POSSESSORY INTEREST TAX

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201. **SHORT TITLE.**
The tax imposed by this chapter shall be called the "Possessory Interest Tax."

202. **TAX IMPOSED.**
A. A tax is hereby imposed on possessory interests within the Navajo Nation at the rate established under Section 206.
B. The tax assessed under this chapter is computed by multiplying the taxable value of a possessory interest on the assessment date by the tax rate.
C. All possessory interests shall be uniformly classified into only one of the five possessory interest classifications, Section 204 (I) to (M), to determine the taxable value.

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

204. **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. “Possessory interest" means the property rights under a lease approved, consented to, or granted by the Navajo Nation, including the rights to the lease premises and underlying natural resources.
B. "Assessment date" means each January 1st.
C. "Lease" means any agreement conferring rights to use or possess tribal lands or to sever products therefrom, including, but not limited to, a lease, right-of-way, use permit, or a joint venture or operating agreement.
D. "Owner" means any person who owns an interest in a lease, or part thereof, as grantee, lessee, permittee, assignee, sublessee, or transferee, whether of the whole interest or less than the whole. In the case of parties to a joint venture or operating agreement, owners and their interests shall be determined under regulations.
E. "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 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 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 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 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 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;

F. "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;

G. "Incremental production value" means (1) the value of the oil that could produced by a tertiary recovery project in excess of the base production value established under conditions before production under the tertiary recovery project; or (2) the value of the oil that could be produced by an expanded tertiary recovery project in excess of the base production value established under conditions before production under the expanded tertiary recovery project;

H. "Base production value" means (1) the value of the 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 value of the 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.

I. “Class one possessory interest” means any lease used to extract, sever, transport or process coal, oil, gas, minerals, and other natural resources.

J. “Class two possessory interest” means any lease used for the generation of electricity, or used for the transportation of electricity upon lines greater than 14.5 kV.

K. “Class three possessory interest” means any lease used for commercial, industrial, manufacturing, assembling or fabricating purposes.

L. “Class four possessory interest” means any lease used for residential purposes.

M. “Class five possessory interest” means any lease used for other purposes.

205. **VALUATION.**

A. The value of a possessory interest shall be determined as provided in this section, or by any method adopted by the Office of the Navajo Tax Commission which accurately reflects fair market value. Provided, that the value of a possessory interest shall exclude the value of leasehold improvements.

B. Fair market value method: The value of a possessory interest may be determined on the basis of the selling prices of comparable leases (whether within or without the Navajo Nation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

C. Present value of income method: The value of a possessory interest may be determined by computing the capitalized value of the gross income to be received from the lease less the reasonable expenses to be incurred in producing the income. The allowable expenses shall be set forth in regulations. Such capitalization shall be done for the remaining life of the lease. If the lease term is indefinite, for the purpose of this method, the life of the lease shall be presumed to be twenty-five (25) years.

D. The Office of the Navajo Tax_Commission may engage private appraisal firms for the valuation of possessory interests and determination of valuation factors.

206. **RATE OF TAX.**

The tax rate shall be established in regulations. The rate shall not be less than one percent (1%), or more than ten percent (10%). Until another rate is established, the tax rate is three percent (3%). A change in the rate must be announced by July 1st following the assessment date for which it is effective.

207. **ASSESSMENT.**

A. Possessory interests shall be assessed annually as of the assessment date.

B. Taxes assessed shall be a lien against the lease and any leasehold improvements in favor of the Navajo Nation. Such lien shall arise as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances upon the property.

C. Owners of possessory interests shall be liable for the taxes assessed.

208. **EXEMPTIONS.**

A. No possessory interest with a taxable value of less than $100,000 shall be subject to this tax. Provided, however, that all possessory interests of a person who owns interests in more than one lease, and of related persons, shall be combined to determine the eligibility of said possessory interests for this exemption.

B. 1. The portion of the possessory interest value attributable to a tertiary recovery project (certified after 1/1/96) or the portion of the possessory interest value attributable to an expanded tertiary recovery project (certified after 1/1/96) shall be exempt from the Possessory Interest Tax from the date the application is received subject to the following:

a. 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 value 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.

b. Disapproval of the base production value or rejection of the project shall constitute an adverse action appealable pursuant to Section 131 of the Uniform Tax Administration Statute.

2. The exemption granted under Section 208(B)(1) shall be limited as follows: the value associated with the exemption shall not exceed three-fourths of the total value. The Possessory Interest Tax shall be applied to the greater of the following: the base production value or 25% of the total value, including the value associated with the incremental production.

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

209. **RESERVED**.

210. **RESERVED.**

211. **FILING OF DECLARATION.**

A. Each owner must file a declaration of its interest in any lease on or before April 1st following each assessment date, or in accordance with regulations. The Office of the Navajo Tax Commission may by form or regulation require the information and documents which it deems necessary for proper and efficient administration of the tax and require that the declaration be signed by specified persons.

B. If an owner fails to provide information or documents within its possession or control which are relevant to a determination of the value of a possessory interest and which it is required to provide under this chapter, the Office of the Navajo Tax Commission may proceed to determine the value and to assess the taxes. This assessment is binding on the owner unless it is shown that the valuation, on the basis of the best information available to the Office of the

Navajo Commission, was clearly erroneous or unless the Office of the Navajo Tax Commission for other good cause shown relieves the owner from the operation of this subsection.

212. **PAYMENT OF TAX.**

A. The tax shall be paid in two installments, one-half being due by November 1st of each year and the other one-half being due by May 1st of the following year. Provided, that no payment of tax shall be due less than three (3) months after the time an assessment is made and notice thereof given and that the Commission shall extend the time for payment accordingly.

B. In the case of an oil and gas lease, an operator who has a right to receive monetary payments for products severed for other than its own interest may be required to make payments of tax to the Office of the Navajo Tax Commission on behalf of an owner, and shall credit such amounts paid against monetary payments due to the owner and provide the owner with a statement of the tax paid.

213. **RESERVED.**

214. **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 due date of the declaration to which the records relate.

215. **CLASS ONE POSSESSORY INTEREST.**

The taxable value of a Class one possessory interest shall be one hundred percent (100%) of its value.

216. **CLASS TWO POSSESSORY INTEREST.**

The taxable value of a Class two possessory interest shall be one hundred percent (100%) of its value.

217. **CLASS THREE POSSESSORY INTEREST.**

The taxable value of a Class three possessory interest shall be ten percent (10%) of its value.

218. **CLASS FOUR POSSESSORY INTEREST.**

The taxable value of a Class four possessory interest shall be ten percent (10%) of its value.

219. **CLASS FIVE POSSESSORY INTEREST.**

The taxable value of a Class five possessory interest shall be ten percent (10%) of its value.

220. **RESERVED.**

221. **RESERVED.**

222. **RESERVED.**

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242. **RESERVED.**

243. **SEVERABILITY.**
If any provision of this chapter, as amended, 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.

244. **EFFECTIVE DATES.**
This chapter shall become effective in accordance with Title 2 of the Navajo Nation Code.

245. **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 rights of taxation by the Navajo Nation.