

Jicarilla Apache Nation Code

- E GPS Coordinates (UTM's) \_\_\_\_\_ N \_\_\_\_\_
5. Species to be imported (include detail if applicable on Strain, Triploid, etc):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Is the Applicant Facility an Entity of the Federal Government: Yes  
No
7. Is the Applicant Facility an Entity of a State Government: Yes  
No
8. Is the Applicant Facility an Entity of a Tribal Government: Yes  
No
9. Is the Applicant Facility a Private Entity: Yes No
10. Has the Applicant Facility conducted AFS "Bluebook Procedure" disease testing within 12 months of the expected application date: Yes No
11. Has the Applicant Facility tested positive for the presence of Whirling Disease at any time in the past: Yes No  
(If the answer in line 11 is **yes**, contact the Jicarilla Game and Fish Department before continuing with the application)
12. Is this application for the purpose of importing Warm Water Species into the Jicarilla Apache Reservation: Yes No  
(If the answer in line 12 is **yes**, contact the Jicarilla Game and Fish Department before continuing with the application)
- Signature of Applicant: \_\_\_\_\_  
Date: \_\_\_\_\_  
(Signing of this Application form confirms that the above information is current and accurate)

**TITLE 11: TAXATION**

Chapter	
1	TAX ADMINISTRATION
2	PRIVILEGE TAX
3	POSSESSORY INTEREST TAX
4	SEVERANCE TAX
5	GASOLINE TAX
6	CAPITAL IMPROVEMENTS TAX
7	GROSS RECEIPTS TAX ORDINANCE
8	CIGARETTE TAX
9	LODGING TAX

**CHAPTER 1: TAX ADMINISTRATION**

**§ 1 TITLE.**

This Chapter may be cited as the "Tax Administration Ordinance."

**§ 2 DEFINITIONS.**

(A) **DEPARTMENT** means the Revenue and Taxation Department, the Director of the Department or an employee of the Department designated by the Director to exercise the powers of the Department under this Chapter, as the case may be. The Department is successor to and has all the authority previously granted to the Tax Administration Division.

(B) **DESIGNATED AGENT** means the person or company who has been identified in writing to the Department, pursuant to J.A.N.C. § 11-1-7, as responsible for performing all the obligations of a taxpayer under this Chapter, including all obligations to provide information necessary to permit the accurate computation of the Nation's taxes, provided that if the designated agent is a company, the company identifies an individual officer, by name or position, to serve as the contact person for the Department and to sign and submit all required forms.

(C) **DIRECTOR** means the Director of the Revenue and Taxation Department.

(D) **LEVY** means the lawful power, hereby invested in the Department, to take into possession or to require the present or future surrender to the Department of any property or rights to property belonging to a delinquent taxpayer.

(E) **OIL AND GAS TAXABLE PRODUCT** means hydrocarbon oil, gas, casinghead gas, distillate, condensate, liquid hydrocarbons and each of their respective constituent vapors and liquids, including without limitation helium, carbon dioxide, and all other non-hydrocarbon gas produced in association therewith which may be found in oil and gas deposits or in coal deposits within the Nation.

(F) **POSSESSORY INTEREST** means a non-exempt interest in real property within the Nation and all improvements, equipment, fixtures and other tangible personal property held or used by the taxpayer in connection with the taxable use of such realty, as defined in J.A.N.C. Title 11, Chapter 3.

(G) **NATION** means all lands within the territory defined by J.A.N.C. § 1-1-5.

(H) **TAX** means the total amount of each tax imposed and required to be paid under the provisions of any tax ordinance subject to this Chapter and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto.

(I) **TAXABLE PRODUCT** means oil and gas taxable products, water, timber and other natural resources which may be severed from the Nation and sold.

(J) **TAXPAYER** means any person or entity, including any individual, partnership, corporation, enterprise or other legal entity, who owns an interest in taxable products at the time of severance or has ownership rights in any possessory interest within the Nation that is subject to the Nation's possessory interest tax, but does not include the Jicarilla Apache Nation.

**§ 3 APPLICABILITY.**

This Chapter applies to and governs the administration and enforcement of the Oil and Gas Severance Tax Ordinance, Oil and Gas Privilege Tax Ordinance, and the Possessory Interest Tax Ordinance, as they may be amended from time to time, and any other tax ordinances which may be enacted by the Council. The procedures set forth in this Chapter regarding assessments of taxes, collections, interest, penalties, seizure of property by levy, and assessment liens (J.A.N.C. §§ 11-1-9 through 11-1-13, 11-1-17, and 11-1-19 through 11-1-26) shall apply to all taxes due and unpaid as of the effective date of this Chapter.

#### **§ 4 AUTHORITIES OF DEPARTMENT.**

(A) In order to implement and enforce this Chapter and the other tax ordinances subject to this Chapter, the Department is authorized to:

- (1) Inspect or audit the records and books of account of taxpayers and designated agents and examine equipment or other evidence at such times as the Department deems necessary for the effective execution of the Department's responsibilities under this Chapter;
- (2) Request and require taxpayers and designated agents to produce and make available for examination their records and books of account and other information or evidence;
- (3) Issue subpoenas, which shall be returnable no less than ten (10) days from the date of service;
- (4) Issue regulations, rulings, instructions or orders, pursuant to J.A.N.C. § 11-1-5;
- (5) Conduct hearings, pursuant to J.A.N.C. § 11-1-14;
- (6) Enter into cooperative agreements or joint powers agreements with the United States or any tribe or state for the exchange of information pertaining to and the administration and enforcement of tax laws;
- (7) Perform such other activities as the Department may find necessary to carry out its responsibilities under this ordinance.

(B) Any subpoena issued by the Department pursuant to this Section shall state with reasonable certainty the nature of the evidence required to be produced, the time and place the evidence is to be produced, and the consequences of failure to obey the subpoena, and shall be attested by the Secretary of the Nation.

(C) After service of a subpoena, if any person served neglects or refuses to produce records or other evidence or to allow the inspection of equipment, records, books, information or evidence in response to the subpoena, the Department may invoke the aid of any court of competent jurisdiction or the United States Department of the Interior in enforcement of the subpoena.

#### **§ 5 ADMINISTRATIVE REGULATIONS, RULINGS, INSTRUCTIONS AND ORDERS; PRESUMPTION OF CORRECTNESS.**

(A) The Director of the Department is authorized to issue all regulations, rulings, instructions or orders necessary to implement and enforce any provision of this

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Chapter or of any law administered under this Chapter, pursuant to the provisions of this Section.

(B) Regulations are written statements of the Director, of general application, interpreting and implementing the ordinances to which they relate. Before issuing a regulation, the Director shall comply with the following requirements.

(1) The Director shall publish notice of the proposed regulation in local newspapers and post such notice at the Nation's offices. The notice shall make available to the public a copy of the proposed regulation, and shall specify the period available for public comment and the date, time and place of a public hearing on the proposed regulation.

(2) The Director shall establish a rulemaking docket no later than the date of notice of the proposed regulation, shall maintain the docket as necessary during the rulemaking process, and shall make the docket available to the public for inspection and copying during regular business hours. The docket shall contain copies of transcripts of any hearings and of each document submitted to or relied on by the Director in the rulemaking process.

(3) The Director shall provide a comment period of at least thirty (30) days, within which any person may submit written comments, data or documentary information, and present orally their views, data or arguments at the hearing scheduled for consideration of the proposed regulation. If no person notifies the Director of an intent to participate in the hearing on a proposed regulation in advance thereof, the Director may cancel the hearing without advance notice. If a hearing is held on a proposed regulation, the Director shall keep the docket open for at least ten (10) days thereafter to provide an opportunity for submission of rebuttal and supplementary information.

(4) After the comment period, the Director shall revise the proposed regulation as deemed appropriate by the Director. All final regulations under the ordinance set forth in this Chapter shall be based on the record of the rulemaking proceeding contained in the docket and shall be accompanied by an explanation of the need for the regulation, the reasons for any major changes from the proposed regulation, and a response to each significant comment submitted in writing during the comment period.

(5) The Director shall submit final regulations to the Council for approval, with the accompanying documentation required in J.A.N.C. § 11-1-5(B)(4). If the Council does not act on the final regulation within forty-five (45) days after its submission for approval, the Director may promulgate the regulation as final and approved.

(C) Rulings are written statements of the Director, of limited application to one or a small number of taxpayers, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the tax consequences of a specified set of circumstances.

(D) Orders are written statements of the Director to implement a decision after a hearing.

(E) Instructions are other written statements or directives of the Director not dealing with the merits of any tax but otherwise in aid of the accomplishment of the duties of the Director.

(F) The extent to which regulations, rulings and orders will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

## **§ 6 ADDRESS OF NOTICES; TIMELY FILING.**

(A) Any notice required or authorized to be given by mail is effective if mailed to or served by the Department on the person in question at the last address shown in the records of the Department. Any notice, return, application or payment required or authorized to be delivered to the Department by mail shall be addressed to the Revenue and Taxation Department, Jicarilla Apache Nation, P.O. Box 950, Dulce, New Mexico, 87528.

(B) Except as otherwise provided by ordinance or resolution of the Council, all notices, returns, applications or payments authorized or required to be made or given by mail are timely if mailed on or before the date on which they are required, as shown by the postmark on the document.

## **§ 7 DESIGNATION OF AGENT; REQUIRED RECORDS; INFORMATION RETURNS.**

(A) Each taxpayer shall designate, in writing to the Department, an agent who shall represent and legally bind the taxpayer with respect to all obligations under this Chapter and the ordinances subject to this Chapter. Taxpayers having interests in the same taxable product from the same lease or the same possessory interest shall designate the same agent with respect to that taxable product or possessory interest.

(1) The written designation shall identify the taxable products or possessory interests for which the agent is designated; shall identify the other taxpayers, if any, having interests in those taxable products or possessory interests and the percentage of such interest; shall list the name, address, telephone and facsimile numbers of the designated agent; and shall state that the taxpayer acknowledges it is bound by the designated agent's actions, inactions or submissions with regard to this Chapter or ordinances subject to this Chapter and that it is bound by any orders issued to the designated agent by the Department or a court with regard to this Chapter or ordinances subject to this Chapter.

(2) Where there are multiple taxpayers with interests in the same taxable product or possessory interest, the written designation may be filed jointly by those taxpayers.

(3) Taxpayers may change their designated agent at any time, provided that the taxpayer files a new written designation with the Department within fifteen (15) days of making the change in designated agent. The taxpayer will be bound by the previous designated agent until the Department receives the written change of designation.

(4) Each designated agent shall register with the Department by completing and submitting to the Department a Designated Agent Information Form prescribed by the Department immediately upon being designated pursuant to this Section and subsequently each November 1 thereafter. If there are no changes to the information contained on the form from the previous filing, the designated agent may,

instead of filing the form, file a letter stating that there are no changes. The Designated Agent Information Form shall show, for each oil and gas taxable product for which the agent is designated, the following information:

- (a) The lease number and name, if applicable;
- (b) The well number, well name, if applicable, and API number;
- (c) The lessee(s) on record;
- (d) The operator(s) of the well;
- (e) The taxpayers having interests in the oil and gas taxable product or possessory interest and the percentage of each taxpayer's interest;
- (f) The royalty rate;
- (g) The formation or formations from which the well produces taxable products; and
- (h) The pipeline that ties into the well.

(5) The designated agent shall file changes to the Designated Agent Information Form as necessary throughout the year to reflect current information. Any changes in ownership of taxable products or possessory interests shall be filed within fifteen (15) days of such change taking place; other changes to the designated agent information form shall be submitted to the Department as soon as possible. If changes in ownership result in a change in designated agent, the taxpayer(s) must file a new written designation with the Department, as provided in J.A.N.C. § 11-1-7(A)(3).

(B) Every designated agent, taxpayer and person engaged in the production, processing, transportation, storage, purchase or sale of taxable products shall maintain books and records of account or other records in a manner that will permit the accurate computation of the Nation's taxes.

(C) The Department may, by regulation, require any person doing business within the Nation to submit to the Department information returns, including a Designated Agent Information Form, that are reasonable and necessary for the administration of any tax subject to this Chapter, including but not limited to establishing or determining the value of property for property taxation purposes.

(D) Each designated agent shall, on behalf of each taxpayer who has designated that agent pursuant to this Section and who owns a taxable possessory interest, complete and file by January 15 of each year the Possessory Interest Reporting Forms prescribed by the Department, as required by J.A.N.C. § 11-3-7.

