

FIRST NATION
WELL DRILLING BUSINESS ACTIVITY TAX LAW, 20__
(ALBERTA)

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SCHEDULES

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WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands and interests in reserve lands, including the taxation of business activities on reserve lands;

B. The Council of the _____ First Nation deems it to be in the best interests of the First Nation to levy a business activities tax on persons drilling wells on reserve lands related to oil and gas exploration or exploitation; and

C. The Council of the _____ First Nation has given notice of this law and has considered any representations received by the Council, in accordance with the requirements of the *First Nations Fiscal Management Act*;

NOW THEREFORE the Council of the _____ First Nation duly enacts as follows:

PART I
CITATION

Citation

1. This Law may be cited as the _____ *First Nation Well Drilling Business Activity Tax Law, 20__* .

PART II
DEFINITIONS AND REFERENCES

Definitions and References

2.(1) In this Law:

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

“Activity Report” means a Well drilling activity report created by the Province of Alberta or Indian Oil and Gas Canada, setting out all Well drilling activity on the reserve during the time period covered by the report;

“Council” has the meaning given to that term in the Act;

“drilling operator” means a person who is engaged in the drilling of a Well on the reserve, whether directly or through employees, agents or contractors;

“First Nation” means the _____ First Nation, being a band named in the schedule to the Act;

“interest”, in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“Request for Information” means a request containing the information set out in Schedule II;

“reporting period” means a time period determined by the tax administrator respecting which the well drilling tax will be levied and collected;

“reserve” means a reserve of the First Nation within the meaning of the *Indian Act*;

“tax administrator” means the person appointed under subsection 3(1) for the purposes of this Law;

“Tax Notice” means a notice containing the information set out in Schedule I;

“tax rate” means the tax rates provided in section 6;

“Taxation Law” means the _____ *First Nation Property Taxation Law, 20__*;

“Well” means an orifice in the ground on the reserve completed or being drilled

- (a) for the production of oil or gas,
- (b) for injection to an underground formation,
- (c) as an evaluation well or test hole, or
- (d) to or at a depth of more than one hundred and fifty (150) metres, for any purpose,

but does not include one to discover or evaluate a solid inorganic mineral and that does not or will not penetrate a stratum capable of containing a pool or oil sands deposit; and

“well drilling tax” or “tax” means a tax imposed, levied, assessed or assessable under this Law and all penalties, interest and costs added to taxes as provided in this Law.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) Except where otherwise defined, words and expressions used in this Law have the meanings given to them in the Taxation Law.

(4) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 6(2)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III ADMINISTRATION

Tax Administrator

3.(1) Council must, by resolution, appoint a tax administrator to oversee the administration and enforcement of this Law. **[Note to First Nation: The following wording may be used for subsection (1): The person appointed as the tax administrator under the Taxation Law is appointed as the tax administrator under this Law.]**

(2) The tax administrator must fulfill the responsibilities given to the tax administrator under this Law and such other duties assigned to the tax administrator by the First Nation from time to time.

(3) The tax administrator may, with the consent of **[insert title]**, assign the performance of any duties of the tax administrator to any officer, employee, contractor or agent of the First Nation.

Revenues and Expenditures

4. Well drilling taxes collected by the First Nation must be placed in the local revenue account of the First Nation and expended only in accordance with an expenditure law enacted by the First Nation under paragraph 5(1)(b) of the Act or in accordance with section 13.1 of the Act.

PART IV TAX LIABILITY AND LEVY

Application of Law

5. This Law applies to all drilling operators and every drilling operator is subject to a well drilling tax in accordance with this Law.

Tax Liability

6.(1) A well drilling tax is levied and imposed on each drilling operator's use and occupation of the reserve for the drilling of one (1) or more Wells, including deepening of an existing Well, and must be paid by the drilling operator in accordance with this Law.

(2) A person on whom a tax is imposed under this Law is liable for the tax even if that person

- (a) is also liable to pay taxes imposed under other property taxation laws of the First Nation;
- (b) holds an interest in reserve lands with a person who is exempt from tax under this Law; or
- (c) is exempt from taxes under other property taxation laws enacted by the First Nation.

(3) Where there is more than one drilling operator engaging in the drilling of a Well, each drilling operator is jointly and severally liable to the First Nation for all well drilling taxes imposed under this Law in respect of that Well.

