

## CHAPTER FOUR

### POSSESSORY INTEREST TAX

#### § 1. Short Title

This chapter is known as the Absentee Shawnee Possessory Interest Tax.

#### § 2. Findings

The Executive Committee as the legislative governing body of the Absentee Shawnee Tribe makes the following findings:

Whereas individual, business and corporations have entered into consensual relationships with the Absentee Shawnee Tribe and its members to secure leases and or rights-of-way on trust lands within the jurisdiction of the Absentee Shawnee Tribe;

Whereas the United States Supreme Court in Merrion V. Jicarilla Apache Tribe recognized the inherent right of tribal governments to tax to raise revenues for essential services and as a necessary instrument of self-government and territorial management; and

Whereas Merrion recognized taxes assist the tribe in deferring the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within the tribal jurisdiction; and

Whereas the economic activities ongoing on the trust lands burdened with a lease or right-of-way continue to affect the integrity of the tribe and its members;

The possessory interest tax imposed by this chapter derives from the consensual relationship existing between the lessee and/or right-of-way holder and the Tribe and its members for ongoing economic activity on these trust lands.

#### § 3. Definitions

(a) “Designated Agent” means the person who has been identified in writing to the Commission, pursuant to Section 6, as responsible for performing all the obligations of a taxpayer under this ordinance, including all obligations to provide information necessary to permit the accurate computation of tribal taxes.

(b) “Drilling Rig” means all of the component parts of a unit that normally are transported to a site and set up to make a complete rig that is to be used for drilling a well for oil, gas, carbon dioxide, water, geothermal or other minerals. A drilling rig includes, but is not limited to:

1. derrick and substructure;
2. crown blocks;
3. traveling block;

4. drilling line;
5. sand line;
6. rotary hose and standpipe;
7. hook;
8. tongs and swivel;
9. elevators;
10. kelly;
11. rotary table;
12. draw works;
13. engine;
14. instrument;
15. slush and mudpumps;
16. generators;
17. electric lines and accessories;
18. mud tanks;
19. fuel tanks;
20. boilers;
21. feed pump;
22. blowout preventer;
23. tools and supplies;
24. water pumps and lines;
25. drill bits;
26. stairs;
27. railings;
28. dog house;
29. tool joints; and
30. miscellaneous equipment.

(c) "Possessory Interest" means any non-exempt interest in real property within the jurisdiction of the Tribe, including but not limited to: (1) interests held under lease, and (2) interests held under an easement of right-of-way, and all improvements, equipment, fixtures and other tangible personal property held or used by the taxpayer in connection with that taxable use of such realty.

(d) "Retail Business" means any business for profit whose business operations consist primarily of the retail sale or lease of consumer goods or the retail sale of consumer services within the Tribe's jurisdiction. Retail business as defined herein does not include a utility.

(e) "Taxpayer" means any person who owns an interest in any possessory interest within the Tribe's jurisdiction that is subject to tax under this chapter, but does not include the Absentee Shawnee Tribe.

(f) "Tax Year" means the calendar year for which a taxpayer shall be liable for possessory interest tax, for a possessory interest owned by the taxpayer on January 1<sup>st</sup> of the same calendar year.

(g) "Utility" means any privately or publicly held entity primarily engaged in supplying, transmitting, transporting or distributing electricity, oil, natural gas, natural gas products, water,

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carbon dioxide, liquid hydrocarbons, telephone, wireless services, broadband services, internet service, telegraph or other communications services, cable television or transportation services.

#### **§ 4. Imposition and Rate of Tax**

The possessory interest tax set forth herein shall be imposed on the ownership and utilization of possessory interests on January 1<sup>st</sup> of each tax year and shall be assessed at the rate of one percent (1%) of the value of the possessory interest as determined and computed in accordance with this chapter. Said rate of tax shall be and remain the same as herein established unless modified by resolution of the Executive Committee. Upon passage of any resolution changing the rate of tax, notice shall be given to all taxpayers and shall be published in newspapers of general circulation and posted or published at such places as the Executive Committee designates.

#### **§ 5. Computation of Value of Possessory Interest**

The value of a possessory interest shall be computed as provided in this section or by any other method adopted by the Tax Commission which accurately reflects the value of the possessory interest which is subject to taxation.