## **§ 8 LIABILITY FOR TAX; TAXPAYER RETURNS; EXTENSION OF TIME.**

(A) Each designated agent is required to make payment to the Nation, on behalf of the taxpayers who designated that agent, for all taxes due under this Chapter and the ordinances subject to this Chapter, and each designated agent shall be responsible for the performance of all the obligations of the taxpayers liable for such taxes.

(B) Each designated agent shall, on behalf of each taxpayer who has designated that agent pursuant to J.A.N.C. § 11-1-7 and who owns an interest in a well, within forty-five (45) days following the end of the calendar month in which a taxable product was severed or in which a lease is operative, complete and file a tax return in

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the form prescribed by the Department showing, separately for each well, the following information for each taxable product severed during that calendar month:

- (1) The total volume of each oil and gas taxable product;
- (2) The Btu value of all natural gas severed;
- (3) The gross value of each oil and gas taxable product;
- (4) The volume of any tax-exempt portion of the product; and
- (5) The dollar amount of each tax, stated separately.

(C) Each designated agent shall file the tax returns described in the previous paragraph even if no taxable product was severed in a calendar month, and the designated agent shall state affirmatively on each return reflecting no production that "zero volume (0)" of taxable product was severed.

(D) Incomplete or otherwise inadequate tax returns may result in the computation of additional tax by the Department, and the taxpayer shall be liable for additional assessed taxes, interest, and penalties as provided in this Chapter.

(E) A taxpayer is liable for any tax liability determined from information revealed in an audit of the taxpayer's records and performed by the Department pursuant to J.A.N.C. § 11-1-17. Liability for the tax, interest, and penalties are computed from the date of the taxable event in the tax period that is the subject of the audit, irrespective of when the audit is performed or the tax liability is discovered therein by the Department.

(F) Payment of all taxes due shall accompany the tax return. Delivery to the Department of a check that is not paid upon presentment does not constitute payment.

(G) The Department may grant an extension of time for the filing of a tax return, upon the request of the taxpayer or the designated agent. However, interest on the tax shall begin to accrue from the date the tax was originally due notwithstanding the extension as provided in J.A.N.C. § 11-1-24.

### **§ 9 DELINQUENT TAXPAYER.**

(A) Any taxpayer to whom taxes have been assessed or from whom payment has been demanded, as provided in J.A.N.C. § 11-1-10, who does not within thirty (30) days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided in J.A.N.C. § 11-1-14, or furnish security for payment acceptable to the Department, becomes a delinquent taxpayer and remains delinquent until:

- (1) Payment of the total amount of all such taxes, interest and penalties is made;
- (2) Security is furnished for payment; or
- (3) No part of the assessment remains unabated.

### **§ 10 ASSESSMENT OF TAXES; PRESUMPTION OF CORRECTNESS.**

(A) If the Department determines that a taxpayer is liable for taxes that are due and that have not been previously assessed to the taxpayer, the Department shall promptly assess the amount thereof to the taxpayer.

(B) Assessments of tax are effective:

(1) When a return of a taxpayer is received by the Department showing a liability for taxes in excess of the tax payment accompanying the return, or

(2) When a notice of tax assessment issued by the Department is mailed or delivered in person to the taxpayer against whom the liability for tax payment is asserted, stating the nature and amount of taxes claimed, demanding immediate payment and informing the taxpayer of the remedies available to the taxpayer, or

(3) As provided in J.A.N.C. § 11-3-8.

(C) When taxes have been assessed to a taxpayer and remain unpaid, the Department may demand payment at any time.

(D) Any assessment of taxes or demand for payment made by the Department is presumed to be correct, and the taxpayer has the burden of showing the assessment or demand is not correct.

## **§ 11 LIMITATIONS PERIOD FOR ASSESSMENTS AND COLLECTIONS.**

(A) No assessment of tax may be made by the Department for a tax reporting period more than ten (10) years after the date on which the claim for the unpaid tax accrues.

(B) A claim for unpaid tax accrues when the tax is first payable, pursuant to the relevant tax ordinance, provided that claims for tax liability that can only reasonably be determined by the Department from records that the taxpayer has failed to disclose or make available are not barred and do not accrue until such records are disclosed or made available to the Department.

(C) No administrative or judicial action or proceeding shall be brought to collect taxes assessed by the Department more than five (5) years after the date of such assessment.

## **§ 12 EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

No court has jurisdiction to entertain any proceeding by a taxpayer or designated agent in which he calls into question his liability for any tax or the application to him of any provision of this Chapter, except as a consequence of the appeal by the taxpayer or designated agent to the Nation's Court from the action and order of the Department, as provided in J.A.N.C. § 11-1-15.

## **§ 13 AUTHORITY FOR ABATEMENT OF TAX ASSESSMENTS.**

(A) The Department may abate any part of an assessment determined by the Department to have been incorrectly, erroneously or illegally made, either in response to a written protest submitted in accordance with J.A.N.C. § 11-1-14 or on the Department's own motion, based on information otherwise available to the Department.

(B) In the event of a final decision of the Department or the Nation's Court under J.A.N.C. §§ 11-1-14 or 11-1-15 that a person is not required to pay any portion of a tax assessed to that person, the Department shall cause that amount of the assessment to be abated.



**§ 14 PROTEST PROCEDURE.**

(A) A taxpayer or designated agent may dispute the assessment of any amount of tax, the application to the taxpayer or designated agent of any provision of this Chapter or the tax ordinances to which this Chapter applies, or the denial of a claim for refund made in accordance with J.A.N.C. § 11-1-16, by filing with the Department a written protest. Every protest shall identify the taxpayer, the designated agent and the tax or taxes involved and shall state the grounds for the protest and the affirmative relief requested.

(B) Any protest shall be filed:

(1) Within sixty (60) days after mailing or personal delivery of a notice of assessment;

(2) Within sixty (60) days of denial of a claim for refund made in accordance with J.A.N.C. § 11-1-16; or

(3) At the time of payment of a tax that is being paid under protest, pursuant to J.A.N.C. § 11-1-18.

(C) A protesting taxpayer or designated agent must timely pay all accrued tax, penalty and interest on or before the date the protest is filed. Delinquent taxes may not be paid under protest.

(D) If a protest is not filed in accordance with this Section, the Department may proceed to enforce collection of any delinquent tax.

(E) The Department may request additional information or hold such hearings or meetings as it deems necessary before issuing a decision on the protest. If the Department holds a hearing, the taxpayer or designated agent shall appear at the hearing, either in person or through representatives of his choice. The hearing shall not be open to the public and shall be conducted in an informal manner. Technical rules of procedure and evidence shall not apply at the hearing, but the hearing shall be conducted to allow the Department and the taxpayer or designated agent to present their evidence and positions in a fair and reasonable manner. A written transcript shall be made of the hearing.

(F) The Department shall issue a written decision on the protest, summarizing the basis for the decision, within one-hundred eighty (180) days after the protest is filed. Failure to issue a final decision within that period shall constitute denial of the protest. The written decision shall include an order granting or denying the relief requested or granting such part thereof as is appropriate and supported by evidence, and it shall inform the protesting taxpayer or designated agent of the right to, and the requirements for perfection of, an appeal from the decision to the Nation's Court and of the consequences of a failure to appeal. The Department shall serve the taxpayer or designated agent with a copy of the decision by certified mail or in person.

(G) A decision of the Department that grants in whole or in part a tax refund to the taxpayer or designated agent shall be submitted to the Nation for payment, unless the decision is appealed pursuant to J.A.N.C. § 11-1-15.

**§ 15 APPEALS FROM DEPARTMENT'S DECISION AND ORDER.**

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(A) If the taxpayer or designated agent is dissatisfied with the decision and order of the Department, or if the Department fails to decide the protest within the time required by J.A.N.C. § 11-1-14(F), the taxpayer or designated agent may appeal to the Nation's Court, but only to the same extent and upon the same theory as was asserted before the Department. If an appeal is not so taken, the decision and order of the Department are conclusive.

(B) An appeal shall be perfected by filing a notice of appeal with the Clerk of the Nation's Court, in the form prescribed by the Court, along with any docketing fee required by law. The date of filing shall be the date the notice of appeal is received and stamped by the Court Clerk.

(C) Simultaneously with the filing of a notice of appeal, the taxpayer or designated agent shall serve a true copy thereof on the Department and on the Secretary of the Nation. A certificate stating the date and manner of service shall be filed with the notice of appeal.

(D) The notice of appeal must be filed within thirty (30) days from the date the decision and order of the Department is served on the taxpayer or designated agent or from the date the protest is deemed denied under J.A.N.C. § 11-1-14(G), as the case may be.

(E) All appeals shall be upon the record made within the Department, unless the Court, on motion of the taxpayer, designated agent or the Department, permits an evidentiary hearing to supplement the record. Any motion requesting an evidentiary hearing must be filed within fifteen (15) days following the date of filing the notice of appeal. If the Court grants the motion, an evidentiary hearing shall be scheduled and notice of the hearing shall be served on the taxpayer or designated agent and the Department no less than twenty (20) days prior to the date of the hearing.

(F) Except as otherwise provided in this Chapter, the rules of procedure and evidence applicable to civil proceedings in the Court shall apply to the appeal.

(G) The Court shall independently weigh the evidence of record to assure that the applicable tax ordinances are lawfully administered and shall issue a written decision on the appeal.

(H) Nothing in this Chapter shall authorize the Court to enter any money judgment against the Department or any other agency of the Jicarilla Apache Nation other than an order to refund the amount of any tax, interest or civil penalty erroneously paid by the taxpayer plus interest.

(I) The decision of the Court shall be subject to appeal to the Court of Appeals, as provided by applicable law, and the decision of the Court of Appeals shall be final and not subject to further review.

(J) A decision of the Court or Court of Appeals that grants in whole or in part a tax refund to the taxpayer shall be submitted to the Treasurer of the Nation for payment.

### **§ 16 CLAIMS FOR REFUND OF PRIVILEGE AND SEVERANCE TAXES.**

(A) Any taxpayer who believes that he has paid a privilege or severance tax subject to this Chapter in excess of the amount for which he is liable, may apply for a

refund within one (1) year from the date the tax was paid. The taxpayer has the burden of proving that the tax has been erroneously paid.

(B) Every claim for refund shall be filed as a fully completed amended tax return, shall state the nature of the claim and shall contain information sufficient to allow processing of the claim. Filing a fully completed amended tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in the tax due shown on the original and amended returns.

(C) In response to a claim for refund, the Department may authorize the refund of any overpayment of tax determined by the Department to have been erroneously made, together with allowable interest as described in J.A.N.C. § 11-1-19.

(D) The Department may allow the claim in whole or in part or may deny the claim in whole or in part in writing. If the claim is denied in whole or in part, the taxpayer may, within sixty (60) days after mailing of the Department's decision, file a written protest of the denial. If the Department has neither granted nor denied any portion of the claim for refund within one-hundred eighty (180) days after the date the claim was mailed or delivered to the Department, the claim shall be deemed denied, and the taxpayer may file a protest of the denial pursuant to J.A.N.C. §§ 11-1-14 and 11-1-15.

(E) No tax refund shall be allowed as an offset or deduction against royalties or other payments owed to the Nation.

## **§ 17 EFFECT OF CERTAIN ACTIONS ON AUDITS OF TAXPAYER RECORDS.**

(A) Except as otherwise provided in this Section, a tax assessment, a final decision by the Department granting a refund, or a final decision of the Nation's Court requiring a refund or overturning an assessment, shall not bar the Department from conducting a subsequent audit of the taxpayer for the same report period and shall not bar the Department from assessing any additional tax liability discovered in such an audit, unless the tax assessment, refund, or decision of the Court was based on an audit of the taxpayer by the Department.

(B) Upon completion by the Department of an audit of the taxpayer for a report period, the Department may assess any additional tax liability discovered from information provided in the audit.

(C) Any additional tax liability assessed by the Department pursuant to this Section shall be conclusive for the report period treated in the audit; provided that, an audit may be reopened if the taxpayer has failed to disclose information and material to the calculation of a tax or to the taxpayer's liability for a tax.

## **§ 18 TAXES PAID UNDER PROTEST.**

Any person timely paying a tax subject to this Chapter may pay the tax under protest, by filing a notice of protest with the Department at the time of payment. Delinquent taxes may not be paid under protest. Any protest filed under this Section shall be subject to the procedures established by J.A.N.C. §§ 11-1-14 and 11-1-15.