(4) Well drilling taxes are due and payable under this Law notwithstanding a complaint or any proceeding initiated or remedy sought respecting a well drilling operator's liability for taxes under this Law.

Tax Rates and Levy

7.(1) The tax rates to be applied are the rates that are established from time to time by regulations made under subsection 390(1) of the *Alberta Municipal Government Act*.

(2) For clarity, the rates established as set out in subsection (1) include any minimum tax amount set in those regulations.

(3) As an exception to subsection (1), if at any time there are no regulations in force and effect under subsection 390(1) of the *Alberta Municipal Government Act*, the tax rates are those that were most recently set out in such regulations.

(4) The well drilling tax is calculated by multiplying the depth of each Well drilled during the reporting period, as set out in the Activity Report, by the applicable tax rate.

(5) The well drilling tax must be levied at least once in each taxation year.

(6) For clarity, a Well is subject to only one well drilling tax levy, except that where an existing Well is expanded in a later reporting period, it must be subject to an additional well drilling tax levy, calculated by determining the tax applicable for the expanded Well and subtracting the taxes previously paid for that Well.

PART V TAX NOTICE AND PAYMENT

Reporting Period

8. The tax administrator must set one (1) or more reporting periods to apply in a taxation year, provided that each reporting period must be at least three (3) consecutive months.

Tax Notice

9.(1) At the end of each reporting period, the tax administrator must mail a Tax Notice to each drilling operator that has undertaken any drilling of a Well during that reporting period.

(2) The tax administrator must determine the well drilling taxes owing by each drilling operator for the reporting period by using the information contained in all Activity Reports applicable to that reporting period.

(3) The mailing of the Tax Notice by the tax administrator constitutes a statement of and demand for payment of the taxes.

(4) If at any time the tax administrator determines that there has been an error or omission in a Tax Notice, the tax administrator may issue and mail an amended Tax Notice to the drilling operator, and any additional taxes are due and payable on the date of mailing of the amended Tax Notice; however, the taxpayer must be given sixty (60) days to pay those taxes and interest and penalties must not be added in that period.

Tax Payment

10.(1) Taxes are due and payable within sixty (60) days from the date of the Tax Notice given in respect of the taxes.

(2) Taxes must be paid at the office of the First Nation during normal business hours, by cheque, money order or cash.

(3) Payment of taxes made by cheque or money order must be made payable to the _____ First Nation.

Receipts for Payments

11. On receipt of a payment of taxes, the tax administrator must issue a receipt to the drilling operator.

Tax Refunds

12.(1) Where a drilling operator is taxed in excess of the proper amount in a taxation year, the tax administrator must refund to that drilling operator any excess taxes paid by that person.

(2) As an exception to subsection (1), if further well drilling taxes payable by the drilling operator are due or accruing due, the tax administrator may apply the amount of the overpayment to those taxes, provided notice is given to the drilling operator.

(3) Where a person is entitled to be refunded an amount of taxes paid under this Law, the tax

administrator must pay the person interest as follows:

- (a) interest accrues from the date that the taxes were originally paid to the First Nation;
- (b) the interest rate during each successive three (3) month period beginning on January 1, April 1, July 1 and October 1 in every year, is two percent (2%) below the prime lending rate of the principal banker to the First Nation on the 15th day of the month immediately preceding that three (3) month period;
- (c) interest will not be compounded; and
- (d) interest stops running on the day payment of the money owed is delivered or mailed to the person to whom it is owed, or is actually paid.

PART VI RECORDS, INFORMATION AND INSPECTIONS

Record of Taxes Levied

13. The tax administrator must keep the following records in respect of the administration of this Law:

- (a) all taxes levied;
- (b) all Tax Notices issued;
- (c) all tax payments made and receipts issued;
- (d) all refunds paid; and
- (e) all enforcement proceedings taken.

Drilling Operator Records

14. A drilling operator must maintain accurate and complete books of account and other records containing all the information necessary to enable the First Nation to verify the drilling operator's drilling of Wells on the reserve and its compliance with this Law.

Request for Information

15. The tax administrator may deliver a Request for Information requesting that a current or former drilling operator, or other person who may have information relevant to the administration of this Law, provide to the tax administrator information or documentation that relates to the administration of this Law, including the information required to be kept under section 14, and that person must provide to the tax administrator, within fourteen (14) days or a longer period as specified in the notice, the requested information.

