

OIL AND GAS SEVERANCE TAX

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301. **SHORT TITLE.**

The tax imposed by this chapter shall be called the "Oil and Gas Severance Tax."

302. **TAX IMPOSED.**

A tax is hereby imposed on the severance of products within the Navajo Nation at the rate established under § 306. The tax due for a period is computed by multiplying the value of products severed and sold during the period by the tax rate.

303. **ADMINISTRATION.**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this chapter.

304. **DEFINITIONS.**

Subject to additional definitions (if any) contained in the subsequent sections of this chapter, and unless the context otherwise requires, in this chapter:

- A. "Severance" means severing, producing, or taking from the soil in any manner whatsoever.
- B. "Products" means oil, natural gas, or other liquid hydrocarbons, individually or any combination thereof.
- C. "Value" means the actual price received for the products at the production unit, or the value which is determined under § 305.
- D. "Production unit" means a unit of property which is designated and identified under § 305(C).
- E. "Interest" means an entire or fractional interest of any kind or nature in products at the time of severance from a production unit.
- F. "Operator" means any person engaged in severing products from a production unit, or who owns an interest and receives all or a portion of the products for its interest.
- G. "Owner" means any person who owns an interest, or who has a right to a monetary payment which is determined by the value of products.
- H. "Purchaser" means any person who is the first purchaser of products after severance from a production unit.
- I. "Period" means a calendar month.
- J. "Tertiary recovery project" means an enhanced recovery project by the following means:
 - 1. alkaline or caustic flooding - an augmented water flooding technique where the water is made chemically basic by the addition of alkali metals;
 - 2. conventional steam drive injection - the continuous injection of at least 50% quality steam in to injection wells to effect oil displacement toward production wells. This method may include the supplemental injection of water, solvents, or other fluids;
 - 3. cyclic steam injection - the alternating injection of at least fifty percent (50%) quality steam and production of oil with condensed steam from the same well or wells;
 - 4. immiscible gas displacement - the injection of non-hydrocarbon gas into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;
 - 5. in situ combustion - the combustion of oil in the reservoir sustained by continuous air injection, to displace unburned oil toward producing wells - provided it continues until at least fifteen percent (15%) of reservoir volume has been served or is burned;
 - 6. microemulsion flooding - an augmented water flooding technique in which a "surfactant" system is injected to enhance oil displacement toward producing wells;
 - 7. miscible fluid displacement - an oil displacement process in which fluid is injected into an oil reservoir at pressure levels such that the injected fluid and reservoir oil are

miscible. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

8. polymer augmented waterflooding - an augmented waterflooding technique in which polymers are injected with the water to improve areal and vertical sweep efficiency;

9. unconventional steam drive injection - the continuous injection of at least fifty percent (50%) quality steam to effect oil displacement toward producing wells. This method may include the supplemental injection of water, solvents, or other fluids and applies only to steam drive projects with an average depth greater than 25,000 feet or which recover oil with a gravity less than 10 degrees API;

K. "Expanded tertiary recovery project" or "expansion" means the addition of injection and producing wells, the change of injection pattern, or other operating changes to an existing tertiary recovery project that will result in the recovery of oil that would not otherwise be recovered;

L. "Incremental oil production" means the volume of oil produced by a tertiary recovery project or an expanded tertiary recovery project in excess of the base production established under conditions before production under the tertiary recovery project or expanded tertiary recovery project;

M. "Base production" means (1) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the tertiary recovery project being certified by the Office of the Navajo Tax Commission; or (2) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the expanded tertiary recovery project being certified by the Office of the Navajo Tax Commission.

305. **VALUE AND UNIT.**

A. The Commission may determine the value of products severed from production unit when: The operator and purchaser are affiliated or related persons; or, the sale and purchase of products is not an arm's length transaction; or, products are severed and removed from a production unit and a price is not established for such products.

B. The value determined by the Commission shall be commensurate with the actual price received for products of like quality, character, and use which are severed in the same field or area. If there are no sales of products of like quality, character, or use severed in the same field or area, then the Commission shall establish a reasonable value based upon the best information available.

C. The Commission shall designate the property that will constitute a production unit and assign to each production unit a number or symbol, which shall serve as identification for the purposes of reporting the severance of products and paying taxes. The Commission shall inform the operators of production units as to the designations made and identification so assigned. If the Commission fails to designate production units and assign numbers, taxpayers are in no way relieved from the liability imposed by this chapter and the operator shall request that such designations and assignments be made.

306. **RATE OF TAX.**

The tax rate shall be established in regulations. The rate shall not be less than three percent (3%) or more than eight percent (8%). Until another rate is established, the rate is four percent (4%). A change in the tax rate must be announced at least three full periods before its scheduled effective date.

307. **RESERVED.**

308. **EXEMPTIONS.**

A. Nothing in this chapter shall be construed as imposing a tax on actual royalty payments made to the Navajo Nation government or the federal government.