**§ 19 INTEREST ON OVERPAYMENTS OF TAXES.**

If any tax is found to be erroneously or illegally paid or collected, interest at the rate of twelve percent (12%) per annum, computed at the rate of one percent (1%) per month or any fraction thereof, shall be allowed on the amount erroneously or illegally collected. Interest on an overpayment arising from an assessment by the Department shall begin to accrue on the date the overpayment was made, and shall continue to accrue until the claim for refund or notice of protest is finally determined, except that if the Department takes more than thirty (30) days from the date of final determination to issue the refund, interest shall continue to accrue until the date thirty (30) days before the Department issues the refund. Interest on an overpayment not arising from an assessment by the Department shall begin to accrue on the date sixty (60) days after the claim for refund is filed with the Department and shall continue to accrue until the claim for refund or notice of protest is finally determined, except that if the Department takes more than thirty (30) days from the date of final determination to issue the refund, interest shall continue to accrue until the date thirty (30) days before the Department issues the refund.

**§ 20 COLLECTION OF PENALTIES AND INTEREST.**

(A) Any civil penalties and interest imposed under this Chapter may be collected with the amount of tax to which it relates, without separate assessment.

(B) The Department may, in its discretion, issue separate assessments of civil penalties for late filing or non-filing of returns or reports as provided in J.A.N.C. § 11-1-25 and for willful attempts to evade any tax or the payment thereof, as provided in J.A.N.C. § 11-1-26(A). Any such assessment shall be subject to the provisions of this Chapter governing tax assessments.

**§ 21 SEIZURE OF PROPERTY BY LEVY.**

(A) The Department may collect tax from a delinquent taxpayer by levy upon all property or rights to property of such person and the conversion thereof to money by appropriate and lawful means.

(B) A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the Department or any law enforcement officer, of the warrant upon the taxpayer or other person in possession of property or rights to property of the taxpayer or upon any person owing or who will owe money to the taxpayer, ordering him to reveal the extent thereof and surrender it to the Department forthwith or agree to surrender it or the proceeds therefrom in the future, on the terms and conditions stated in the warrant.

(C) A warrant of levy shall:

(1) Bear on its face a statement of the authority for its service and compelling compliance with its terms and shall be attested by the Secretary of the Nation;

(2) Identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof and the date or approximate date on which the tax became due;

(3) Order the person on whom it is served to reveal the amount of property or rights to property in his own possession that belong to the taxpayer and the extent of his own interest therein, and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of his knowledge, in the possession of others;

(4) Order the person on whom it is served to surrender the property forthwith but may allow him to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature;

(5) State on its face the penalties for willful failure of the person upon whom it is served to comply with its terms; and

(6) State that the Jicarilla Apache Nation claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties.

## **§ 22 SURRENDER OF PROPERTY SUBJECT TO LEVY.**

(A) Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender the property or rights, or discharge such obligation, to the Department, except for that part of the property as is, at the time of such demand, the subject of a bona fide attachment, execution, levy or other similar process.

(B) Any person who wrongfully fails or refuses to surrender, as required by this Section, any property or rights to property levied upon, upon demand by the Department, is liable for a civil penalty in an amount equal to the lesser of the value of the property or rights to property not so surrendered or the amount of the taxes for the collection of which such levy has been made.

(C) The surrender by a person in possession of or obligated with respect to property, rights to property or proceeds from the sale or other disposition of property subject to levy upon which a levy has been made discharges such obligation to the Department. A surrender by a person shall be a defense against the assertion of any obligation or liability to the delinquent taxpayer or any other person with respect to such property or rights to property arising from the surrender or payment.

## **§ 23 ASSESSMENT LIEN.**

(A) If any taxpayer liable for any tax subject to this Chapter neglects or refuses to pay the tax after assessment as provided in J.A.N.C. § 11-1-10, the amount of the tax, including all accrued interest and penalties, shall be a lien in favor of the Jicarilla Apache Nation upon all property and rights to property belonging to the person and found within the Nation.

(B) The lien imposed by J.A.N.C. § 11-1-23(A) shall arise at the time assessment has been made and shall continue until the liability for payment of the amount assessed is satisfied and the lien is released by the Department.

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(C) As against any mortgagee, pledgee, purchaser, judgment creditor, lienor for value or other encumbrancer for value, the lien imposed by J.A.N.C. § 11-1-23(A) shall be considered to have arisen and become effective when notice of the lien has been filed by the Department with the Secretary of the Nation and the Jicarilla Agency Superintendent.

(D) A notice of lien shall identify the taxpayer whose liability for taxes is sought to be enforced, the date or approximate date on which the tax became due, and the amount of tax claimed to be due, and shall state that the Jicarilla Apache Nation claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties. A copy of any notice of lien shall be served on the taxpayer affected.

(E) Partial payment of the amount due shall reduce the amount of the lien by the amount paid. The Department may release the lien when payment of the tax, plus any penalty and interest, is adequately guaranteed by other security. The Department shall file a document releasing the lien, completely or partially as applicable, with the Secretary of the Nation and the Jicarilla Agency Superintendent.

(F) The Department may foreclose upon the property subject to a lien imposed by J.A.N.C. § 11-1-23(A) by filing a civil action in the Nation's Court or other court of competent jurisdiction for that purpose. In the event of a foreclosure or surrender pursuant to J.A.N.C. § 11-1-21, 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.

(G) In all instances where a notice of lien for taxes, penalties and interest has been filed, no foreclosure upon the property subject to the lien may be made by the Department after more than five (5) years have elapsed following the date on which the lien was filed.

### **§ 24 INTEREST ON DEFICIENCIES.**

(A) If any tax subject to this Chapter is not paid on or before the required payment date, interest shall be paid to the Nation on such amount from the first day following the day on which the tax should have been paid, without regard to any extension of time, until the tax is paid; provided that, if demand is made for payment of any tax, including accrued interest, and if such tax, including accrued interest, is paid within ten (10) days after the date of such demand, no interest on the amount so paid shall be imposed for the period after the date of the demand. In the case of tax assessed as the result of an audit, interest shall accrue from the first date that the tax should have been paid if the tax had been properly reported and calculated. A taxpayer is responsible for any failure of a designated agent to pay a tax on time, and shall be liable for any interest owed to the Nation as a result of such failure.

(B) Interest due the Nation under this Section shall be at the rate of twelve percent (12%) per annum, computed at the rate of one percent (1%) per month or any fraction thereof.

(C) Interest shall not be imposed on interest or on civil penalties.

### **§ 25 CIVIL PENALTIES.**

(A) In the case of failure, due to negligence or disregard of applicable ordinances and regulations, but without intent to defraud, to pay when due any amount of tax required to be paid or to file by the date required a return regardless of whether any tax is due, there shall be added to the amount of tax as penalty the greater of:

(1) Two percent (2%) of the amount of tax due, for each month or any fraction of a month from the date the tax was due until paid, but not to exceed ten percent (10%) of the tax due; or

(2) Fifty Dollars (\$50.00).

Such penalty shall not be imposed if the taxpayer has obtained an extension of time to pay tax, pursuant to J.A.N.C. § 11-3-9.

(B) In the case of failure, with intent to defraud the Nation, to pay when due any amount of tax required to be paid, there shall be added to the amount of tax as penalty the greater of:

(1) Fifty percent (50%) of the tax due; or

(2) One Hundred Dollars (\$100.00).

(C) In the case of failure to comply with any other requirements of this Chapter, except for failure to designate an agent or change to an agent or to file a designated agent information form or change to a Designated Agent Information Form pursuant to J.A.N.C. § 11-1-7, the Department shall impose a penalty of Five Hundred Dollars (\$500.00). If the taxpayer or designated agent still fails to comply after thirty (30) days, the Department shall impose an additional penalty of up to One Thousand Dollars (\$1,000.00), with the precise amount determined by the Department in the Department's discretion. For every thirty (30) days thereafter that the taxpayer or designated agent still fails to comply, the Department shall assess an additional penalty of up to Two-Thousand Five-Hundred Dollars (\$2,500.00), with the precise amount determined by the Department in the Department's discretion.

(D) In the case of failure to designate an agent or change to an agent or to file a Designated Agent Information Form or change to a Designated Agent Information Form pursuant to J.A.N.C. § 11-1-7, the Department shall impose on each taxpayer or designated agent failing to comply a penalty of Two-Thousand Five-Hundred Dollars (\$2,500.00) per lease. If the taxpayer or designated agent still fails to comply after thirty (30) days, the Department shall impose an additional penalty of Two-Thousand Five-Hundred Dollars (\$2,500.00) per lease per day of violation for so long as such violation continues.

(E) If any payment required to be made under this Chapter is attempted to be made by check which is not paid upon presentment, such dishonor shall be deemed proof of negligence for purposes of J.A.N.C. § 11-1-25(A).

## **§ 26 ATTEMPTS TO EVADE OR DEFEAT TAX.**

(A) Any designated agent or taxpayer who willfully attempts to evade or defeat any tax or the payment thereof, in addition to other penalties provided by this Chapter, shall be subject to a civil penalty of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00).

(B) The Department may initiate a civil proceeding in the Nation's Court of necessary to enforce against the taxpayer or designated agent the civil penalties authorized by this Section and J.A.N.C. § 11-1-25.

**§ 27 ADMINISTRATIVE REPORTS.**

(A) The Department shall prepare a report to the Council annually, by November 30th, projecting the amount of tax revenues to be collected and deposited into the Nation's Severance Tax, Possessory Interest Tax and General Funds for the next calendar year, and containing such other information as is deemed necessary to project the amount of money that will be deposited into those funds.

(B) The Department shall prepare a report to the Council semi-annually, showing the amount of tax receipts collected and deposited into the Severance Tax, Possessory Interest Tax and General Funds, and such other information as is deemed necessary by the Council or the Department, including information necessary to determine the amount of money in those funds which is unencumbered.

**§ 28 TIMELINESS WHEN LAST DAY FOR PERFORMANCE FALLS ON SATURDAY, SUNDAY OR LEGAL HOLIDAY.**

When by any provision of this Chapter the last day for performing any act falls on Saturday, Sunday or a legal holiday recognized by the Nation, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

**§ 29 LIMITED WAIVER OF SOVEREIGN IMMUNITY.**

Any challenge to the validity or application of any tax subject to this Chapter may be brought only in the courts of the Jicarilla Apache Nation, and only in accordance with the procedures established by this Chapter. The Jicarilla Apache Nation waives its sovereign immunity from suit solely for the purpose of filing an appeal as provided in J.A.N.C. § 11-1-15. The Nation does not waive its sovereign immunity from suit in the courts of any other jurisdiction for any claim arising from the administration or enforcement of any tax subject to this Chapter.

**§ 30 MEASUREMENT OF GAS.**

The volume, specific gravity and heating value of gas (Btu content) on which tax subject to this Chapter is payable shall be determined as provided in applicable regulations of the Bureau of Land Management governing the measurement of gas produced under the terms of Indian oil and gas leases, except to the extent those regulations may be modified by the laws of the Jicarilla Apache Nation.

**§ 31 MEASUREMENT OF OIL.**



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The volume of oil on which tax subject to this Chapter is payable shall be determined as provided in applicable regulations of the Bureau of Land Management governing the measurement of oil produced under the terms of Indian oil and gas leases, except to the extent those regulations may be modified by the laws of the Jicarilla Apache Nation.

### **§ 32 CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.**

(A) It is unlawful for any employee of the Department or any former employee to disclose to any person any information contained in a tax return or an informational return or report required by this Chapter or any other information about a taxpayer or designated agent acquired as a result of his employment by the Department, except:

- (1) To another employee of the Department;
- (2) To a member of the Council or the Secretary of Treasurer of the Nation, provided that disclosure is necessary for the recipient to carry out an official duty of the Nation and the information is kept confidential by the recipient;
- (3) To an authorized representative of the U.S. Department of the Treasury, pursuant to a reciprocal agreement for the exchange of information;
- (4) To an authorized representative of another tribe or a state, provided that the receiving tribe or state has entered into an agreement with the Department to use the information only for tax purposes and provided that the receiving tribe or state has enacted confidentiality laws similar to this Section;
- (5) To a court of competent jurisdiction in an action relating to taxation to which the Department and the taxpayer or designated agent are parties, or in an action to enforce any tax liability of the taxpayer to which the Department is a party;
- (6) To the taxpayer or designated agent or other authorized representative;
- (7) To the Department's legal counsel; or
- (8) In such manner and form that the information revealed is not identified as applicable to a particular taxpayer or designated agent.

