

**STANDARDS FOR
FIRST NATION WELL DRILLING BUSINESS ACTIVITY TAX LAWS, 2016**

[Consolidated to 2023-04-27]

**PART I
PREAMBLE**

WHEREAS:

- A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;
- B. Standards are established by the Commission to further the policy objectives of the Commission and the Act, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues; and
- C. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

**PART II
PURPOSE**

These Standards set out the requirements that must be met for First Nation local revenue laws enacted under subparagraph 5(1)(a)(iv) of the Act. These Standards are used by the Commission in its review and approval of First Nations' business activity tax laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. These Standards are intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY AND PUBLICATION**

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

**PART IV
APPLICATION**

These Standards apply to business activity tax laws that provide for a tax on business operators undertaking the drilling of Wells on reserves located in the Province of Alberta.

**PART V
CITATION**

These Standards may be cited as the *Standards for First Nation Well Drilling Business Activity Tax Laws, 2016*.

PART VI DEFINITIONS

In these Standards:

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

“annual rate of national inflation” means the change in the Annual Average Consumer Price Index for Canada, All-Items, maintained by Statistics Canada;

“business activity tax” or “tax” means a tax imposed, levied, assessed or assessable under a Law and all penalties, interest and costs added to taxes as provided in a Law;

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

“Commission” means the First Nations Tax Commission established under the Act;

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

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

“interest”, in relation to reserve lands in Canada elsewhere than in Quebec, 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;

“Law” means a business activity tax law enacted under subparagraph 5(1)(a)(iv) of the Act to which these Standards apply;

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

“reporting period” means a time period respecting which a business activity tax will be levied and collected;

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

“tax administrator” means the person appointed by Council to administer and enforce a Law;

“tax notice” means a notice of business activity taxes owing sent to a business operator under a Law;

“taxation law” means a law enacted by a First Nation under paragraph 5(1)(a) of the Act respecting the taxation of interests in reserve lands, but does not include a property transfer tax law; and

“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 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.

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

Except as otherwise provided in these Standards, words and expressions used in these Standards have the same meaning as in the Act.

[am. FNTC Resolution 2019-06-26.]

**PART VII
STANDARDS**

1. Administration and Enforcement of Law

The Law must provide for

- (a) the appointment by resolution of a tax administrator, or
- (b) the tax administrator appointed under the First Nation's taxation law,

to oversee the administration and enforcement of the Law.

2. Tax Liability

2.1 The Law must provide that it applies to all business operators.

2.2 The Law must levy a business activity tax on the business operator's use and occupation of the reserve for the drilling of a Well, including the deepening of an existing Well.

2.3 The Law must provide that the business activity tax is payable by the business operator.

3. No Exemptions

The Law must not exempt any business operator from the business activity tax.

4. Tax Rates

4.1 The Law must establish a business activity tax rate in each of the following categories:

- (a) a flat rate for the first 500 metres of depth of a Well;
- (b) a rate for each metre of depth of a Well exceeding 500 metres and up to 1000 metres; and
- (c) a rate for each metre of depth of a Well exceeding 1000 metres.

4.2 In the first year of taxation, the Law must establish rates of business activity tax that do not exceed the following rates, subject to adjustment in accordance with subsection 4.3:

- (a) a flat rate of \$930 for the first 500 metres of depth of a Well;
- (b) a rate of \$2.38 for each metre of depth of a Well exceeding 500 metres and up to 1000 metres; and
- (c) a rate of \$4.77 for each metre of depth of a Well exceeding 1000 metres.

4.3 The rates set out in subsection 4.2 are to be adjusted in each year after 2023 by the annual rate of national inflation.

4.4 Where a First Nation wishes to increase the rates of business activity tax in the second or any subsequent year that rates are established in accordance with subsection 4.1,

- (a) the First Nation must amend the Law to set out the new rates; and
- (b) the amending Law must establish rates that do not increase the rates from the previous rates by more than the annual rate of national inflation, applied in each year from the year that the previous rates were established.

[am. FNTC Resolution 2023-04-27.]