B. The incremental oil production from a tertiary recovery project (certified after 1/1/96) and the incremental oil production from an expanded tertiary recovery project (certified after 1/1/96) shall be exempt from the Oil and Gas Severance Tax from the date the application is received subject to the following:

1. The operator must file an application with the Office of the Navajo Tax Commission for certification of a tertiary recovery project or an expanded tertiary recovery project. At the time the application is filed, the operator must file its projection of base production for validation and approval by the Office of the Navajo Tax Commission. The Office of the Navajo Tax Commission will review the application and make a determination if the project qualifies as a tertiary recovery project or an expanded tertiary recovery project. The Office of the Navajo Tax Commission will certify or reject the project in writing to the operator in a reasonable timely manner.

2. Disapproval of the base production or rejection of the project shall constitute an adverse action appealable pursuant to 24 N.T.C. §131.

3. If the tertiary recovery project or expanded tertiary recovery project is certified by the Office of the Navajo Tax Commission pursuant to the provisions of § 308(B)(1), the taxpayer may claim exemption for the incremental oil production from the date the application is received. Any Navajo severance tax paid on the incremental oil production during the period from the date the application is received to the date of certification shall be creditable against Navajo severance tax for subsequent periods.

4. The exemption granted by this subsection shall be separate from and in addition to any exemptions granted under other chapters of Title 24.

309. **RESERVED.**

310. **RESERVED.**

311. **FILING OF REPORTS.**

A. Taxpayers must file reports of the severance or purchase of products and the tax due, or withheld and remitted, for the period, by the fifteenth day of the second month after the end of each calendar month, in accordance with subsections (B), (C), and (D) of this section. The Commission may by form or regulation require that information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included in or with reports, and that reports be signed by specified persons.

B. Each purchaser shall include in its report the total value, volume, and kind of products purchased during the period, by production unit, and any tax withheld from payments. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to report purchases.

C. Each operator shall include in its report the name of the property and the total value, volume, and kind of products severed and sold, by production unit, the identity of each owner and any tax withheld therefrom. For products severed and taken-in-kind other than for itself, the operator's report need not include the value of the products taken.

D. An owner whose interest in products severed is reported under subsections (B) or (C) of this section is not required to file a report. Provided that, where an operator or purchaser has not reported or not included in a report, any part of the value, volume, and kind of products severed and sold or taken with respect to an owner, such owner shall be required to file a report as to its interest, in accordance with this chapter and the regulations.

E. The Commission may by form or regulation require information reports to be filed by any person it deems necessary for the proper and efficient administration of the tax.

312. **WITHHOLDING AND PAYMENT OF TAX.**

A. A purchaser making a monetary payment to an owner or an operator for an owner's portion of the value of products purchased shall withhold from such payment the amount of tax due from the owner. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to withhold tax from payments.

B. An operator making a monetary payment to an owner for the owner's portion of the value of products severed and sold shall withhold from such payment the amount of tax due from the owner. Provided that, if a purchaser has withheld the tax, an operator shall not also withhold.

C. Payment of tax is due at the time a report is due. In addition to the tax due for itself as an owner, a taxpayer must remit to the Commission in full any and all amounts which, as an operator or purchaser, it has withheld from owners.

D. An operator or purchaser who withholds the tax and remits it, pursuant to subsections (A), (B), and (C) of this section, shall credit such amounts against the monetary payment to the owner and shall, in a reasonable time and manner, provide the owner with a statement of the tax withheld.

E. An owner whose tax has been withheld and remitted pursuant to subsections (A), (B), and (C) of this section is relieved from liability for the amount withheld. Provided, that where any part of the tax due from an owner of products severed has not been so withheld, or has been withheld and not remitted, such owner shall remain liable for the unpaid tax and must make payment in accordance with this chapter and the regulations. Further provided, that an owner shall have a cause of action in any court of competent jurisdiction to recover from the operator or purchaser amounts withheld as tax, but not remitted to the Commission.

313. **RESERVED.**

314. **RECORDKEEPING.**

Records required to be kept must be preserved for four years beyond the time payment of tax is made, or if no payment is due, for four years beyond the end of the period to which the records relate.

315. **RESERVED.**

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340. **RESERVED.**

341. **RELIEF FROM BUSINESS ACTIVITY TAX.**

A. For any period beginning on or after October 1, 1985, the gross receipts from the sale of products, including those products exempt under Section 308(A), shall be excluded from source gains of a branch for the purpose of the Business Activity Tax, 24 N.N.C. §§ 401-445.

B. For any period beginning prior to October 1, 1985, if products are assessed and the tax paid pursuant to this chapter, then the gross receipts from the sale of such products, including those products exempt under § 308(A), shall be excluded from source-gains of a branch for the purpose of the Business Activity Tax.

C. Provided, in any case, that the severance tax must be paid to the Commission in order for any exclusion to apply or be finally effective, and no such exclusion shall apply or be finally effective until the tax determined under this chapter has been paid to the Commission.

D. For the purpose of § 411(F) of the Business Activity Tax, the proper filing of severance tax reports shall constitute a claim of the exclusions provided in this section.

342. **RESERVED.**

343. **SEVERABILITY.**

If any provision of this chapter, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

344. **EFFECTIVE DATE.**

This chapter shall take effect upon approval by the Navajo Nation Council. The tax imposed hereunder shall be due and payable for periods beginning on or after October 1, 1985, and for the purposes of § 341, may be applied for periods beginning prior to October 1, 1985.

345. **REPEALS.**

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.