(B) Nothing in this Section prohibits the Department from disclosing to any person:

- (1) Whether a person is or is not registered with the Department as a taxpayer or designated agent; or
- (2) The final decision and order of the Department in any protest filed under J.A.N.C. § 11-1-15.

### **§ 33 USE OF FUNDS.**

Seven percent (7%) of all taxes assessed pursuant to this Chapter and the ordinances subject to this Chapter, including accrued interest and penalties, shall be deposited into a duly established account and expended solely for the use of the Department to administer this Chapter and the ordinances subject to this Chapter, pursuant to a budget approved by the Council. Any money in such account at the end of each fiscal year shall not revert to the General Fund and shall remain available for appropriation as provided in this Section.

**§ 34 AMENDMENT OF ORDINANCES.**

The Department shall notify taxpayers and designated agents promptly of any amendments to this Chapter or the ordinances subject to this Chapter.

**§ 35 EFFECTIVE DATE.**

This Chapter shall be effective on the date adopted by the Council, subject to the subsequent approval of this Chapter by the Secretary of the Interior as provided in the Revised Constitution of the Jicarilla Apache Nation.

**§ 36 SEVERABILITY.**

If any part of this Chapter or its application to any situation or person is held invalid, the remainder of the ordinance and its application to other situations or persons shall not be affected.

**§ 37 REPEALER.**

The following provisions of the Jicarilla Apache Nation Code in effect on the day before enactment of this Chapter (June 7, 2000) are hereby repealed:

- (A) Section 11-1-4;
- (B) Section 11-1-6;
- (C) Section 11-1-7;
- (D) Section 11-1-8;
- (E) Section 11-1-10;
- (F) Section 11-1-11;
- (G) Section 11-1-12;
- (H) Section 11-1-13;
- (I) Section 11-2-5;
- (J) Section 11-2-6;
- (K) Section 11-2-7;
- (L) Section 11-2-9;
- (M) Section 11-2-10;
- (N) Section 11-2-11;
- (O) Section 11-2-12;
- (P) Section 11-2-15;
- (Q) Section 11-3-3(A)-(E), (G), (I), (J), (L), (M);
- (R) Section 11-3-7(C) and (G);
- (S) Section 11-3-10;
- (T) Section 11-3-14;
- (U) Section 11-3-15;
- (V) Section 11-3-16;
- (W) Section 11-3-19;
- (X) Section 11-3-20(A)-(D).

## CHAPTER 2: PRIVILEGE TAX

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### § 1 IMPOSITION OF TAX.

A tax is imposed on the privilege of severing any oil and gas taxable products within the Nation and is authorized to be imposed on the privilege of severing any other taxable products within the Nation pursuant to the provisions of this Chapter. The Oil and Gas Privilege Tax Ordinance was enacted by the Council on March 8, 1985 as Ordinance No. 85-O-434 and was approved on behalf of the Secretary of the Interior on April 12, 1985. This Chapter amends the previous Oil and Gas Privilege Tax Ordinance to authorize a tax on the privilege of severing all taxable products within the Nation, to clarify the computation of volume for oil and gas taxable products, and to provide for the administration of this Chapter pursuant to the Tax Administration Ordinance (J.A.N.C. Title 11, Chapter 1) enacted on the same date as this Chapter.

### § 2 DEFINITIONS.

(A) **DEPARTMENT** means the Revenue and Taxation Department, the Director of the Department or an employee of the Department designated by the Director to exercise the powers of the Department under this Chapter, as the case may be. The Department is the successor to and has all the authority previously granted to the Tax Administration Division.

(B) **DESIGNATED AGENT** means the person or company who has been identified in writing to the Department, pursuant to J.A.N.C. § 11-2-11, as responsible for performing all the obligations of a taxpayer under this Chapter, including all obligations to provide information necessary to permit the accurate computation of the privilege tax under this Chapter.

(C) **OIL AND GAS TAXABLE PRODUCT** means hydrocarbon oil, gas, casinghead gas, distillate, condensate, liquid hydrocarbons and each of their respective constituent vapors and liquids, including without limitation, helium and carbon dioxide, and all other non-hydrocarbon gas produced in association therewith which may be found in oil and gas deposits or in coal deposits within the Nation.

(D) **NATION** means all lands within the territory defined by J.A.N.C. § 1-1-5.

(E) **TAXABLE PRODUCT** means oil and gas taxable products, water, timber and other natural resources which may be severed within the Nation and sold.

(F) **TAXPAYER** means any person or entity, including any individual, partnership, corporation, enterprise or other legal entity, who owns an interest in taxable products at the time of severance, but does not include the Jicarilla Apache Nation.

### § 3 DUE DATE OF TAX.

The privilege tax is due at the time of severance and payable monthly, by the twenty-fifth day of the second calendar month following the calendar month in which the taxable product was severed.

**§ 4 RATE OF TAX ON OIL AND GAS TAXABLE PRODUCTS.**

The privilege tax set forth herein was originally assessed at the rate of five percent (5%) of the total gross value of all oil and gas taxable products severed within the Nation, subject to escalation based on the Consumer Price Index published by the U.S. Department of Labor. As of February 1, 2001, the tax was assessed at a rate of 8.29% of the total gross value of all oil and gas taxable products severed within the Nation, and the rate shall remain at 8.29% until such time as the Legislative Council of the Jicarilla Apache Nation may amend this Section.

**§ 5 RATE OF TAX ON TAXABLE PRODUCTS OTHER THAN OIL AND GAS.**

The Department may set rates for privilege taxes on other taxable products through regulations issued pursuant to the procedures set forth in J.A.N.C. § 11-1-5.

**§ 6 EXEMPTION.**

The Nation's royalty share of oil and gas production from leases issued by the Bureau of Indian Affairs or minerals development agreements entered into by the Nation shall be exempt from the privilege tax. For purposes of this Section, the exemption is equal to the volume of royalty oil or gas specified in the lease or minerals development agreement.

**§ 7 COMPUTATION OF TOTAL GROSS VALUE OF GAS TAXABLE PRODUCTS.**

For purposes of determining the privilege tax, the total gross value of gas taxable products shall be the total volume measured pursuant to J.A.N.C. § 11-2-9, less the Nation's royalty share, as defined in J.A.N.C. § 11-2-6, times the index value, where the index value is the value determined according to the formula set forth in J.A.N.C. § 18-10-1 through § 18-10-5.

**§ 8 COMPUTATION OF TOTAL GROSS VALUE OF OIL TAXABLE PRODUCTS.**

For purposes of determining the privilege tax, the total gross value of oil taxable products shall be the total volume measured pursuant to J.A.N.C. § 11-2-10, less the Nation's royalty share, as defined in J.A.N.C. § 11-2-6, times the index value, where the index value equals the price posted for San Juan Basin Sweet Crude Oil by Giant Refining Company in its monthly Crude Oil Price Bulletin.

**§ 9 COMPUTATION OF GAS VOLUME.**

Gas volume shall be computed as the total volume of severed gas taxable products measured at the wellhead, before any deductions are taken for transportation, processing, industry-standard shrinkage, or any other reason. Notwithstanding the preceding sentence, the volume of severed gas taxable products from a low-production

well, where an off-site gas measurement permit has been obtained pursuant to J.A.N.C. § 18-12-1 through § 18-12-10, and the meter used complies with the minimum standards in Onshore Oil and Gas Order No. 5, 54 Fed. Reg. 8100 (Feb. 24, 1989), shall be computed as the larger of either:

(A) The total volume of severed gas taxable products measured at the off-site measurement point approved under J.A.N.C. § 18-12-1 through § 18-12-10; or

(B) The total volume of severed gas taxable products sold by the lessee to a broker or an end user, as the case may be.

For purposes of this Section, a low-production well is defined as a well that produces no more than 15 MCF per day of gas on a monthly basis (calculated on days of actual production per month), as documented by the most recent twelve (12) month production history, and that is approved by the United States Department of Interior for exemption from the measurement standards of Onshore Oil and Gas Order No. 5, Sections IIIC.1, C.2 and C.4.

## **§ 10 COMPUTATION OF OIL VOLUME.**

Oil volume shall be computed as the total volume of severed oil taxable products, before any deductions are taken for transportation, processing, industry-standard shrinkage, or any other reasons, measured in accordance with current contracts of sale by the operator or producer and the purchaser of such oil and in accordance with standard industry practices.

## **§ 11 PAYMENT OF TAX BY WHOM.**

Each taxpayer subject to a tax under this Chapter shall designate, in writing to the Department, an agent who shall represent and legally bind the taxpayer with respect to all obligations under this Chapter, pursuant to J.A.N.C. § 11-1-7. Taxpayers having interests in the same taxable product from the same lease shall designate the same agent with respect to that taxable product. The designated agent shall be liable for payment of the taxes assessed by this Chapter and shall make payments and file forms pursuant to the terms of this Chapter and J.A.N.C. Title 11, Chapter 1.

## **§ 12 USE OF PRIVILEGE TAX PROCEEDS.**

All monies received shall be deposited by the Treasurer of the Nation in the General Fund to be budgeted by the Council and expended to defray the cost of providing governmental services. The Department may execute vouchers for approval for payment against this Fund to make refund adjustments, payments of interest or payments for any purpose which this Chapter may require.

## **§ 13 SEVERABILITY.**

If any part of this Chapter or its application to any situation or person is held invalid, the remainder of the Chapter or its application to other situations or persons shall not be affected.

#### § 14 EFFECTIVE DATE.

This Chapter shall become effective on July 1, 2000, after adoption by the Council, and subject to the subsequent approval of this Chapter by the Secretary of the Interior, as provided in the Revised Constitution of the Jicarilla Apache Nation.

## CHAPTER 3: POSSESSORY INTEREST TAX

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#### § 1 STATEMENT OF PURPOSE.

It is the policy of the Jicarilla Apache Nation to provide members and non-members of the Nation residing, doing business or working within the Nation with essential governmental services. To finance this governmental policy, the Jicarilla Apache Nation in this Chapter adopts a possessory interest tax which will provide the Nation with a portion of the revenues necessary to fund essential governmental services within the Nation and which will benefit all individuals and businesses within the Nation.

#### § 2 REVENUE AND TAXATION DEPARTMENT.

The Revenue and Taxation Department of the Jicarilla Apache Nation shall administer this Chapter and shall keep all records and accounts concerning this Chapter. Any inquiries concerning the Jicarilla Apache possessory interest tax shall be made through the Revenue and Taxation Department of the Nation.

#### § 3 DEFINITIONS.

(A) **DEPARTMENT** means the Revenue and Taxation Department, the Director of the Department or an employee of the Department designated by the Director to exercise the powers of the Department under this Chapter, as the case may be. The Department is the successor to and has all the authority previously granted to the Tax Administration Division.

(B) **DESIGNATED AGENT** means the person or company who has been identified in writing to the Department, pursuant to J.A.N.C. § 11-3-6, as responsible for performing all the obligations of a taxpayer under this Chapter, including all obligations to provide information necessary to permit the accurate computation of the Nation's taxes.

(C) **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

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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.

(D) **POSSESSORY INTEREST** means any non-exempt interest in real property within the Nation, including but not limited to:

- (1) Interests held in fee;
- (2) Interests held under lease; and
- (3) Interests held under an easement or right-of-way, and all

improvements, equipment, fixtures and other tangible personal property held or used by the taxpayer in connection with the taxable use of such realty.

(E) **NATION** means all lands within the territory defined by J.A.N.C. § 1-1-5.

(F) **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 Nation. Retail business as defined herein does not include a utility.

(G) **TAXABLE PRODUCT** means hydrocarbon oil, gas, casinghead gas, distillate, condensate, liquid hydrocarbons and each of their respective constituent

vapors and liquids, including without limitation, helium and carbon dioxide, and all other non-hydrocarbon gas produced in association therewith which may be found in oil and gas deposits or in coal deposits within the Nation, as well as water, timber and other natural resources which may be severed within the Nation and sold.

(H) **TAXPAYER** means any person or entity, including any individual, partnership, corporation, enterprise or other legal entity, who owns an interest in any possessory interest within the Nation that is subject to tax under this Chapter, but does not include the Jicarilla Apache Nation.