5. Tax Levy

5.1 The Law must provide for the business activity tax to be collected at least once in each year, and may

- (a) establish one (1) or more reporting periods to apply in a year, or

(b) enable the tax administrator to establish one (1) or more reporting periods to apply in a year, provided that each reporting period is at least three (3) consecutive months.

5.2 The Law must provide that

(a) the business activity tax is calculated by applying the business activity tax rates to any Well drilled during the reporting period, based on the depth of the Well;

(b) the depth of each Well must be determined by reference to a report obtained by the First Nation from Canada or the Province of Alberta, or from an authorized agent, board, commission, contractor or other representative of Canada or the Province of Alberta; and

(c) a Well must be subject to only one business activity tax, except that if an existing Well is expanded after the business activity tax is paid, it must be subject to an additional business tax levy in respect of the additional depth only.

[am. FNTC Resolution 2023-04-27.]

6. Tax Notice and Payment

6.1 The Law must require the tax administrator to mail a tax notice to each business operator that has undertaken any drilling of a Well during the reporting period.

6.2 The Law must set a due date for the payment of business activity taxes that is at least sixty (60) days after the date of the tax notice.

6.3 The Law must require a tax notice to contain at least the following information:

(a) the name and address of the business operator;

(b) the taxes imposed under the Law for the current reporting period;

(c) when penalties and interest will be added if taxes are not paid;

(d) any unpaid taxes, penalties, interest and arrears in respect of the business operator's drilling of Wells on the reserve; and

(e) where payment must be made, the manner of payment, and the date or dates the taxes are due.

6.4 The Law must provide for the mailing of amended tax notices where the tax administrator determines there has been an error or omission in a tax notice given to a business operator.

7. Tax Refunds

7.1 The Law must set out procedures for providing refunds to a business operator and the circumstances under which refunds will be given.

7.2 The Law must include at least the following provisions:

(a) a refund of excess taxes paid where the tax administrator determines that the business operator was taxed in excess of the proper amount in a reporting period; and

(b) payment of interest at a rate of two percent (2%) below the prime lending rate of the principal banker to the First Nation on the fifteenth day of the month immediately preceding the calculation of the interest for the following three (3) month period.

7.3 Notwithstanding subsection 7.2, the Law may provide for a refund of excess taxes paid to be applied as a credit on account of business activity taxes that are due or accruing due by the business operator to the First Nation, provided the First Nation gives notice to the business operator.

8. Complaints to Tax Administrator

The Law must provide for a complaints process that allows a business operator to make a complaint to the First Nation respecting an error or omission in a tax notice.

9. Records and Receipts

9.1 The Law must require the tax administrator to keep records of

- (a) all business activity taxes levied under the Law;
- (b) all tax notices mailed under the Law;
- (c) all tax payments made and receipts issued in respect of each business operator;
- (d) all refunds paid under the Law; and
- (e) all enforcement proceedings taken under the Law.

9.2 The Law must require the tax administrator to issue a receipt to a business operator for each payment made under the Law.

10. Penalties

Where the Law provides for a penalty to be imposed in respect of unpaid taxes, the Law must set out the date on which, or the time period after which, the penalty will be imposed if taxes remain unpaid.

11. Confidentiality

The Law must provide for the confidentiality of information and documents obtained by the tax administrator and any other person who has custody or control of records obtained or created under the Law, except that disclosure may be made

- (a) in the course of administering the Law or performing functions under it;
- (b) in proceedings before a tribunal having jurisdiction or a court of law;
- (c) where a person gives written authorization for his or her agent to obtain confidential information relating to a business or an interest in reserve lands;
- (d) by the tax administrator to a third party for research (including statistical) purposes, provided the information or documents do not include any information that is in an individually identifiable form; or
- (e) by Council to a third party for research (including statistical) purposes.

[am. FNTC Resolution 2019-06-26.]

PART VIII COMING INTO FORCE

These Standards are established and in effect as of September 14, 2016.

PART IX ENQUIRIES

All enquiries respecting these Standards should be directed to:

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Kamloops, BC V2H 1H1
Telephone: (250) 828-9857