Inspections

16.(1) A person authorized by the First Nation may during normal business hours enter onto an interest in reserve lands to

- (a) determine whether or not
 - (i) a person is a drilling operator,
 - (ii) the person is engaged in drilling a Well, or
 - (iii) this Law is being and has been complied with; and
- (b) inspect, audit and examine books of account and records related to Well drilling on the reserve.

(2) As part of an inspection under this section, the drilling operator must give access to the books of accounts and other records required to be kept by this Law, and allow the First Nation to take copies and extracts as necessary, and the drilling operator must, on request, furnish every facility and assistance

required for the entry and examination.

PART VII PENALTIES, INTEREST AND ENFORCEMENT

Penalty

17. If all or part of the taxes are not paid as required by subsection 10(1), a penalty of ten percent (10%) of the portion that remains unpaid will be added to the amount of the unpaid taxes and the amount so added is, for all purposes, deemed to be part of the taxes.

Interest

18. If all or any portion of the taxes are not paid as required by subsection 10(1), the unpaid portion accrues interest at fifteen percent (15%) per year.

Application of Taxes Paid

19. The tax administrator must credit payments for taxes, first, to taxes, including penalties and interest, from previous reporting periods, second, to a penalty added in the current reporting period, and, third, to unpaid taxes and interest for the current reporting period.

Tax Collection and Enforcement

20.(1) Taxes levied under this Law are a debt owed to the First Nation by the drilling operator, recoverable by the First Nation in a court of competent jurisdiction or in any manner permitted by law.

[Note to First Nation: If the First Nation has a property taxation law, the following subsection could be inserted instead of the above subsection (1), and subsection (4) and Schedule IV should be deleted.]

(1) Taxes levied under this Law are a debt owed to the First Nation by the drilling operator, recoverable by the First Nation in a court of competent jurisdiction, and may also be recovered by any other method authorized under the Taxation Law or other applicable laws, and for this purpose Parts XIII, XIV, XV and XVI **[Note to First Nation: Confirm these Parts accurately refer to the collection and enforcement provisions in the First Nation's Taxation Law]** of that law apply to the collection and enforcement of unpaid well drilling taxes, including with respect to the recovery of the costs of enforcement incurred by the First Nation.

(2) The use of one method of collection and enforcement does not prevent seeking recovery by one or more other methods.

(3) A copy of the Tax Notice that refers to the taxes payable by a person, certified as a true copy by the tax administrator, is evidence of that person's debt for the taxes.

(4) Costs incurred by the First Nation in the collection and enforcement of unpaid taxes are

(a) recoverable by the First Nation as set out in Schedule IV; and

(b) payable by the debtor as unpaid taxes.

PART VIII COMPLAINTS TO TAX ADMINISTRATOR

Complaints to Tax Administrator

21.(1) A drilling operator may, within thirty (30) days of the date of a Tax Notice, deliver a complaint to the tax administrator in the form set out in Schedule III, in respect of an alleged error or omission in the Tax Notice.

(2) Within fourteen (14) days after receipt of a complaint, the tax administrator must review the matter and attempt to resolve the complaint.

(3) If the tax administrator concludes that there was an error or omission in the Tax Notice, the tax administrator must mail an amended Tax Notice correcting the error or omission.

(4) Where the tax administrator mails an amended Tax Notice, subsection 9(4) and section 12 apply.

(5) The tax administrator must advise Council of each complaint received under this section, including the nature of the complaint and the resolution of the complaint, if any.

PART VIII GENERAL PROVISIONS

Disclosure of Information

22.(1) The tax administrator or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

- (a) in the course of administering this Law or performing functions under it;
- (b) in proceedings before a tribunal having jurisdiction or a court of law; or
- (c) in accordance with subsection (2).

(2) The tax administrator may disclose to the agent of a drilling operator confidential information relating to the business or interest in reserve lands if the disclosure has been authorized in writing by the drilling operator.

(3) An agent must not use information disclosed under subsection (2) except for the purposes authorized by the drilling operator in writing referred to in that subsection.

Disclosure for Research Purposes

23. Notwithstanding section 22,

- (a) the tax administrator may disclose information and records to a third party for research purposes, including statistical research, provided the information and records do not contain information in an individually identifiable form or business information in an identifiable form;
- (b) Council may disclose information and records to a third party for research purposes, including statistical research, in an identifiable form where
 - (i) the research cannot reasonably be accomplished unless the information is provided in an identifiable form, and
 - (ii) the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

Validity

24. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay tax or any other amount under this Law be affected by

- (a) an error or omission in a determination made by the First Nation or the tax administrator;
- (b) an error or omission in a Tax Notice or other notice given under this Law; or
- (c) a failure of the First Nation or the tax administrator to do something within the required time.

