

# Oil and Gas Tax Section

## Fort Berthold Reservation Tax Reporting Instructions

### INTRODUCTION:

These instructions are designed to provide the basic information needed to file the T-84 Tax Rate Application and the monthly T-12 Oil Tax Report and T13 Gas Tax Report for wells located on the Fort Berthold Indian Reservation. The forms are available on the North Dakota Office of State Tax Commissioner's ("Commissioner") website at [www.tax.nd.gov/OilGas](http://www.tax.nd.gov/OilGas) or by contacting the Oil and Gas Tax Section at [oiltax@nd.gov](mailto:oiltax@nd.gov). The rate application and monthly oil and gas tax reports must be filed using the Excel spreadsheets or other file formats designed by the Commissioner, other variations of the forms will not be accepted.

The Three Affiliated Tribes ("Tribes") and the State of North Dakota ("State") entered into an oil and gas tax agreement ("Agreement") which 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. 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 Commissioner has 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 – 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%
    - Oil extraction tax rate of 5%.
    - Oil extraction tax rate increases to 6% when the average price exceeds the adjusted \$90 trigger for 3 months
      - Oil extraction tax rate decreases to 5% when average price is less than the adjusted \$90 trigger for 3 months
  - Gas taxation:
    - Gross production tax rate as provided in North Dakota Century Code (N.D.C.C.) § 57-51-02.2
      - Fiscal year gas tax rate list is available on the Commissioner's web page.
  - 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. chs. 57-51 and 57-51.1.
  - Oil and gas revenue sharing:
    - For wells drilled (spud) prior to July 1, 2019:
      - 50% of the gross production tax and the oil extraction tax collected from Trust Lands must be allocated and paid to the Tribes.
      - 50% of the gross production tax and the oil extraction tax collected from Trust Lands must be allocated and paid to the State and political subdivisions based on statutory distribution formulas.
    - For wells drilled (spud) after June 30, 2019:
      - 80% of the gross production tax and oil extraction tax collected from Trust Lands must be allocated and paid to the Tribes.
      - 20% of the gross production tax and the oil extraction tax collected from Trust Lands must be allocated and paid to the State and political subdivisions based on statutory distribution formulas.
- Non-Trust Lands - 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%
    - Oil extraction tax rate of 5%.
    - Oil extraction tax rate increases to 6% when the average price exceeds the adjusted \$90 trigger for 3 months
      - Oil extraction tax rate decreases to 5% when average price is less than the adjusted \$90 trigger for 3 months
  - Gas taxation:
    - Gross production tax rate as provided in N.D.C.C. § 57-51-02.2.
      - Fiscal year gas tax rate list is available on the Commissioner's web page.
  - 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. chs. 57-51 and 57-51.1.
  - Oil and gas revenue sharing:
    - For wells drilled (spud) prior to July 1, 2019:
      - 50% of the gross production tax and the oil extraction tax collected from Non-Trust Lands must be allocated and paid to the Tribes.
      - 50% of the gross production tax and the oil extraction tax collected from Non-Trust Lands must be allocated and paid to the State and political subdivisions based on statutory distribution formulas.
    - For wells drilled (spud) after June 30, 2019:

- 20% of the gross production tax and the oil extraction tax collected from Non-Trust Lands must be allocated and paid to the Tribes.
  - 80% of the gross production tax and the oil extraction tax collected from Non-Trust Lands must be allocated and paid to the State and political subdivisions based on statutory distribution formulas.
  
- Trust and Non-Trust ratios and their corresponding tax rates will be established for the spacing units of new wells spudded within the FBIR, utilizing the drilling unit for the target formation. **The operator of a well that is permitted with a surface location within the FBIR must submit a 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
  - A copy of the NDIC's 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. The notification letter will contain the following information:
  - Well name and number
  - NDIC well file number
  - 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
  - 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 at the time of qualification.
    - The pool code to be used for tax reporting the Trust interests of each pool's spacing unit:
      - For wells drilled (spud) prior to July 1, 2019 - A 400 series pool code will be assigned to Trust interests (i.e., Bakken Tribal Trust will be reported using pool code 451).
      - For wells drilled (spud) after June 30, 2019 – A 600 series pool code will be assigned to Trust interests (i.e., Bakken Tribal Trust will be reported using pool code 651).
  - 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 and applicable well code for each pool's spacing unit at the time of qualification.
    - The pool code to be used for tax reporting the Non-Trust interests of each pool's spacing unit:

- For wells drilled (spud) prior to July 1, 2019 - A 300 series pool code will be assigned to Non-Trust interests (i.e., Bakken Tribal Fee will be reported using pool code 351).
  - For wells drilled (spud) after June 30, 2019 – A 500 series pool code will be assigned to Non-Trust interests (i.e., Bakken Tribal Fee will be reported using pool code 551).
  - **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 a copy of the completion report, recompletion report, or a NDIC spacing order for any applicable changes to an approved application for permit to drill within ten days of any change to the spacing unit of any well subject to the reporting requirements of the Agreement.** The 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 Commissioner receives the correction notice. Failure to submit the required information may result in a twenty-five dollar per day failure to file penalty.