(I) **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 of the same calendar year.

(J) **UTILITY** means any privately or publicly held entity primarily engaged in supplying, transmitting, transporting or distributing electricity, oil, natural gas, natural gas products, water, carbon dioxide, liquid hydrocarbons, telephone, telegraph or other communication services, cable television or transportation services.

(K) **WELL UNIT** means well property from which taxable products are severed, and includes wells and non-mobile equipment used at a well site in connection with the severance, treatment or storage of taxable products. Such non-mobile equipment consists of all pipe and equipment supporting separation, dehydration, compression, sweetening, product storage, metering and other activities prior to and including the first place of physical measurement, but does not include drilling rigs.

(1) For oil and condensate, the first place of physical measurement is either the outlet of the initial storage facility or the outlet of the lease automatic custody transfer unit.

(2) For natural gas, the first place of physical measurement is the outlet of the custody transfer meter, the allocation meter or the sales meter, whichever occurs first.

#### **§ 4 IMPOSITION AND RATE OF TAX.**

The possessory interest tax set forth herein shall be imposed on the ownership of possessory interests on January 1 of each tax year and shall be assessed at the rate of seven percent (7%) of the value of the possessory interest as determined and computed in accordance with this Chapter. The rate of tax shall be and remain the same as herein established unless amended by ordinance of the Council. Upon passage of any ordinance 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 Council designates.

#### **§ 5 COMPUTATION OF VALUE OF POSSESSORY INTEREST.**

The value of a possessory interest shall be computed as provided in this Section.

(A) **Date of Valuation.** All property that is subject to taxation under this Chapter shall be valued as of January 1st of the tax year, except as provided in J.A.N.C. § 11-3-5(E)(1).



(B) *Method of Valuation: Generally.* If a method or methods of valuation for a possessory interest are not otherwise provided in this Section, the value of the possessory interest for taxation purposes shall be equal to the tangible property cost 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 minus accumulated depreciation, provided that the value shall not be less than twenty percent (20%) of the total tangible property costs. In order to calculate the accumulated depreciation, the taxpayer shall use the figures set forth in the Depreciation Tables issued by the New Mexico Taxation and Revenue Department, Property Tax Division, State Assessed Property Bureau for the applicable tax year for any property covered by those tables.

(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 New Mexico Property Tax Code, as amended, currently N.M. Stat. Ann. §§ 7-36-1 to 7-36-33 (Repl. 1993), and regulations adopted pursuant thereto. Unlike New Mexico law, however, this value shall not be reduced by a one-third (1/3) assessment ratio prior to application of the possessory interest tax. This reference to New Mexico law is solely for purposes of establishing a method of valuation and shall not be construed as a concession by the Jicarilla Apache Nation that state law is otherwise applicable to the Nation.

(D) *Method of Valuation: Well Unit.* The value of a well unit is equal to twenty-seven percent (27%) of the difference between the actual price received for the taxable products from a well unit for the calendar year (or such other amount determined by the New Mexico Taxation and Revenue Department pursuant to § 7-32-6 of the New Mexico Oil and Gas Ad Valorem Production Tax to be the value of the taxable products) and the value of the Nation's royalty interest percentage in the production of that well unit for the same calendar year, but not deducting transportation costs. For purposes of this Section, calendar year means:

(1) In the first tax year of liability of the taxpayer, the calendar year immediately preceding the tax year;

(2) In every tax year other than the first tax year of liability of the taxpayer, the second calendar year preceding the tax year.

(3) For purposes of the deduction for the Nation's royalty interest permitted in this Section, the value of the Nation's royalty interest percentage in the production of a well unit is the total value for the taxable products from a well unit in a calendar year times the royalty rate, as specified in the taxpayer's lease.

(E) *Method of Valuation: Drilling Rig.* The value of a drilling rig is equal to the schedule value set forth in the table in NMAC 3.6.5.40.4.3, where "depth capacity" means the maximum depth of a well that the drilling rig is capable of drilling without exceeding its safe operating design limits. This value will then be prorated on the basis of the amount of time that the drilling rig is located within the Nation during the tax year.

(1) *Date of Valuation.* If a drilling rig is not located within the Nation on January 1 but has been brought within the Nation at some time during the tax year,

the drilling rig shall be valued on the first day of the month following the first day that the drilling rig was located within the Nation.

(2) *Date of Report.* The designated agent shall report the valuation of the drilling rig on the Possessory Interest Reporting Form prescribed by the Department pursuant to J.A.N.C. § 11-3-7 and shall include in the report the days which the drilling rig was located within the Nation. Notwithstanding the provisions of J.A.N.C. §§ 11-3-7, however, this report shall be filed on January 15 of the year following the tax year for which the information is given. Notice of tax assessment and of the amount of tax due shall be mailed by the Department on February 1 of the year following the tax year in question, notwithstanding the provisions of J.A.N.C. § 11-3-8, the remainder of J.A.N.C. §§ 11-3-7 and 11-3-8 shall apply.

## **§ 6 DESIGNATION OF AGENT.**

Each taxpayer shall designate, in writing to the Department, pursuant to J.A.N.C. § 11-1-7, an agent who shall represent and legally bind the taxpayer with respect to all obligations under this Chapter, including completing the forms distributed by the Department 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 REPORTING REQUIREMENTS.**

Each taxpayer shall comply with the following reporting requirements and such other requirements as are adopted by the Department:

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

(B) *Reporting Date; Delinquent Reporting.* Each designated agent shall file with the Department a general information form and report the value of its possessory interests by January 15 of each tax year. Delinquent reports shall not extend the date that payment of taxes is due pursuant to § 8 of this Chapter, without regard to the date of mailing of the notice of assessment by the Department. Delinquent reports may result in interest charges and a penalty for late filing, as specified in J.A.N.C § 11-1-8(l), § 11-1-24 and § 11-1-25, except that no penalty will be imposed if an extension is granted by the Department, pursuant to Section J.A.N.C § 11-1-8.

(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 or value of its possessory interests, the Department may proceed to determine the value of that taxpayer's possessory interests and to assess taxes accordingly. The Department's valuation of the possessory interest is presumed to be correct, and the Department's assessment will be binding on the taxpayer unless it shows that the value, on the basis of the best information available to the Department, was determined by the Department in an arbitrary or capricious

manner or unless the Department 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 J.A.N.C. § 11-3-11, provided that the Department may require the taxpayer to file the information necessary to establish the claimed tax exemption.

(E) *Authority of the Department.* The Department 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 Department by February 1 of the tax year, unless that date has been extended pursuant to J.A.N.C. Title 11, Chapter 1, or unless the taxpayer fails to timely report the value of its possessory interest pursuant to J.A.N.C. § 11-3-7(B). The assessment shall be effective as of January 1 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 the notice, unless:

(1) The notice is late due to the taxpayer's failure to file timely the reports required under J.A.N.C. § 11-3-7, in which case penalties and interest shall be calculated, pursuant to J.A.N.C. § 11-1-24 and § 11-1-25, from February 1 until the time of payment; or

(2) The due date has been extended pursuant to J.A.N.C. § 11-3-9, in which instance the assessed tax shall be paid on or before the date stated by the Department in the notice.

Any taxes assessed shall be paid by check or money order made payable to the Treasurer of the Jicarilla Apache Nation. Payment is timely made if it is received by the Office of the Treasurer of the Jicarilla Apache Nation before midnight on the date on which the tax is due.

## **§ 9 EXTENSION OF TIME FOR PAYING TAX.**

Upon the filing with the Department of a timely written request for an extension of time within which to pay assessed taxes, and upon a showing of good cause, the Department may extend, for a period not to exceed sixty (60) days, the due date for payment of taxes assessed, but no further extension shall be allowed. Such a request for extension, to be timely, must be filed on or before the date the assessed taxes are due. No penalty for late payment as provided for in J.A.N.C. § 11-1-25 shall be imposed on any payment for which an extension has been granted, but interest shall accrue as provided by J.A.N.C. § 11-1-24.

## **§ 10 LIEN FOR TAXES.**

## Jicarilla Apache Nation Code

(A) *Lien Against Possessory Interest.* The possessory interest tax shall be a lien against the possessory interest of the taxpayer in favor of the Jicarilla Apache Nation 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 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 Jicarilla Apache Nation upon all property and rights to property of the taxpayer, including any oil and gas production within the Nation. The lien imposed by this subsection shall arise at the time of the assessment, but shall be effective against any mortgagee, pledgee, purchaser, judgment creditor, lienor or other encumbrancer for value when notice of the lien has been filed as provided in J.A.N.C. § 11-3-10(C).

(C) *Notice of Lien.* A notice of the lien provided for in J.A.N.C. § 11-3-10(B) shall be filed with the Secretary of the Jicarilla Apache Nation and with the Superintendent of the Jicarilla Agency of the Bureau of Indian Affairs. The notice of lien shall identify the taxpayer whose tax liability is sought to be enforced and the date the tax was due and shall state that the Jicarilla Apache Nation claims a lien for the entire amount of tax claimed to be due, including applicable interest and penalty.

(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 Nation. Partial payment of the amount due shall reduce the amount of the lien by the amount paid. The Nation 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 Nation may foreclose upon the property subject to a lien by filing a civil action in the Nation's Court, state court or federal court for that purpose. 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. Provided, that the Department may by regulation prescribe the circumstances in which property subject to a lien may be retained to offset the amount due, rather than being converted into money.

## § 11 EXEMPTIONS.

(A) *Exempt Service Lines.* No possessory interest used exclusively to operate a utility service line, utility delivery facility or utility distribution facility which exclusively serves the Nation shall be subject to this tax.

(B) *Non-Exempt Service Lines.* Possessory interests used to operate utility lines passing through the Nation and providing service exclusively beyond the Nation's boundaries shall be subject to this tax.

(C) *Partially Exempt Service Lines.* Possessory interests used to operate utility lines or utility delivery or distribution facilities, which provide service both to the Nation and beyond the Nation, shall be subject to this tax, except that specific utility

lines or utility delivery or distribution facilities that the taxpayer demonstrates clearly serve the Nation exclusively, shall be exempt.

(D) *Governmental Entities.* No possessory interest held and used by the United States, by the Jicarilla Apache Nation (but not including by corporations or enterprises owned by the Nation), by the State of New Mexico or a subdivision thereof, or by municipalities within that state shall be subject to this tax.

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

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

## **§ 12 METHOD OF CLAIMING EXEMPTION.**

Any taxpayer owning both taxable and exempt possessory interests shall file with the Department a claim for any exemption under J.A.N.C. § 11-3-11. The claims for exemption shall be filed on the form provided by the Department at the time of filing the valuation reports required by J.A.N.C. § 11-3-7 and shall be accompanied by a map clearly indicating the specific property for which exemption is claimed. The Department may request in writing that any person or entity owning only exempt possessory interests shall submit a list of such exemptions to the Department.

## **§ 13 SEVERABILITY.**

If any part of this Chapter or its application to any situation or person is held invalid, the remainder of the Chapter or its application to other situations or persons shall not be affected.

## **§ 14 USE OF TAX PROCEEDS.**

There is hereby created a Possessory Interest Tax Temporary Fund and a Possessory Interest Tax Permanent Fund, Jicarilla Apache Nation. All monies received pursuant to this Chapter shall be held in suspense by the Treasurer of the Nation in the Temporary Fund until disbursed as hereinafter provided. The Treasurer of the Nation shall, from time to time, transfer from the Possessory Interest Tax Temporary Fund to the Possessory Interest Tax Permanent Fund the amount of money which is reported to be unencumbered. The Department may execute vouchers for approval for payment against the Temporary Fund to make refund adjustments, payments of interest or payments for any purpose which this Chapter may require. If there are insufficient monies in the Temporary Fund, the Department may execute vouchers for approval for payment against the Permanent Fund.

## **§ 15 EFFECTIVE DATE.**

This Chapter shall be effective as of the date of its enactment by the Council, subject to the approval of the Secretary of the Interior pursuant to Art. XI, § 2 of the Constitution of the Jicarilla Apache Nation.