Limitation on Proceedings

25.(1) No person may commence an action or proceeding for the return of money paid to the First Nation, whether under protest or otherwise, on account of a demand, whether valid or invalid, for taxes or any other amount paid under this Law, after the expiration of six (6) months from the date the cause of action first arose.

(2) If a person fails to start an action or proceeding within the time limit described in this section, then money paid to the First Nation is deemed to have been voluntarily paid.

Notices

26.(1) Where in this Law a notice is required to be given, it must be given

- (a) by mail to the recipient’s ordinary mailing address or the address for the business premises;
- (b) where the recipient’s address is unknown, by posting a copy of the notice in a conspicuous place on the recipient’s property or the business premises; or
- (c) by personal delivery or courier to the recipient or to the recipient’s ordinary mailing address or the address for the business premises.

(2) Except where otherwise provided in this Law,

- (a) a notice given by mail is deemed received on the fifth day after it is posted;
- (b) a notice posted on property is deemed received on the second day after it is posted; and
- (c) a notice given by personal delivery is deemed received upon delivery.

Interpretation

27.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of this Law and must be construed as being inserted for convenience of reference only.

Force and Effect

28. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the ____ day of _____, 20____, at _____, in the Province of _____.

A quorum of Council consists of _____ () members of Council.

[Name] _____
Chief [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]

SCHEDULE I
WELL DRILLING TAX NOTICE

DRILLING OPERATOR: _____

ADDRESS: _____

PURSUANT to the provisions of the _____ *First Nation Well Drilling Business Activity Tax Law, 20__*, taxes in the amount of _____ dollars (\$____) are hereby levied with respect to the use of reserve lands for Well drilling activities.

Reporting period: From _____, 20__ to _____, 20__

Description of Well drilling during the reporting period:

| Description | Depth | Taxes payable |
|-------------|-------|---------------|
|-------------|-------|---------------|

- 1.
- 2.
- 3.

Total taxes payable during reporting period:

Unpaid taxes during previous reporting period:

Penalties added to unpaid taxes:

Interest payable:

Total amount due:

All taxes are due and payable on or before _____. Payments for unpaid taxes and interest are past due and must be paid immediately.

Payments must be made at the offices of the _____ First Nation, located at [address] during normal business hours. Payment must be by cheque, money order or cash.

Taxes that are not paid when due shall incur penalties and interest as set out in the _____ *First Nation Well Drilling Business Activity Tax Law, 20__*.

Tax Administrator for the _____ First Nation

Dated: _____, 20__.

