

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 3 of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to exercise all sovereign authority - legislative and judicial - within the scope of the jurisdiction recognized in Article I of the Constitution; and
- WHEREAS,** Article I of the Constitution of the Three Affiliated Tribes provides that the jurisdiction of the Tribes shall extend to all persons and to all lands within the exterior boundaries of the Fort Berthold Reservation; and
- WHEREAS,** Since the initial enactment of the oil and gas production tax law of the Three Affiliated Tribes, the Tribal Business Council has enacted a comprehensive law, titled "Three Affiliated Tribes Tax Commission" and codified as Chapter 29 of the Code of Laws of the Tribes, in which law are set forth substantive and procedural provisions generally applicable to and governing the administration of all taxes imposed by the Three Affiliated Tribes; and
- WHEREAS,** Additionally, the North Dakota Legislature has recently enacted amendments to the State oil and gas production tax law which have certain effect upon the administration of the Tribal law which taxes the same activities, in view of the fact that the State of North Dakota is exercising such taxing authority concurrently with the Three Affiliated Tribes within the boundaries of the Fort Berthold Reservation, as permitted under governing federal law; and
- WHEREAS,** Based upon such recent Tribal and State legislative developments which, either directly or indirectly, affect and mandate changes in the administration of the oil and gas production tax law as initially enacted by the Three

Affiliated Tribes, it is the considered judgment of the Tribal Business Council that it has become advisable and necessary to amend the current oil and gas production tax law of the Tribes;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes, pursuant to its Constitutional authority, hereby approves and enacts the proposed amendments to the Oil and Gas Gross Production Tax law of the Three Affiliated Tribes, a photostatic copy of which amended law in its entirety is attached hereto.

BE IT FURTHER RESOLVED, That said amended tax law shall be codified as Chapter 29.1 of the Code of Laws of the Three Affiliated Tribes.

BE IT FURTHER RESOLVED, That said amended tax law shall become effective immediately.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 13th day of June, 1989; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 13th day of June, 1989.

Ed Youg
Secretary, Tribal Business Council

ATTEST:

Edward Lone Wolf
Chairman, Tribal Business Council

CHAPTER 29.1

OIL AND GAS GROSS PRODUCTION TAX

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29.1-01. Declaration of Policy. It is the policy of the government of the Three Affiliated Tribes to provide to both nonmembers and members of the Tribes as many public services as are economically feasible and to protect the natural resources and the environment within the exterior boundaries of the Fort Berthold Reservation. This policy is being pursued with the intent of maintaining and enhancing the health, security, and general welfare of all people resident and/or engaged in business activities on the Fort Berthold Reservation. The purpose of the tax imposed herein is to derive a portion of the revenues necessary to continue to pursue and to strengthen the governmental functions inherent in this policy established by the Three Affiliated Tribes.

29.1-02. Applicability of Other Tribal Law. The administration of the tax imposed herein shall be subject to and governed by all substantive and procedural provisions set forth in Chapter 29 of the Code of Laws of the Three Affiliated Tribes (titled "Three Affiliated Tribes Tax Commission"), which are generally applicable to the administration of all taxes imposed by the Three Affiliated Tribes and which are not inconsistent with any of the provisions set forth in this Chapter.

29.1-03. Definitions. As used in this Chapter:

- a. "Casinghead gas" shall mean gas as produced from a well classified as an oil well by the Natural Resources Department of the Three Affiliated Tribes.
- b. "Commission" shall mean the Three Affiliated Tribes Tax Commission, as specifically defined in Section 1.103b of Chapter 29.

- c. "Gas" shall mean natural gas and casinghead gas.
- d. "Gross value at the well" shall mean fair market value at the time of production.
- e. "Natural gas" shall mean gas as produced from a well classified as a gas well by the Natural Resources Department of the Three Affiliated Tribes.
- f. "Nonoperating interest" shall mean 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.
- g. "Oil" shall mean petroleum, crude oil (including condensate), mineral oil, and casinghead gasoline.
- h. "Person" shall mean and include the following: (1) an individual or any group of individuals, however associated; (2) an organization of any kind, whether organized for profit or not and regardless of the manner or form in which its affairs are conducted, whether it be a sole proprietorship, partnership, joint venture, trust, estate, an unincorporated association, corporation, or government; (3) any combination of individuals or organizations in whatever form, e.g., partnership, joint venture, or syndicate; and (4) any part, subdivision, or agency of any of the foregoing.
- i. "Producer" shall mean the owner of a working interest or a nonoperating interest in a well capable of producing oil or gas, or both.
- j. "Purchaser" shall mean any buyer of oil or gas after it has been produced. Purchaser does not include a person who acquires oil or gas in place in the earth through a lease, estate, or other interest.
- k. "Working interest" shall mean a mineral interest which includes

the rights granted to a lessee of property to explore for and produce and own oil or gas.