## **CHAPTER 4: SEVERANCE TAX**

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### **§ 1 IMPOSITION OF TAX.**

A tax is imposed on the severance of any oil and gas taxable products within the Nation and is authorized to be imposed on the severance of any other taxable products within the Nation pursuant to the provisions of this ordinance. The Oil and Gas Severance Tax Ordinance was enacted by the Council on July 9, 1976 as Ordinance No. 77-O-02, was approved by the Secretary of the Interior or his authorized representative on December 22, 1976, and was amended on January 26, 1977 by Ordinance No. 77-O-195. This Chapter amends the previous Oil and Gas Severance Tax Ordinance to authorize a tax on the severance of all taxable products within the Nation, to clarify the computation of volume for oil and gas taxable products, and to provide for administration of this Chapter pursuant to the Tax Administration Ordinance [J.A.N.C. Title 11, Chapter 1], enacted on the same date as this Chapter.

### **§ 2 DEFINITIONS.**

(A) **DEPARTMENT** means the Revenue and Taxation Department, the Director of the Department or an employee of the Department designated by the Director as authorized to exercise the powers of the Department under this Chapter, as the case may be. The Department is the successor to and has all the authority previously granted to the Tax Administration Division.

(B) **DESIGNATED AGENT** means the person or company who has been identified in writing to the Department, pursuant to J.A.N.C. § 11-1-7, as responsible for performing all the obligations of a taxpayer under this Chapter, including all obligations to provide information necessary to permit the accurate computation of the severance tax under this Chapter.

(C) **OIL AND GAS TAXABLE PRODUCT** means hydrocarbon oil, gas, casinghead gas, distillate, condensate, liquid hydrocarbons and each of their respective constituent vapors and liquids, including without limitation, helium and carbon dioxide, and all other non-hydrocarbon gas produced in association therewith which may be found in oil and gas deposits or in coal deposits within the Nation.

(D) **NATION** means all lands within the territory defined by J.A.N.C. § 1-1-5.

(E) **TAXABLE PRODUCT** means oil and gas taxable products, water, timber and other natural resources which may be severed within the Nation and sold.

(F) **TAXPAYER** means any person or entity, including any individual, partnership, corporation, enterprise or other legal entity, who owns an interest in taxable products at the time of severance, but does not include the Jicarilla Apache Nation.

**§ 3 DUE DATE OF TAX.**

The severance tax is due at the time of severance and payable monthly, by the twenty-fifth day of the second calendar month following the calendar month in which the taxable product was severed.

**§ 4 RATE OF TAX ON GAS TAXABLE PRODUCTS.**

The severance tax set forth herein was originally assessed at the rate of five cents (\$0.05) per million BTU of gas volume. This rate was adjusted as of February 1, 2001 to \$0.0517 per million BTU of gas volume, based on the Consumer Price Index published by the U.S. Department of Labor, and the rate shall remain at \$0.0517 until such time as the Legislative Council of the Jicarilla Apache Nation may amend this Section.

**§ 5 RATE OF TAX ON OIL TAXABLE PRODUCTS.**

The severance tax set forth herein was originally assessed at the rate of twenty-nine cents (\$0.29) per barrel of crude oil or condensate volume. This rate was adjusted as of February 1, 2001 to \$0.2997 per barrel of crude oil or condensate volume, based on the Consumer Price Index published by the U.S. Department of Labor, and the rate shall remain at \$0.2997 until such time as the Legislative Council of the Jicarilla Apache Nation may amend this Section.

**§ 6 RATE OF TAX ON TAXABLE PRODUCTS OTHER THAN OIL AND GAS.**

The Department may set rates for severance taxes on other taxable products through regulations issued pursuant to the procedures set forth in J.A.N.C. § 11-1-5.

**§ 7 COMPUTATION OF GAS VOLUME.**

Gas volume shall be computed as the total volume of severed gas taxable products measured at the wellhead, before any deductions are taken for transportation, processing, industry-standard shrinkage, or any other reason. Notwithstanding the preceding sentence, the volume of severed gas taxable products from a low-production well, where an off-site gas measurement permit has been obtained pursuant to J.A.N.C. § 18-12-1 through § 18-12-10, and the meter used complies with the minimum standards in Onshore Oil and Gas Order No. 5, 54 Fed. Reg. 8100 (Feb. 24, 1989), shall be computed as the larger of either:

- (A) The total volume of severed gas taxable products measured at the off-site measurement point approved under J.A.N.C. § 18-12-1 through § 18-12-10; or
- (B) The total volume of severed gas taxable products sold by the lessee to a broker or an end user, as the case may be.

For purposes of this Section, a low-production well is defined as a well that produces no more than 15 MCF per day of gas on a monthly basis (calculated on days

of actual production per month), as documented by the most recent twelve (12) month production history, and that is approved by the United States Department of Interior for exemption from measurement standards of Onshore Oil and Gas Order No. 5, Sections III.C.1, C.2 and C.4.

#### **§ 8 COMPUTATION OF OIL VOLUME.**

Oil volume shall be computed as the total volume of severed oil taxable products, before any deductions are taken for transportation, processing, industry-standard shrinkage, or any other reasons, measured in accordance with current contracts of sale by the operator or producer and the purchaser of such oil and in accordance with standard industry practices.

#### **§ 9 PAYMENT OF TAX BY WHOM.**

Each taxpayer subject to a tax under this Chapter shall designate, in writing to the Department, an agent who shall represent and legally bind the taxpayer with respect to all obligations under this Chapter, pursuant to J.A.N.C. § 11-1-7. Taxpayers having interests in the same taxable product from the same lease shall designate the same agent with respect to that taxable product. The designated agent shall be liable for payment of the taxes assessed by this Chapter and shall make payments and file forms pursuant to the terms of this Chapter and J.A.N.C. Title 11, Chapter 1.

#### **§ 10 SEVERANCE TAX FUND CREATED, TRANSFER OF FUNDS.**

The Oil and Gas Severance Tax Fund created by Ordinance No. 77-O-02 shall be re-named the "Severance Tax Permanent Fund." In addition, there is created a Severance Tax Temporary Fund, Jicarilla Apache Nation. All monies received pursuant to this ordinance shall be held in suspense by the Treasurer of the Nation in such Temporary Fund until disbursed as hereinafter provided. The Treasurer of the Nation shall, from time to time, transfer from the Severance Tax Temporary Fund to the Severance Tax Permanent Fund the amount of money which is reported to be unencumbered. The Department may execute vouchers for approval for payment against the Temporary Fund to make refund adjustments, payments of interest or payments for any purpose which this Chapter may require. If there are insufficient monies in the Temporary Fund, the Department may execute vouchers for approval for payment against the Permanent Fund.

#### **§ 11 SEVERABILITY.**

If any part of this Chapter or its application to any situation or person is held invalid, the remainder of the Chapter or its application to other situations or persons shall not be affected.

#### **§ 12 EFFECTIVE DATE.**



This ordinance shall become effective on July 1, 2000, after adoption by the Council, and subject to the subsequent approval of this ordinance by the Secretary of the Interior, as provided in the Revised Constitution of the Jicarilla Apache Nation.

## CHAPTER 5: GASOLINE TAX

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### § 1 DEFINITIONS.

(A) **DEPARTMENT** means the Revenue and Taxation Department of the Jicarilla Apache Nation.

(B) **IMPORTER** means a person who imports gasoline into the Nation other than in the fuel supply tank of a motor vehicle for sale or use within the Nation. The person who owns the gasoline at the time of importation is the importer. A person may be both an importer and a wholesaler or retailer of the same quantities of gasoline.

(C) **GASOLINE** means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft, except for diesel engine fuel, kerosene, liquified petroleum gas, compressed or liquified natural gas, and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines.

(D) **PERSON** means an individual or any other legal entity, including any federal, tribal, state or other governmental entity, department, agency, instrumentality or political subdivision, and includes any corporation, partnership, joint venture, limited liability company or other organization existing under federal, tribal, state or foreign law.

(E) **NATION** means, for purposes of this Chapter only, all land within the exterior boundaries of the Jicarilla Apache Reservation as recognized by the United States and all land held in trust by the United States for the Jicarilla Apache Nation.

(F) **RETAILER** means a person who sells or gives away gasoline for any purpose other than resale and delivers the gasoline sold into fuel supply tanks of motor vehicles or into portable fuel storage containers. A person may be both an importer or wholesaler and a retailer as to the same quantities of gasoline.

(G) **WHOLESALER** means any person other than an importer who sells gasoline for resale. A person may be both an importer or retailer and a wholesaler as to the same quantities of gasoline.

### § 2 IMPOSITION OF GASOLINE TAX.

(A) For the privilege of engaging in business as an importer of gasoline into the Nation there is imposed an excise tax at the rate of seventeen cents (\$.17) per gallon on each gallon of gasoline imported into the Nation by the importer.

(B) The tax imposed by this Section may be called the "gasoline tax."

### § 3 DEDUCTIONS.

## Jicarilla Apache Nation Code

In computing the gasoline tax due, the importer may deduct from the total amount of gasoline imported into the Nation:

(A) Gasoline exported from the Nation other than in the fuel supply tank of a motor vehicle;

(B) Gasoline lost or destroyed by fire or unavoidable accident while in the possession of the importer;

(C) Gasoline used within the Nation in a manufacturing process in which the gasoline is an ingredient or component material. Gasoline used as fuel in a manufacturing process does not qualify for deduction under this subsection;

(D) The importer claiming any deduction has the burden of proving to the reasonable satisfaction of the Department that the gasoline is deductible under this Section.

### **§ 4 IMPORTER RETURNS AND TAX PAYMENTS.**

(A) Every importer shall file gasoline tax returns in the form prescribed by the Department on or before the twenty-fifth (25<sup>th</sup>) day of the month following the month in which it imports gasoline into the Nation.

(B) The return shall report the number of gallons of gasoline imported, the identity of the person to whom the gasoline is delivered, the number of deductible gallons, and any other information required by the Department.

(C) The return shall be accompanied by payment of the amount of gasoline tax due.

### **§ 5 RETAILER RETURNS.**

(A) Every retailer shall file informational returns in the form prescribed by the Department on or before the twenty-fifth (25<sup>th</sup>) day of the month following the month in which it takes delivery of any gasoline within the Nation.

(B) The return shall report the number of gallons of gasoline delivered, the date delivered, the identity of the importer or wholesaler from whom the retailer obtained the gasoline, and any other information required by the Department.

### **§ 6 WHOLESALER RETURNS.**

(A) Every wholesaler shall file informational returns in the form prescribed by the Department on or before the twenty-fifth (25<sup>th</sup>) day of the month following the month in which it takes delivery of any gasoline within the Nation.

(B) The return shall report the number of gallons of gasoline delivered, the identity of the importer from whom the wholesaler obtained the gasoline, the identity of the person to whom the gasoline was sold, and any other information required by the Department.

### **§ 7 REGISTRATION OF IMPORTERS, WHOLESALERS AND RETAILERS.**

## Jicarilla Apache Nation Code

(A) Every person engaged in the business of importing gasoline into the Nation and every person engaged in business as a retailer or wholesaler of gasoline within the Nation shall register with the Department.

(B) The registration shall include name, address, telephone number, federal social security number, federal taxpayer identification number, all state taxpayer identification numbers of the person registering and of all other persons owning more than ten percent (10%) of the voting and non-voting interests in the person registering and such other information required by the Department.

### **§ 8 BONDS.**

(A) Every importer, wholesaler and retailer of gasoline shall file with the Department a bond or other security acceptable to the Department.

(B) Any bond shall name the Jicarilla Apache Nation as obligee and shall be conditioned upon the prompt filing of true reports and the prompt payment of all taxes imposed by this Chapter, together with all applicable penalties and interest.

(C) The amount of the bond or other security shall be the greater of One Thousand Dollars (\$1,000.00) or an amount equal to twice the estimated monthly gasoline tax obligation of the person filing the bond.

### **§ 9 FUEL MANIFESTS.**

(A) Every person importing gasoline into the Nation, or exporting gasoline out of the Nation, other than by pipeline or in the fuel supply tank of a motor vehicle shall carry a manifest or bill of lading in a form prescribed by or acceptable to the Department.

(B) The manifest or bill of lading shall be signed by the person who delivered possession of the gasoline to the transporter and by every person accepting delivery of any part of the gasoline from the transporter, indicating the amount accepted.

(C) Any other person transporting thirty-five (35) gallons or more of gasoline within the Nation, other than in the fuel supply tank of a motor vehicle, shall upon demand furnish proof acceptable to the Department that the gasoline so transported was legally acquired and that any gasoline tax imposed by this Chapter on the gasoline has been paid.