(a) Date of Valuation. All property that is subject to taxation under this chapter shall be valued as of January 1<sup>st</sup> of the tax year, unless the taxpayer first acquired the property after January 1<sup>st</sup>, in which case, the property shall be valued on the 1<sup>st</sup> day on which it was acquired.

(b) Method of Valuation: Generally. If a method or methods of valuation for a possessory interest are not otherwise provided in this section or by regulation, the value of the possessory interest for taxation purposes shall include the value of any improvements, equipment, fixtures and other tangible personal property held or used by the taxpayer in connection with the taxable use of the possessory interest. Unless the Tax Commission, by regulation, establishes a different method of valuation, value shall be computed in accordance with the method for determining market value under the Oklahoma statutes and regulations adopted thereto. The Commission has the authority to determine independently the value of any possessory interest. This reference to Oklahoma law is solely for purposes of establishing a method of valuation, and shall not be construed as a concession by the Absentee Shawnee Tribe that state law is otherwise applicable to the Tribe.

(c) Method of Valuation: Oil and Gas Pipelines and Related Equipment. Except as otherwise described in this section, the value of pipelines and related equipment (such as tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil and gas) shall be computed in accordance with the method of valuation for pipelines and related equipment for purposes of property taxation under the Oklahoma statutes and regulations adopted pursuant thereto. This reference to Oklahoma law is solely for purposes of establishing a method of valuation, and shall not be construed as a concession by the Absentee Shawnee Tribe that state law is otherwise applicable to the Tribe.

## **§ 6. Designation of Agent**

Each taxpayer shall designate, in writing to the Commission, an agent who shall represent and legally bind the taxpayer with respect to all obligations under this chapter, including completing

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the forms distributed by the Commission and providing the information required therein. Taxpayers having interests in the same possessory interest shall designate the same agent with respect to that possessory interest.

## **§ 7. Registration and Reporting Requirements**

Each taxpayer shall comply with the following registration reporting requirements and such other requirements as are adopted by the Commission: *Amended 9/11/02 by Resolution LAS-2002-37.*

(a) Registration. Every person with taxable possessory interests on tribal or individual trust lands within the jurisdiction of the Absentee Shawnee Tribe shall register with the Tax Commission and submit information as required by the Tax Commission.

(b) Forms. The Commission shall provide the taxpayer of its designated agent with forms for registration and reporting information about the ownership and value of possessory interests. Information shall be reported annually by the taxpayer of designated agent on these forms, which shall be the basis for determination and assessment of tax due.

(c) Failure to Report, Administrative Valuation. If a taxpayer fails to file substantially complete possessory interest tax reporting forms, or to otherwise provide requested information or documents within its possession or control which are relevant to a determination of the extent of value of its possessory interest, the Commission may proceed to determine the value of that taxpayer's possessory interests and to assess taxes accordingly. The Commission's valuation of the possessory interest is presumed to be correct, and the Commission's assessment will be binding on the taxpayer unless it shows that the value, on the basis of the best information available to the Commission, was determined by the Commission in an arbitrary or capricious manner or unless the Commission for other good cause shown relieves the taxpayer from the operation of this subsection.

(d) Reporting Value of Exempt Interests. No taxpayer shall be required to file property valuation forms for any possessory interest which is exempt under Section 10 provided that the Commission may require the taxpayer to file the information necessary to establish the claimed tax exemption.

(e) Authority of the Commission. The Commission may by form or regulation require any taxpayer to file the information or documents deemed necessary for the proper and efficient administration of the tax.

## **§ 8. Notice of Assessment and Payment of Taxes Due**

Notice of tax assessment and of the amount of tax due shall be mailed by the Commission by February 15<sup>th</sup> of the tax year, unless that date has been extended pursuant to the Tax Administration ordinance, or unless the taxpayer fails to timely report the value of its possessory interest pursuant to Section 7(b). The assessment shall be effective as of January 1<sup>st</sup> of the tax year without regard to the date of mailing of the notice. The assessed tax shall be paid within thirty (30) days of the date of mailing said notice, unless (1) the notice is late due to the taxpayer's failure to file timely the reports required under Section 7, in which case penalties and interests shall be calculated pursuant to Chapter 2 of this title, from February 15<sup>th</sup> until the time of payment, or (2) the due date has been

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extended pursuant to Section 7(b) of this chapter, in which instance the assessed tax shall be paid on or before the date stated by the Commission in the notice.

