for each pool's spacing unit:

Tax rate changes - the State Tax Commissioner will address reporting procedures and tax rate changes for each pool's spacing unit affected by an applicable tax incentive. This information will be provided in a separate incentive qualification letter issued to the well's operator.

- The pool code to be used for tax reporting the non-trust interests of each pool's spacing unit:

A 300 series pool code will be assigned to non-trust interests (i.e. Bakken Tribal Fee will be reported using pool code 351).

- Border wells located within the boundaries of the FBIR, with spacing unit production from lands outside the FBIR, will include the outside production in the Non-Trust ratio.

- A well operator must submit an amended Schedule T-84 with the appropriate documentation within ten days of any change to the spacing unit of any well subject to the reporting requirements of the Agreement. The State Tax Commissioner will issue a revised notification letter reflecting the updated Trust and Non-Trust ratios and corresponding tax rates that will become effective for the production month following the month in which the State Tax Commissioner receives the correction notice. Failure to submit the required information may result in a twenty-five dollar per day failure to file penalty.
- Beginning with July 2008 production periods (i.e., oil reports due August 25, 2008 and gas reports due September 15, 2008) the purchases or sales from wells located within the FBIR must be reported to the State Tax Commissioner on the T12 and T13 reports. Separate sequence entries must be reported for each API and newly assigned pool code using the established Trust and Non-Trust ratios and corresponding tax rates for the pool's spacing unit.
- Inventory produced prior to July 1, 2008, but purchased or sold on or after July 1, 2008, will be reported using the existing pool codes for the well. Due to the various tax rate issues affecting a well, multiple entries for an API and pool code may be required.

- Reporting and taxation issues relating to production periods prior to July 2008 are not covered by this Agreement and will continue to be subject to the administrative requirements of both the State and Tribal governments.
- The State Tax Commissioner will not be administering subsection D(9) of the Agreement which pertains to TERO and Tribal Application fees. For information regarding TERO fees call (701) 627-3634 or go to www.mhatero.com. For information regarding Tribal Application fees contact the Three Affiliated Tribes at (701) 627-4781.
- System Changes
 - The only system change we will make to fulfill the reporting requirements relates to the Electronic Data Interchange (EDI) reporting.
 - In segment TIA – 8193, the data element length for reporting the pool code in TIA03 will need to be updated to 1/3 (i.e., minimum of 1 / maximum of 3 characters) to allow for the reporting of three digit pool codes (i.e., Bakken Tribal Fee will be reported using pool code 351).

The State Tax Commissioner's web site at www.nd.gov/tax/oilgas/ has the following Agreement information available:

1. A copy of this notice
2. A copy of the Agreement
3. A list of the pool codes to include Tribal codes
4. T12 Oil Report Instructions – Fort Berthold Reservation
5. Schedule T-84 Report
6. Three Affiliated Tribes contact Information

Office of State Tax Commissioner contact information:

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Phone: 701.328.2705
701.328.3657
Email: oiltax@nd.gov
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