SCHEDULE II
REQUEST FOR INFORMATION BY TAX ADMINISTRATOR
FOR THE _____ FIRST NATION

TO: _____

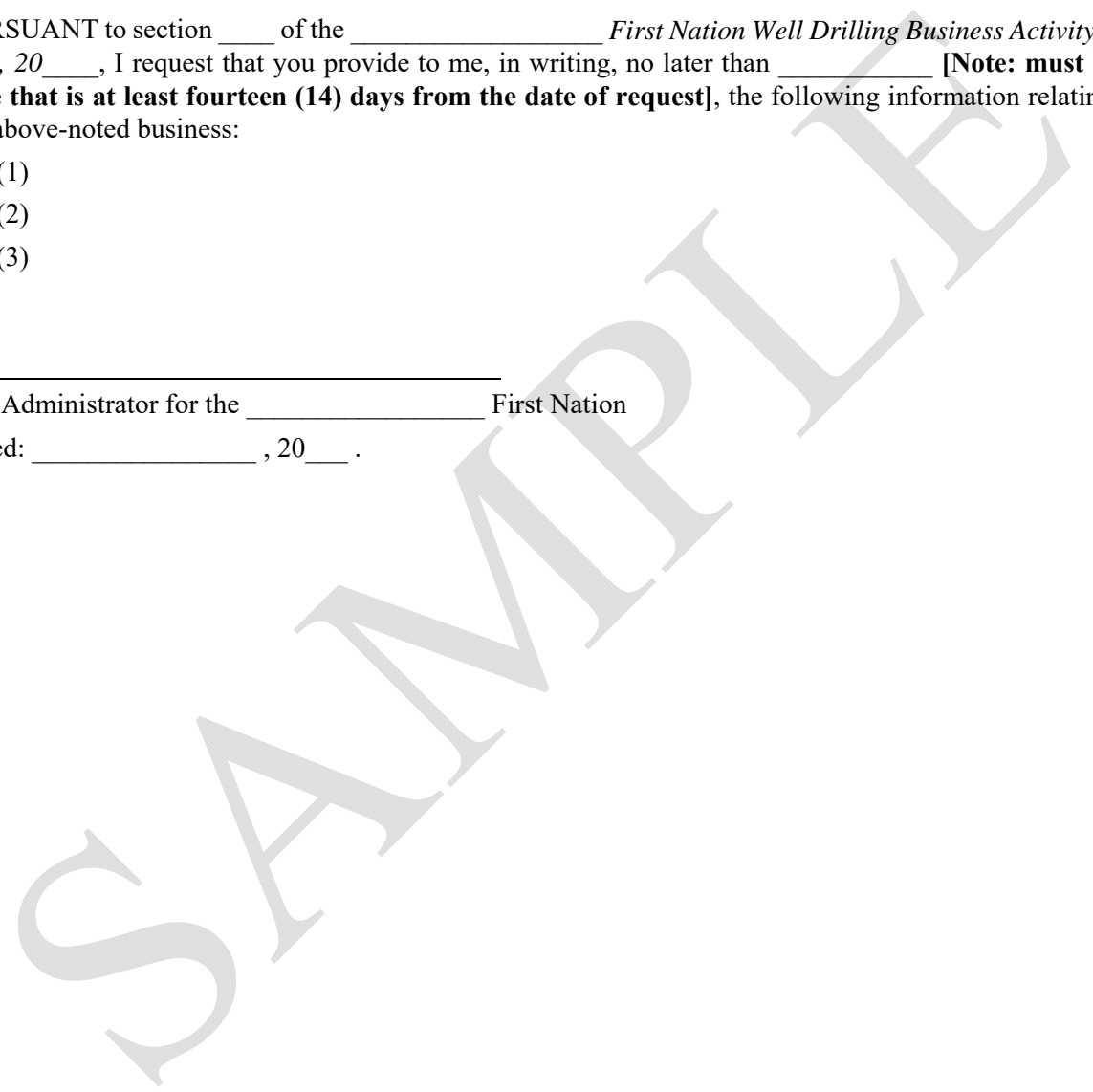
ADDRESS: _____

PURSUANT to section ____ of the _____ *First Nation Well Drilling Business Activity Tax Law, 20__*, I request that you provide to me, in writing, no later than _____ **[Note: must be a date that is at least fourteen (14) days from the date of request]**, the following information relating to the above-noted business:

- (1)
- (2)
- (3)

Tax Administrator for the _____ First Nation

Dated: _____, 20__ .



SCHEDULE III
COMPLAINT TO TAX ADMINISTRATOR RESPECTING
A WELL DRILLING TAX NOTICE

TO: Tax Administrator for the _____ First Nation
[address]

NAME & ADDRESS OF DRILLING OPERATOR: _____

PURSUANT to the provisions of the _____ *First Nation Well Drilling Business Activity Tax Law, 20*____, I hereby make a complaint respecting an error or omission in a well drilling tax notice dated _____.

This alleged errors or omissions are as follows:

- (1)
- (2)
- (3)

(describe the reasons in support of the complaint in as much detail as possible)

Mailing address to which a reply to the complaint is to be sent:

Name of Complainant (please print)

Signature of Complainant (or representative)

Dated: _____, 20____.

A copy of the Well Drilling Tax Notice is enclosed with this Form.

SCHEDULE IV
COSTS PAYABLE BY DEBTOR ARISING FROM
THE COLLECTION AND ENFORCEMENT OF UNPAID TAXES

The First Nation's costs arising from the collection and enforcement of unpaid taxes are payable by the debtor as follows:

1. For preparation of a notice by the First Nation \$
2. For service of notice on each person or place by the First Nation \$
3. For service of notice on each person or place by a process server, bailiff or delivery service actual cost
4. For advertising in newspaper actual cost
5. For staff time spent in undertaking collection and enforcement procedures, not including costs otherwise recovered under this Schedule: \$ __ per person per hour
6. Actual costs incurred by the First Nation for carrying out enforcement measures not otherwise recovered under this Schedule will be charged based on receipts.

SAMPLE