### **§ 10 GASOLINE TAX ACCOUNT.**

All gasoline tax revenues collected by the Department shall be deposited in the Gasoline Tax Account and shall be expended as provided by enactment of the Legislative Council.

### **§ 11 EFFECTIVE DATE.**

Upon enactment of this Chapter by the Legislative Council and approval by the Secretary of the Interior, this Chapter shall be deemed effective on September 1, 2001 and shall apply to all gasoline imported into the Nation on or after the effective date.

## **CHAPTER 6: CAPITAL IMPROVEMENTS TAX**

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### **§ 1 TITLE.**

The tax imposed by this Chapter shall be called the Capital Improvements Tax.

### **§ 2 TAX IMPOSED.**

A tax is imposed on the privilege of severing products within the Nation. Every interest owner is deemed to be in the business of severing products and is liable for this tax to the extent of his interest as may be measured by the value of the products.

### **§ 3 ADMINISTRATION.**

Title 11, Chapter 1 applies to and governs the interpretation, administration and enforcement of the Capital Improvements Tax, except to the extent this Chapter or a cooperative agreement entered into under J.A.N.C. § 11-6-11 expressly provides otherwise.

### **§ 4 DEFINITIONS.**

(A) **DEPARTMENT** means the Jicarilla Apache Revenue and Taxation Department, the Director of the Department, or an employee of the Department designated by the Director as authorized to exercise the powers of the Department under this Chapter.

(B) **DESIGNATED AGENT** means the person who has been identified in writing to the Department, pursuant to J.A.N.C. § 11-6-9, as responsible for performing all the obligations of a taxpayer under this Chapter, including all obligations to provide information necessary to permit the accurate computation of the Capital Improvements Tax under this Chapter.

(C) **NATION** solely for purpose of this Chapter means all land that:

(1) On March 1, 2002 was within the exterior boundaries of the Jicarilla Apache Reservation as recognized by the United States or was held in trust by the United States for the Nation; and

(2) On the date the Capital Improvements Tax is assessed is within the exterior boundaries of the Jicarilla Apache Reservation as recognized by the United States or is held in trust by the United States for the Nation.

(D) **PRODUCT** means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide. The volume of products subject to the Capital

Improvement Tax shall be determined under applicable laws of the State of New Mexico.

(E) **TAXPAYER** means any interest owner as defined by this Chapter. Any person deemed to be a taxpayer under this Chapter shall be subject to the obligations imposed on taxpayers by Title 11, Chapter 1 (Tax Administration).

(F) **QUALIFYING WELL** means a well within the Nation as defined in this Chapter.

(G) **INTEREST OWNER** means any person or entity, including any individual, partnership, corporation or other legal entity who owns an entire or fractional interest of whatsoever kind of nature in the products at the time of severance or who has right to a monetary payment which is determined by the value of such products, but does not include the Nation or any entity owned by the Nation.

(H) **TAXABLE VALUE** solely for the purposes of this Chapter means the taxable value of the products as determined under applicable laws of the State of New Mexico.

(I) **OPERATOR** means any person:  
(1) Engaged in the severance of products within the Nation; or  
(2) Who owns an interest in any product at the time of severance and receives a portion or all of such product for his interest.

(J) **PURCHASER** means a person who is the first purchaser of a product after severance within the Nation.

## § 5 TAX RATE.

The Capital Improvements Tax shall be assessed at a rate of seven-tenths (7/10) of one percent of the taxable value of the products severed from qualifying wells.

(A) Any operator making a monetary payment to an interest owner for his portion of the value of products severed within the Nation shall withhold from such payment the amount of the Capital Improvements Tax due from any interest owner.

(B) Any purchaser who by express or implied agreement with the operator makes a monetary payment to an interest owner for his portion of the value of products severed within the Nation shall withhold from such payment the amount of Capital Improvements Tax due from the interest owner.

(C) The Department may require any purchaser making a monetary payment to an interest owner for his portion of the value of products severed within the Nation to withhold from such payment the amount of Capital Improvements Tax due from the interest owner.

(D) Any operator or purchaser who pays any Capital Improvements Tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

## § 6 PAYMENT AND REMITTANCE OF TAX BY OPERATOR.

Each operator shall in the form and manner required by the Department make a return to the Department showing the total value, volume and kind of products sold

within the Nation for each calendar month. All Capital Improvements Tax due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. The Department may require any additional report or information the Department may deem necessary for the proper administration of this Chapter.

#### **§ 7 PAYMENT AND REMITTANCE OF TAX BY PURCHASER.**

Each purchaser shall in the form and manner required by the Department make a return to the Department showing the total value, volume and kind of products purchased by him from within the Nation for each calendar month. All Capital Improvement Tax due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. The Department may require any additional report or information the Department may deem necessary for the proper administration of this Chapter.

#### **§ 8 DESIGNATION OF INDIVIDUAL.**

Each taxpayer, operator and purchaser shall designate an agent as provided in J.A.N.C. § 11-1-7.

#### **§ 9 USE OF TAX.**

Revenue from the Capital Improvements Tax is exclusively dedicated to fund capital improvement projects within the Nation, and is not available to finance the construction of buildings to be used for commercial activity.

#### **§ 10 COOPERATIVE AGREEMENT.**

The Department is authorized and directed to enter into a cooperative agreement with the New Mexico Department of Taxation and Revenue for the exchange of information necessary for the administration of this Chapter and the proper administration of the Jicarilla Apache Tribal capital improvements tax credit established by Chapter 15, Laws 2000, State of New Mexico. The Department may enter into a cooperative agreement with the State of New Mexico for collection of the tax. The cooperative agreement shall be effective only upon approval by the Legislative Council of the Nation.

#### **§ 11 EFFECTIVE DATE.**

The effective date of the provisions of this Chapter shall be January 1, 2003, subject to approval by the Secretary of the Interior as provided in Article XI, § 2 of the Nation's Revised Constitution.

## CHAPTER 7: GROSS RECEIPTS TAX ORDINANCE

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### § 1 SHORT TITLE; PURPOSE.

This Chapter is known as the Jicarilla Apache Gross Receipts Tax Ordinance.

### § 2 DEFINITIONS.

For purposes of this Chapter:

(A) **AUTHENTIC NATIVE AMERICAN ARTS AND CRAFTS** means any product which is:

- (1) Handcrafted by an Indian artist; and
- (2) Sold by or on behalf of such artist.

(B) **DEPARTMENT** means the Revenue and Taxation Department, the Director of the Department or an employee of the Department designated by the Director to exercise powers of the Department under Title 11.

(C) **PRESIDENT** means the President of the Jicarilla Apache Nation.

(D) **GROSS RECEIPTS** means the total amount of money or the value of other consideration received from performing services or selling goods or property within Jicarilla Apache Lands and includes any receipts from sales of tangible property handled on consignment and receipts from leases or rentals of tangible personal property, but excludes cash discounts allowed and taken and excludes any gross receipts or sales tax imposed by the State of New Mexico or its political subdivisions, provided that such entity provides for a reciprocal exclusion for gross receipts or sales tax imposed by the Nation.

(E) **ITINERANT VENDOR** means a vendor that sells food or goods at retail to the general public, that does not have a fixed business or retail space, either on or off Jicarilla Apache Lands and has sales of less than \$20,000 per year (either on or off Jicarilla Apache Lands). **ITINERANT VENDOR** includes vendors licensed to operate booths or concessions at Little Beaver and other events. Itinerant vendor does not include suppliers, materialmen or vendors of construction services or goods.

(F) **PERSON** means any individual, firm, partnership, joint venture, association, corporation, estate, trust, entity of state or federal government, political entity or other identifiable entity.

(G) **NATION** means the Jicarilla Apache Nation.

(H) **JICARILLA APACHE ENTERPRISE** means a business or joint venture that is at least 51% owned by the Jicarilla Apache Nation, including corporations chartered under 25 U.S.C. § 477, and unchartered business enterprises of the Nation.

(I) **LEGISLATIVE COUNCIL** means the governing body of the Nation.

(J) **PURCHASE PRICE** means the amount paid or charged for tangible personal property or other taxable items or service.

(K) **JICARILLA APACHE LANDS** means, solely for purposes of this Chapter, all land held by the United States in trust for Jicarilla Apache Nation and all lands owned

by the Nation within the exterior boundaries of the territory designated by the United States as Indian reservation lands of the Nation.

(L) **TANGIBLE PERSONAL PROPERTY** means all goods, wares, merchandise, produce, commodities and all tangible things and substances which are capable of being possessed or exchanged.

(M) **TAXPAYER** means any taxable person or entity, including any individual, partnership, corporation or other legal entity engaging in a taxable transaction on Jicarilla Apache Lands.

(N) **COURT** means the court of the Jicarilla Apache Nation.

(O) **VENDOR** means any person receiving any payment or consideration upon any taxable transaction.

### § 3 TAX DISTRICTS.

There is hereby established within Jicarilla Apache Lands two (2) tax districts: Rio Arriba and Sandoval Tax Districts. These tax districts shall correspond to the boundaries of Jicarilla Apache Lands located within each of these two (2) counties.

### § 4 IMPOSITION AND RATE OF TAX.

(A) Except as otherwise provided in this Chapter, for the privilege of engaging in business on Jicarilla Apache Lands, an excise tax of gross receipts, to be known as the Gross Receipts Tax, is imposed on any person engaging in business, performing services or selling tangible personal property within Jicarilla Apache Lands at the following rates:

Rio Arriba District	5.6875%
Sandoval Tax District	5.750%

(B) These rates shall be adjusted automatically to correspond to the total of the State of New Mexico and local option districts' gross receipts, sales or similar tax rate for the respective counties.

### § 5 GROSS RECEIPTS TAX CREDIT.

(A) If a gross receipts, sales or similar tax has been levied by the State of New Mexico or a political subdivision thereof on a taxable transaction taking place on Jicarilla Apache Lands, the amount of the state tax may be credited against any gross receipts tax due the Nation in the amount equal to the lesser of twenty-five percent (25%) of the Nation's gross receipts tax or twenty-five percent (25%) of tax revenue produced by the sum of the rate of tax imposed under the New Mexico Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transaction; provided that the New Mexico Gross Receipts and Compensating Tax Act allows a credit of the lesser of seventy-five percent (75%) of the tax imposed on Jicarilla Apache Lands on the receipts from the transaction or seventy-five percent (75%) of the tax revenue produced by the sum of the rate of tax imposed pursuant to the New Mexico Gross Receipts and Compensating Tax



Act and the total of the rates of local option gross receipts taxes imposed on the receipts from the same transaction.

(B) The Department shall enter into a cooperative agreement with the Secretary of the New Mexico Department of Taxation and Revenue to carry out the provisions of this Section. Such cooperative agreement shall be approved by the Legislative Council and signed by the President or Vice President.

## **§ 6 EXEMPTIONS.**

The following sales are exempt from the taxes imposed by this Chapter:

- (A) Sales of livestock or agricultural goods;
- (B) Sales of tobacco products;
- (C) Sales to or by the Nation, its governmental entities and political subdivisions, and Jicarilla Apache Enterprises, except for the provision of lodging services;
- (D) Sales of natural gas, electricity, heat, coal, fuel oil or other fuels sold or furnished for residential or commercial use;
- (E) Leasing or rental of real property for residential purposes, including mobile home lots;
- (F) Sales of water;
- (G) Sales of Authentic Native American arts and crafts;
- (H) Sales of groceries, food stuff and sales of goods at grocery stores dedicated primarily to selling food stuffs; and the sale of prepared meals in a restaurant or eating facility;
- (I) Sale of goods at wholesale for later resale;
- (J) Sales by Itinerant Vendors;
- (K) Sales of goods or services for incorporation into residences, including sales of residential construction services; and
- (L) Sale of gasoline or special fuels upon which a tax has already been imposed by the Nation or the State of New Mexico;
- (M) Sales of liquor upon which a tax has already been imposed.

## **§ 7 VENDING MACHINE SALES AND INSTALLMENT SALES.**

(A) The Department shall require a Vendor to pay the tax imposed by this Chapter upon sales made through vending machines and similar devices.

(B) In the case of installment sales of Tangible Personal Property, the Vendor shall collect and remit the tax imposed by this Chapter upon the principal amount of each installment of the Purchase Price at the time the installment is paid.