29.1-04. Gross Production Tax. A tax of one percent (1%) of the gross value at the well is hereby imposed upon all oil and gas produced within the exterior boundaries of the Fort Berthold Reservation, less the value of any part thereof, the ownership of or right to which is exempt from taxation. The tax imposed hereby shall attach to and is hereby imposed upon the whole production, including what is commonly known as the royalty interest.

29.1-05. Gross Production Tax to be in Lieu of Certain Other Tribal Taxes. The payment of the tax imposed herein shall be fully in lieu of any liability for payment of all ad valorem taxes imposed by the Three Affiliated Tribes upon any property rights attached to or inherent in the right of producing oil or gas, upon producing oil or gas leases, upon machinery, appliances, and equipment used in and around any well producing oil or gas and actually used in the operation of such well, and upon any investment in any property specified hereinabove in this section. Any interest in the land upon which oil or gas is being produced, other than that specified hereinabove in this section, shall be assessed and taxed as other land situated within the Fort Berthold Reservation may be assessed and taxed by the Three Affiliated Tribes.

It is expressly provided that the payment of the tax imposed herein shall not be in lieu of any liability for payment of any Tribally-imposed taxes based on income or excise taxes based on the sale of oil and gas products at retail.

29.1-06. Equipment and Other Property Used Exclusively In Production Exempt From Tribal Ad Valorem Taxes. No equipment, material, or other property shall be exempt from the levy of any ad valorem taxes imposed by the Three Affiliated Tribes by reason of payment of the tax imposed herein, except such equipment, machinery, tools, materials, and other property as are actually necessary and being used at the site of a producing well in the production of oil or gas.

It is expressly provided that no ice plants, hospitals, office buildings, garages, residences, gasoline extraction or absorption plants, water systems, fuel systems, rooming houses, or other buildings or structures, nor any equipment or material used in connection therewith, shall be exempt from the levy of any Tribally-imposed ad valorem taxes. Nor shall drilling rigs be so exempt. Additionally, the land on which a producing well is located shall not be so exempt, except to the extent of the mineral interests therein.

29.1-07. Payment of Tax in General. The tax imposed herein shall be paid to the Commission on a monthly basis. The tax on oil shall be due and payable on the twenty-fifth (25th) day of the month next succeeding the month of production. The tax on gas shall be due and payable on the fifteenth (15th) day of the second month succeeding the month of production. In the event that the tax is not paid in a timely manner as specified in this subsection, it shall be deemed delinquent and shall be subject to collection, together with the appropriate penalty and interest, as provided in Chapter 29; provided, however, that a request for an extension of the time for payment of the tax may be made, as provided in Chapter 29.

The tax imposed herein shall be paid by the producer of the oil or gas, whether the oil or gas is sold or transferred by assignment at the time of production or is retained by the producer. The producer shall pay the tax on the whole production, including that quantity of oil or gas in which any person owns a royalty interest; provided, however, that, in settlement with any royalty interest owner, the producer shall have the right to deduct the amount of such tax so paid on the royalty portion of the production or to deduct therefrom an amount of the royalty portion of the production equivalent in value, at the time such tax becomes due, with the amount of the tax paid.

Any gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, shall be deemed for the purpose of this Chapter, as to the amount utilized, gas actually produced and saved.

29.1-08. Payment of Tax on Reclaimed Oil. On all oil reclaimed from tank bottoms, pit oil, and salt water, the tax imposed herein shall be paid by the operator of the reclaiming plant, unless the tax has been previously paid thereon. If tank bottom or pit oil material is removed from the lease by the operator of a treatment plant, the gross value of the oil reclaimed from the material shall be constituted by the purchase price paid by the operator of the treatment plant for the material from which the oil is reclaimed. If the operator has not paid a cash price for the material, the oil reclaimed therefrom shall be deemed to have no value at the well. All persons engaged in the sale, purchasing, and refining of tank bottom

and pit oil material and salt water shall report to the Commission all information deemed necessary by Commission for the enforcement of this section.