## **§ 9. Lien for Taxes**

(a) Lien against Possessory Interest. The possessory interest tax shall be a lien against the possessory interest of the taxpayer in favor of the Absentee Shawnee Tribe to secure payment of the tax and any penalty and interest that become due. The lien under this subsection shall arise as of January 1<sup>st</sup> of the tax year, without notice or demand, and shall be a first lien and superior to any other interest in the property.

(b) Lien against Other Property. If a taxpayer fails to timely pay the possessory interest tax after assessment, the amount of the unpaid tax, including any penalty and interest that becomes due, shall be a lien in favor of the Absentee Shawnee Tribe upon all property and rights to property of the taxpayer, including any oil and gas production within the tribal jurisdiction. The lien imposed by this subsection shall arise at the time of the assessment, but shall be effective against any mortgagee, pledge, purchaser, judgment creditor, lien or other encumbrancer for value when notice of the lien has been filed as provided in Subsection (c).

(c) Notice of Lien. A notice of the lien provided for in Subsection (b) of this section shall be filed as required in Chapter 2 (Tax Administration) of this title.

(d) Release or Reduction of Lien. The liens provided for in this section shall continue until the liability for payment of the full amount demanded in the lien is released by the Tribe. Partial payment of the amount due shall reduce the amount of the lien by the amount paid. The Tribe may release the lien when the payment of the tax, plus any penalty and interest, is adequately guaranteed by other security or by a surety bond.

(e) Foreclosure. The Tribe may foreclose upon the property subject to a lien by filing a civil action in Tribe court, state court or federal court for that purposed. In the event of such a foreclosure, the property shall be sold in a commercially reasonable manner and the proceeds applied to the expenses of the foreclosure and then to the liability for costs, penalties, interest and tax. Any remaining balance shall be remitted to the taxpayer. The Commission may retain the property, subject to a lien, to offset the amount due.

## **§10. Exemptions**

(a) Governmental Entities. No possessory interest held and used by the United States, by the Absentee Shawnee Tribe (but not including by tribal corporations or tribal enterprises), by the state of Oklahoma or a subdivision thereof, or by municipalities within the state shall be subject to this tax.

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(b) Retail Businesses. No possessory interest which is used primarily to conduct a retail business shall be subject to this tax.

(c) Ranches and Homesites. No possessory interest which is used primarily to conduct a farm, ranch or to provide a homesite shall be subject to this tax.

(d) Drilling Rigs. No possessory interests in drilling rigs shall be subject to this tax.

## **§11. Method of Claiming Exemption**

Any taxpayer owning both taxable and exempt possessory interests shall file with the Commission a claim for any exemption under Section 10 of this chapter. The claims for exemption shall be filed on the form provided by the Commission at the time of filing the valuation reports required by Section 7, and shall be accompanied by a map clearly indicating the specific property for which exemption is claimed. The Commission may request in writing that any person or entity owning only exempt possessory interests shall submit a list of such exemptions to the Commission.





ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
TAX COMMISSION

2025 S. GORDON COOPER DRIVE  
SHAWNEE, OK 74801

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## INSTRUCTIONS FOR SUBMISSION OF INFORMATION CONCERNING POSSESSORY INTEREST TAX

On \_\_\_\_\_, 2001, the Absentee Shawnee Tribe of Oklahoma amended the Absentee Shawnee Licensing and Tax Code (the "Code"). Chapter 4 of the Code amends the Possessory Interest Tax Originally adopted in 1986. This Code imposes duties on the Tax Commission to collect taxpayer information, distribute tax forms and assess and collect taxes in accordance with valuation determinations.

The Tax Commission has identified you as having property subject to the tax. The purpose of this document is to inform you of the tax reporting requirements under the Code.

This packet contains the instructions for all reporting entities. Additional copies of the reporting forms may be reproduced.

### 1. Property to be Reported

Pursuant to Chapter Four, § 3 of the Code, all taxable possessory interests are required to be reported to the Tax Commission. Such possessory interests include, but are not limited to:

- Interests held under a lease;
- Interests held under an easement or a right-of-way; and

In addition, the owner of any taxable possessory interest must report any improvements, equipment, fixtures and other tangible personal property held or used by the taxpayer in connection with the taxable use of real property. Tangible personal property includes, but is not limited to:

- Telephone, telegraph or microwave lines, towers, or repeater stations;
- Communications towers;
- Pipelines;
- Communication lines;
- Electric power lines;
- Electric generating plants;
- Fiber optic lines; and
- Other buildings, equipment or tangible personal property held or used on the land.

