

April 17, 2008

Honorable Bob Stenehjem  
State Senator  
7475 41st Street SE  
Bismarck, ND 58504-3200

Dear Senator Stenehjem:

The 2007 Legislative Assembly enacted Senate Bill No. 2419 to provide authority for the Governor to enter agreements with the Three Affiliated Tribes to govern taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Indian Reservation. North Dakota Century Code (NDCC) Section 57-51.2-02 lists the requirements that must be met by the agreement and those requirements are summarized as follows:

1. Taxes subject to the agreement are the state's oil and gas gross production and oil extraction taxes for wells within the exterior boundaries of the Fort Berthold Indian Reservation.
2. The oil and gas gross production tax must apply to all wells.
3. The oil extraction tax rate for trust lands on the Fort Berthold Indian Reservation may not exceed 6.5 percent but the rate may be reduced under the agreement.
4. Oil and gas gross production and oil extraction tax exemptions under state law do not apply within the boundaries of the Fort Berthold Indian Reservation unless provided in the agreement.
5. Oil and gas gross production tax revenues must be allocated as follows:
  - a. Trust land gross production tax revenues and exemptions must be evenly divided between the tribe and the state.
  - b. Nontrust land gross production tax revenues must be allocated 20 percent to the tribe in lieu of application of any Three Affiliated Tribes' fees and taxes on production on such lands. The state must receive the remaining 80 percent of tax revenues.
  - c. The state's share of tax revenue from trust land and nontrust land gross production taxes must be allocated among political subdivisions as provided by state law.
6. The agreement must apply for the life of a well drilled and completed during the time the agreement is in effect.
7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on production of oil and gas on the Fort Berthold Indian Reservation during the term of the agreement.
8. The agreement must allow the Tax Commissioner to offset future distributions to the tribe to reflect any tax refunds made by the Tax Commissioner.

9. The Tax Commissioner must retain authority to administer and enforce oil and gas gross production and oil extraction taxes for any wells subject to the agreement.
10. State regulatory provisions must apply for the life of a well drilled and completed during the time the agreement is in effect.
11. The federal district court for the western division of North Dakota is the venue for any dispute arising from a revenue-sharing agreement between the state and the Three Affiliated Tribes.

Under NDCC Section 57-51.2-05, Chapter 54-40.2, relating to general authority to enter state-tribal agreements, does not apply to an agreement with the Three Affiliated Tribes relating to taxation and regulation of oil and gas.

Under NDCC Chapter 57-51.2, there is no provision requiring an agreement entered by the Governor and the Three Affiliated Tribes to obtain legislative approval. You raised the question of what remedy the Legislative Assembly would have if the Governor enters an agreement with the Three Affiliated Tribes which does not comply with the provisions of Chapter 57-51.2. It appears the only option for the Legislative Assembly in that event would be to file suit in state district court to invalidate the agreement for failure to comply with the statutory requirements. It appears state court would be the appropriate forum because a federal court would not have diversity jurisdiction with North Dakota state government entities on both sides of a lawsuit.

We hope this provides useful information. Please contact this office if you have any further questions.

Sincerely,

John Walstad  
Code Revisor

JW/AL