**INSTRUCTIONS:**

- 1. The Commissioner will assign allocation ratio's, pool codes, and well codes for affected API numbers.** Transactions for wells on the Fort Berthold Indian Reservation must be reported with separate API, Sequence, and Pool Code entries for allocated purchase/sales interests from Trust and Non-Trust Lands.
- 2. ENTRY SEQUENCE NUMBERING,** be sure to use incrementing sequence numbers for each entry for an API and Pool Code, (i.e. API 01201234, pool code 51, sequence 1, 2, 3 and API 01201235, pool code 45, sequence 1, 2, 3). The sequence number allows "replacement" amendments to match to a previously reported entry for the API, pool code, and sequence number.
- 3. CORRECT POOL CODES,** be sure to use the correct assigned "300", "400", " " series pool code for allocated Trust and Non-Trust interests reported for an API number. The correct pool code is essential to the distribution of revenues to the correct taxing jurisdictions pursuant to the revenue sharing agreement.
- 4. Formulas may be used to provide calculations within the spreadsheet but do not change the format of any cells.** The Commissioner has decided not to provide calculation capabilities, our policy is to not prepare any part of a taxpayer's return.
- 5. DO NOT link the spreadsheet to another file.** The spreadsheet file will not include the necessary data because the Commissioner will not have access to the linked file. If your formulas reference linked files, please copy and hard paste the resultant values into the report.
- The Commissioner recommends that electronic returns be accompanied by electronic tax payments. However, **if you submit a check for payment of tax, your check must be accompanied by a Tax Payment Voucher,** prescribed by the Commissioner, that includes the necessary information to process your payment.

**T12 EXAMPLE:**

The Commissioner has prepared the following worksheet example to show the Trust and Non-Trust entries required for reporting purchases/sales from wells located within the exterior boundaries of the Forth Berthold Indian Reservation:

- Trust Ratio allocation of 25% with an 18% government exempt interest reported for pool code (451 - Bakken Tribal Trust)
- Non-Trust Ratio allocation of 75% with no government exempt interest reported for pool code (351 - Bakken Tribal Fee)

API Number (i.e. 01201234)	Sequence Number	Barrels of Oil Purchased /Sold	Value of Oil Purchased/S old	Value of Exempt Government Royalties	Taxable Value of Oil	Total Production Tax Due	Production Tax Previously Paid	Production Tax Paid By Others	Production Tax Paid with Report	Total Extraction Tax Due	Extraction Tax Previously Paid	Extraction Tax Paid By Others	Extraction Tax Paid with Report	Well Code	Pool Code	Posting Code	Oil Gravity	Additional Value	Transportation Deduction	Other Deductions	Condensate (Y or N)	Other Party Federal I.D. Number
<b>Production Period</b>																						
1. Trust Ratio allocation of 25% with an 18% government exempt interest reported for pool code (451 -																						
2. Non-Trust Ratio allocation of 75% with no government exempt interest reported for pool code (351 -																						
<b>Tribal Trust</b>																						
01201234	1	250.00	30000.00	5400.00	24600.00	1230.00	0.00	0.00	1230.00	1230.00	0.00	0.00	1230.00	T5	451	NX01	40.0	0.00	0.00	2.65	N	123456789
<b>Tribal Fee</b>																						
01201234	2	750.00	90000.00	0.00	90000.00	4500.00	0.00	0.00	4500.00	4500.00	0.00	0.00	4500.00	T5	351	NX01	40.0	0.00	0.00	2.65	N	123456789
<b>Coversheet Totals</b>										<b>\$5,730.00</b>												<b>\$5,730.00</b>

## COMMISSIONER CONTACT INFORMATION:

- Taxpayer assistance:
  - Phone 701.328.2705
  - Email [oiltax@nd.gov](mailto:oiltax@nd.gov)
  - Hearing/speech impaired TTY users call Relay North Dakota 1-800-366-6888.
  
- Mailing address:

North Dakota Office of State Tax Commissioner  
Oil and Gas Tax Section  
600 E. Boulevard Ave., Dept. 127  
Bismarck, ND 58505-0599
  
- Website: [tax.nd.gov](http://tax.nd.gov)
  - **The laws, rules, forms, instructions, newsletters, check and electronic payment information, fiscal year gas rates, code lists, and other miscellaneous information are available on our website.**
  - The following Agreement information is available:
    - A copy of the Agreement
    - A list of the pool codes including Tribal codes
    - Schedule T-84 Report
  
- Send written requests and questions to the following address or submit by email:

Oil & Gas Tax Section  
Office of State Tax Commissioner  
600 E Boulevard Ave, Dept. 127  
Bismarck, ND 58505-0599
  
- For questions regarding state government royalties, contact the North Dakota Land Department at 701-328-2800.
  
- For questions regarding federal government royalties, contact the North Dakota State Auditor's Office at 701-250-4681.
  
- For questions regarding the Form 5, Oil Production Reports, or Form 5B, Reports of Gas Production, or for certification procedures for oil extraction tax exemptions or rate reductions, contact the North Dakota Industrial Commission at 701-328-8020.

## THREE AFFILIATED TRIBES CONTACT INFORMATION:

Three Affiliated Tribes  
Tax Department  
305 4<sup>th</sup> Avenue, Ste 1300  
New Town, ND 58770

Phone: (701) 627-6132

Website: [www.mhanation.com](http://www.mhanation.com)

(Revised 2/2020)