29.1-09. Filing of Return with Payment of Tax. Each producer of oil or gas shall file with the Commission, together with payment of the tax imposed herein, at the time the tax is required to be paid, a verified return providing, together with any other information required on the forms prescribed by the Commission, the following information:

- a. A full description of the property by lease name, subdivision of quarter section, section, township, and range, from which the oil or gas was produced.
- b. The name of the producer of the oil or gas.
- c. The gross amount of oil or gas produced and saved.
- d. The gross amount of oil or gas retained by the producer.
- e. The gross amount of oil or gas sold or transferred by assignment by the producer.
- f. The name of the purchaser of the oil or gas.
- g. The total value of the oil or gas sold based upon the actual price paid therefor, if purchased at the time of production.
- h. The prevailing market price being paid, at the time of the production of the oil or gas, in the same field for oil or gas of like kind, quality, and character.
- i. In those instances wherein any royalty interest is claimed to be exempt by law from imposition of the tax imposed herein, the facts on which such claim of exemption is based and any other relevant information the Commission may require.

In the event that the return is not filed in a timely manner as specified in this subsection, it shall be deemed delinquent and the producer shall be subject to the assessment and payment of the appropriate penalties, as provided in Chapter 29; provided, however, that a request for an extension of the time for filing a return may be made, as provided in Chapter 29.

29.1-10. Authority of Commission to Require Submission of Information. The broad authority granted in Chapter 29 to the Commission to require, by various means, taxpayers and other persons deemed proper to submit or provide access to relevant information, in various forms, shall extend to producers, purchasers, and assignees of producers of oil and gas and to owners of royalty interests therein for any reasonable and appropriate purpose, including the acquisition by the Commission of a full and complete disclosure of the true facts relating to the actual quantity of production of oil or gas at any location.

29.1-11. Lien for Tax. The tax imposed herein, together with any penalties and interest assessed in relation thereto in a particular instance, shall, at all times, be and constitute a first and paramount lien against and upon any and all property, both real and personal, owned by any person liable for payment of the tax and situated within the exterior boundaries of the Fort Berthold Reservation. The requisite documents constituting and relating to notice of such liens shall be filed by the Commission both in the office of the clerk of the Fort Berthold Tribal District Court and in the office of the register of deeds of the respective county in which the affected real or personal property is situated.

29.1-12. Reports by Persons Engaged in Transportation or Purchase and Storage of Oil or Gas. It shall be the duty of every pipeline, railroad, or other transportation company to submit to the Commission, upon request, any and all information relative to the transportation of oil or gas subject to the tax imposed herein which may be reasonably required to properly and adequately enforce the provisions of this Chapter. The Commission shall have the authority to require any such company to report, together with any additional relevant information, the quantity of oil or gas transported, the respective point of receipt of each shipment, and the respective point of destination of each shipment. The Commission shall have the additional authority to require any pipeline or other transportation company to install suitable measuring devices to enable the company to provide information relative to the quantity of oil or gas transported within or across the exterior boundaries of the Fort Berthold Reservation.

It shall be the duty of every person engaged in the purchase and storage within the Fort Berthold Reservation of oil or gas subject to the tax imposed herein to submit to the Commission, upon request, any and all information relative to the purchase and storage thereof which may be reasonably required to properly and adequately enforce the provisions of this Chapter. The Commission shall have the authority to require any such person to report, together with any additional relevant information, the quantity of oil or gas in storage, the identity of the person from whom the oil or gas was purchased, and the respective location, identity, character, and capacity of each storage receptacle in which the oil or gas is or was being stored.

Any information requested by the Commission pursuant to this section shall be submitted to the Commission within a period of forty-five (45) days from the date of receipt of the request. The failure or refusal of any person to comply with any of the requirements prescribed in this section shall subject such person to liability for payment of a penalty in the amount of twenty-five dollars (\$25.00) to be assessed on the basis of each day in which the person continues to fail or refuse to comply with the respective requirement.