## **2. Property Valuation - Date**

Pursuant to Chapter Four, § 5 of the Code, all property subject to valuation for possessory interest taxation purposes shall be valued as of January 1<sup>st</sup> of each year, or for the year of acquisition, on the first day on which the property was acquired.

## **3. Persons Preparing the Report**

Pursuant to Chapter Four, § 6 of the Code, each taxpayer shall designate, in writing to the Commission, an agent whose obligations will include completion of the Possessory Interest Tax forms.

## **4. Reporting Requirements**

Information shall be reported annually by the taxpayer on forms provided by the Tax Commission. The designated agent for the taxpayer shall file a general information form reporting the value of its possessory interests by January 15th of each year. Delinquent reports may result in interest charges and a penalty for late filing, and will not extend the date that payment of taxes is due. Pursuant to Chapter Two of the Code, the Commission may, upon request by the taxpayer, grant an extension of time to file the reporting form. If the Commission grants such a request, no penalty will be imposed.

## **5. Records Maintenance**

Every reporting entity should maintain maps, books and accounts of all possessory interests in a manner that will permit accurate valuation and location for each tax year.

## **6. Penalties**

Pursuant to Chapter Four, § 7 of the Code, a taxpayer may incur penalties for delinquent reporting. Pursuant to Chapter Four, § 9(b) of the Code, if a taxpayer fails to timely pay the possessory interest tax after assessment, the amount of the unpaid tax, including any penalty and interest, shall be a lien in favor of the Absentee Shawnee Tribe upon all property and rights to property of the taxpayer, including any oil and gas production, within the Tribal Jurisdiction. Interest on deficiencies shall be at the rate of 12% per annum, computed and compounded at the rate of 1% per month. See AST LTC Chapter 2, § 32. Civil penalties can range from 2% to 50% of the tax due. See AST LTC Chapter 2, § 33.

## **7. Exemptions**

Certain exemptions are provided in Chapter Four, § 10 of the Code. Any taxpayer owning both taxable and exempt possessory interests shall file with the Tax Commission a claim for any exemption under Chapter Four, § 10 of the Code. The claim for exemption shall be filed on the form provided by the Commission and shall be accompanied by a map clearly indicating the specific property for which exemption is claimed. The Tax Commission may request in writing that any person or entity owning only exempt possessory interests shall submit a list of such exemptions to the Commission.

## **8. Method of Valuation**

The value of a possessory interest shall be computed in accordance with Chapter Four, § 5 of the Code. Generally, the value of a possessory interest for taxation purposes shall include the value of any improvements, equipment, fixtures and other tangible personal property held or used by the taxpayer in connection with the taxable use of the possessory interest. Value shall be computed in accordance with the method for determining market value for the ad valorem tax under the Oklahoma statutes and regulations. The value of pipelines and related equipment shall be computed in accordance with the method of valuation for pipelines and related equipment for purposes of property taxation under the Oklahoma statutes and regulations. The Tax Commission has the authority to independently determine the value of the possessory interest.

## **9. Reporting Forms**

The Absentee Shawnee Tax Reporting Forms provided by the Tax Commission are to be completed in their entirety. Please list the information requested for each particular type of property included in the calculation of value on the Detailed Property Value Report form and summarize that information on the Property Summary form. The following reporting forms are available:

1. Application for Registration
2. General Property Summary
3. Detailed Property Value Report

If you have any questions, please contact the Tax Commission at (405) 275-4030.

**ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
TAX COMMISSION**

2025 S. GORDON COOPER DRIVE  
SHAWNEE, OK 74801

**APPLICATION FOR REGISTRATION (PIT)**

This application is to be used for registration with the Tax Commission of the Absentee Shawnee Tribe of Oklahoma. Please complete this application in full. Questions which do not apply should be answered "N/A" (Not Applicable). Any change in the information submitted in this initial application requires that an updated application be filed with the Tax Commission.

1.

<i>Name of Taxpayer</i>			<i>Federal Tax I.D. # or Social Security #</i>		<i>ASTC Registration #</i>
<i>Address of Principal Business Location</i>					<i>County</i>
<i>City</i>	<i>State</i>	<i>ZIP</i>	<i>Telephone Number</i>		<i>Contact Name</i>

2. Date Business Started in Oklahoma: \_\_\_\_\_

3. Type of Ownership:  Proprietorship     Corporation     Partnership/Association/Joint Venture     Other

4. Owner's Name and Address (If Corporation, list three principal officers and their addresses, if Partnership, Association, Joint Venture, list all owners and their addresses) (attach additional pages as needed):

5. Mailing Address (if different than Business Location): \_\_\_\_\_

6. Location where records are maintained (if different from Business Location): \_\_\_\_\_

7. If this is not a new business, give former owner's trade name: \_\_\_\_\_

8. Real Property Interests: List lease, right of way or easement held location of lease, right of way or easement and parties to lease, right of way or easement.

9. List Possessory Interests held and describe the primary improvements and use, such as telephone, telegraph or microwave lines/towers, pipelines, electric power lines, electric generating plants, etc. (attach additional pages as needed):

I hereby affirm that the information reported in this form and any attached supplement(s) are true and correct.

By: \_\_\_\_\_  
Signature Title Date


  
**ABSENTEE SHAWNEE TRIBE OF OKLAHOMA**  
**TAX COMMISSION**

2025 S. GORDON COOPER DRIVE  
 SHAWNEE, OK 74801

**POSSESSORY INTEREST TAX**  
**GENERAL PROPERTY SUMMARY**

<i>Name of Taxpayer</i>		<i>Federal Tax I.D. or Social Security #</i>		<i>AST Registration #</i>	
<i>Address</i>					
<i>City</i>	<i>State</i>	<i>ZIP</i>	<i>Telephone Number</i>	<i>Contact Name</i>	

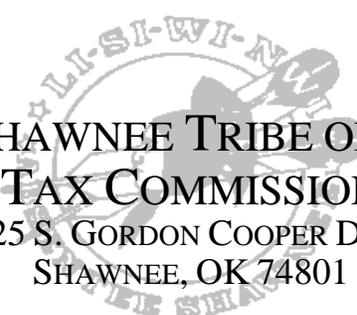
<i>List each possessory interest separately. See Chapter 4, §3(c) of the Absentee Shawnee Licensing and Tax Code for a definition of possessory interest.<sup>1</sup></i>	<i>Value of Possessory Interest</i>	<i>Taxes Due (1% of Value)</i>
A.	\$	\$
B.	\$	\$
C.	\$	\$
D.	\$	\$
E.	\$	\$
F.	\$	\$
G.	\$	\$
H.	\$	\$
I.	\$	\$
J.	\$	\$
<b><i>TOTAL</i></b>	<b>\$</b>	<b>\$</b>

I hereby affirm that the information reported in this form and any attached supplements and supporting documents are true and correct.

By: \_\_\_\_\_  
 Designated Agent for Taxpayer

\_\_\_\_\_  
 Date

<sup>1</sup>Please attach a Detailed Property Value Report from for each listing.


  
**ABSENTEE SHAWNEE TRIBE OF OKLAHOMA**  
**TAX COMMISSION**

2025 S. GORDON COOPER DRIVE  
 SHAWNEE, OK 74801

**DETAILED PROPERTY VALUE REPORT**  
**FOR ITEM \_\_\_\_\_ OF THE GENERAL PROPERTY SUMMARY**

<i>Name of Taxpayer</i>		<i>Federal Tax I.D. or Social Security #</i>		<i>ASTC Registration #</i>	
<i>Address</i>					
<i>City</i>	<i>State</i>	<i>ZIP</i>	<i>Telephone Number</i>	<i>Contact Name</i>	

<b>Location<sup>1</sup></b>	<b>Total Value<sup>2</sup></b>
	\$ _____ (Insert into column 2 of the General Property Summary)

I hereby affirm that the information reported in this form and any attached supplements and supporting documents are true and correct.

By: \_\_\_\_\_ Date \_\_\_\_\_  
           Designated Agent for Taxpayer

<sup>1</sup> Specify location. Provided any identifying right-of-way or lease number and attach a map showing location.

<sup>2</sup> Attach evidence of valuation adopted by the Oklahoma Tax Commission.