## **§ 8 COLLECTION OF TAX; ASSESSMENTS; PENALTIES.**

(A) The Vendor shall add the gross receipts tax to the purchase price and give the purchaser a receipt for the tax collected, which shall be stated separately from the

Purchase Price. The receipt is prima facie evidence that the purchaser has paid and the Vendor has collected the tax.

(B) Every person selling property or providing services on Jicarilla Apache Lands is responsible for the collection and payment of the gross receipts tax imposed by this Chapter.

(C) Any Vendor who appropriates or converts the tax collected to his own use or to any other use to the extent that the tax required to be collected is not available for payment on the due date set forth in this Chapter shall be personally liable to the Nation upon assessment by the Department for the amount of the tax plus interest and penalty imposed by the Department pursuant to the Tax Administration Ordinance, J.A.N.C. Title 11, Chapter 1.

(D) Any Vendor who fails to collect the tax imposed or having collected the tax fails to pay it to the Department, whether such failure is the result of the Vendor's acts or the result of acts or conditions beyond the Vendor's control, shall be personally liable to the Nation upon assessment by the Department for the amount of the tax, plus interest and penalties as established in the Tax Administration Ordinance, Title 11, Chapter 1.

## **§ 9 PAYMENT OF TAX; RECORDS; REGISTRATION.**

(A) Every Vendor engaging in a taxable transaction under this Chapter shall, on or before the twenty-fifth (25<sup>th</sup>) day of the month succeeding the end of each monthly period, prepare a return for the preceding monthly period, setting forth the amount of all sales, exempt sales, taxable sales, the amount of gross receipts tax due thereon, and such other information as the Department may require, and sign and file the return with the Department.

(B) The gross receipts tax as computed in the return shall be based upon the total non-exempt sales made during the month, including both cash and charge sales. The return shall compute the gross receipts tax on the Purchase Price, excluding gross receipts taxes imposed by the State of New Mexico for which a reciprocal exclusion has been granted by the state. A credit shall be allowed for all taxes remitted to the purchaser upon the refund of the Purchase Price paid for Tangible Personal Property or other taxable items or services returned to the vendor.

(C) Every Vendor shall pay the gross receipts taxes collected during a calendar month to the Department at the same time the return for the preceding calendar month is submitted.

(D) Each Vendor engaging in any taxable transaction under this Chapter shall:  
(1) Keep and preserve records of all sales made by the person and other books or accounts necessary to determine the amount of tax due under this Chapter; and

(2) Open all such records for examination at any time by the Director or its duly authorized representative or agent.

(E) The Department is authorized to establish alternative procedures for collection and distribution of taxes subject to the state gross receipts tax credit specified in J.A.N.C. § 11-7-5.

(F) Every Vendor shall register with the Department on the registration form provided by the Department. The Vendor shall be responsible for updating the information on the Registration Form. Failure to register shall be subject to penalties pursuant to § 11-1-20.

#### **§ 10 REPORTING REQUIREMENTS FOR OIL AND GAS LESSEE/OPERATORS.**

Oil and gas lessees, and/or the agents or operators designated by such oil and gas lessees, operating within the boundaries of Jicarilla Apache Lands under leases or mineral development agreements shall submit to the Department a listing of Vendors and independent contractors retained by such lessees and/or agents or operators to provide goods and services for such lessees and/or agents or operators and the amount paid to such and properly paid. The listing of Vendors and independent contractors and the amount paid to same shall be submitted quarterly by each oil and gas lessee, operator or agent designated by such oil and gas lessee to the Department. Failure to comply with this Section shall subject either the oil and gas lessee and/or agent or operator designated by such oil and gas lessee to the penalties set forth in J.A.N.C. § 11-1-25.

#### **§ 11 ADMINISTRATION.**

The administration of this Chapter shall be governed by the Tax Administration Ordinance, J.A.N.C. Title 11, Chapter 1.

#### **§ 12 TAX LIEN.**

The tax imposed by this Chapter shall be a first and prior lien upon the goods and business fixtures of or used by any Vendor and shall take precedence on all such property over other liens or claims of whatsoever kind or nature but only to the extent of the taxes due.

#### **§ 13 TAX PROTEST.**

Any person having made a return and paid the sales tax may protest the payment of the tax pursuant to procedures set forth in the Tax Administration Ordinance, J.A.N.C. Title 11, Chapter 1.

#### **§ 14 USE OF TAX PROCEEDS.**

All unprotested gross receipts taxes and other monies received by the Department shall be budgeted for by the Legislative Council.

#### **§ 15 NO WAIVER OF SOVEREIGN IMMUNITY.**

The Nation does not in any way waive its sovereign immunity from suit except as provided in this Chapter.

**§ 16 SEVERABILITY.**

If any part or application of this Chapter is held invalid, the remainder of the Chapter or its application to other situations or persons shall not be affected.

**§ 17 EFFECTIVE DATE.**

This Chapter shall be effective as of July 1, 2005.

## **CHAPTER 8: CIGARETTE TAX**

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**§ 1 TITLE.**

This Chapter shall be known as the “Jicarilla Apache Nation Cigarette Tax Ordinance,” and the tax imposed by this Chapter shall be known as the “tribal cigarette tax.”

**§ 2 DEFINITIONS.**

For purposes of this Chapter:

(A) **CIGARETTE** means:

(1) Any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco;

(2) Any roll of tobacco that is wrapped in any substance containing tobacco, which, because of its appearance, the type of tobacco used in the filler, its packaging and labeling, or its marketing and advertising, is likely to be offered to, or purchased by, consumers as a cigarette, as described in Paragraph (1) of this Subsection;

(3) Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(4) Bidis and kreteks; and

(5) “Roll-your-own” tobacco, i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

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(B) **DEPARTMENT** means the Revenue and Taxation Department, the Director of the Department, or an employee of the Department designated by the Director to exercise powers of the Department under this Chapter, as the case may be.

(C) **DIRECTOR** means the Director of the Revenue and Taxation Department.

(D) **LICENSE** means a license granted under this Chapter authorizing the holder to sell cigarettes bearing tax-credit stamps within the Nation's lands.

(E) **NATION** means the Jicarilla Apache Nation, and for purposes of this Chapter includes:

(1) Any political subdivision, agency, or department of the Nation;

(2) Any incorporated or unincorporated enterprise of the Nation, and any incorporated or unincorporated enterprise of one or more native nations, provided that one such nation is the Jicarilla Apache Nation; and

(3) A corporation considered to be the Nation by the Federal government or the State of New Mexico.

(F) **NATION'S LANDS** means all land within the exterior boundaries of the Jicarilla Apache Reservation as recognized by the United States and all land held in trust by the United States for the Jicarilla Apache Nation.

(G) **PACKAGE** means an individual pack, box or other container. The term "package" does not include a container that itself contains other containers, such as a carton of cigarettes.

(H) **PERSON** means a natural person, firm, sole proprietorship, partnership joint venture, association, company, corporation, trust, syndicate, or any group or combination of one or more natural persons, acting as a unit for business purposes. The term "person" does not include the Nation.

(I) **TAX STAMP** means an adhesive label issued and authorized by the New Mexico Taxation and Revenue Department, pursuant to the New Mexico Cigarette Tax Act, to be affixed to cigarette packages for State tax purposes and upon which is printed a serial number and the words "State of New Mexico" and "tobacco tax."

(J) **TAX-CREDIT STAMP** means a stamp issued by the New Mexico Taxation and Revenue Department, pursuant to the New Mexico Cigarette Tax Act, that indicates the cigarette package bearing the stamp is to be or has been sold by the Nation or a licensed tribal member within the Nation's lands and is to be or has been subject to the tribal cigarette tax imposed by this Chapter.

(K) **TAX-EXEMPT STAMP** means a stamp issued by the New Mexico Taxation and Revenue Department, pursuant to the New Mexico Cigarette Tax Act, that indicates a tax- exempt status within the meaning of that Act.

(L) **TRIBAL MEMBER** means:

(1) A person who is recognized by the governing body of the Nation to be an enrolled member of the Nation; and

(2) A corporation that is considered a member of the Nation by the Federal government or the State of New Mexico.

(M) **VENDOR** means any person or entity, including the Nation, that sells cigarettes that are subject to, and not exempt from, the tribal cigarette tax imposed by this Chapter, within the Nation's lands.

### § 3 TRIBAL CIGARETTE TAX.

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(A) For the privilege of selling cigarettes within the Nation's lands, there is imposed a tribal cigarette tax in the amount of \$0.75 per package of cigarettes, regardless of whether the cigarettes are packaged in lots of five, ten, twenty, or twenty-five or more cigarettes.

(B) The legal incidence of the tribal cigarette tax shall be on the vendor.

### **§ 4 EXEMPTIONS.**

Exempted from the tribal cigarette tax are:

(A) Sales of cigarettes bearing tax stamps;

(B) Sales of cigarettes bearing tax-exempt stamps, provided such stamps are issued on or after July 1, 2010; and

(C) Sales of cigarettes that the Nation is prohibited from taxing by any provision of the Nation's constitution or Federal law.

### **§ 5 SALES OF CIGARETTES BEARING TAX-CREDIT STAMPS.**

(A) Cigarettes bearing tax-credit stamps may be sold within the Nation's lands only by the Nation and tribal members licensed, pursuant to Section 6 of this Chapter, to sell such cigarettes.

(B) Cigarettes bearing tax-credit stamps may be sold within the Nation's lands by the Nation and licensed tribal members only for:

(1) Use or resale within the Nation's lands or on the land of another native nation, whether within or without the State of New Mexico; or

(2) Use but not resale at a location off any native nation's land, whether within or without the State of New Mexico.

(C) Sales of cigarettes bearing tax-credit stamps within the Nation's lands by the Nation and licensed tribal members are subject to the tribal cigarette tax imposed by this Chapter.

### **§ 6 LICENSE TO SELL CIGARETTES BEARING TAX-CREDIT STAMPS.**

(A) No tribal member shall engage in the sale of cigarettes bearing tax-credit stamps within the Nation's lands without a license issued by the Department.

(B) The Department shall issue or renew a license for a term not to exceed one year.

(C) The Department may charge a license fee of up to One Hundred Dollars (\$100.00) for each license issued or renewed.

(D) An application for a license or renewal of a license shall be submitted on a form prescribed by the Department and shall include:

(1) The name and address of the applicant and:

(a) If the applicant is a firm, partnership, or association, the name and address of each of its members; or

(b) If the applicant is a corporation, the name and address of each of its officers; and

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(2) The name and address of any person or persons owning, directly or indirectly, in the aggregate, more than ten percent of the ownership interest in the business applying for a license or renewal;

(3) The address of the applicant's principal place of business and every location where the applicant's business is conducted; and

(4) Any other information the department may require.

(E) The Department may deny an application for a license or renewal of a license if:

(1) The applicant is delinquent in paying any tribal taxes, including but not limited to delinquent tribal cigarette taxes; or

(2) The applicant has had a license revoked by the Department within the past two years or another similar license to sell cigarettes revoked by another Indian tribe, State, or other jurisdiction within the past two years.

(F) In addition to any other civil or criminal penalties provided by law, upon a finding that a licensee has violated a provision of this Chapter or a regulation, ruling, instruction, or order issued by the Department pursuant to this Chapter, the Department may revoke or suspend the license of the licensee.

(G) As used in this section, "applicant" includes a person or persons owning, directly or indirectly, in the aggregate, more than ten percent of the ownership interest in the business holding or applying for a license pursuant to the Jicarilla Apache Cigarette Tax Ordinance.

### **§ 7 RETURNS.**

(A) Every vendor shall, on or before the twenty-fifth (25th) day of the month succeeding the end of each monthly period, file a return for the monthly period, on a form prescribed by the Department, signed by the vendor, setting forth:

(1) The vendor's total inventory of cigarettes at the beginning of the first day of the monthly period, stating separately the quantities and types of cigarettes within the vendor's inventory bearing tax stamps, tax-credit stamps, and tax-exempt stamps;

(2) The total quantity of cigarettes sold by the vendor on the Nation's lands during the monthly period, stating separately the quantities and types of cigarettes sold by the vendor bearing tax stamps, tax-credit stamps, and tax-exempt stamps;

(3) The total amount of cigarette tax due from the vendor for the monthly period;

(4) The total quantity of cigarettes acquired by the vendor during the monthly period, stating separately the quantities and types of cigarettes purchased or acquired by the vendor bearing tax stamps, tax-credit stamps, and tax-exempt stamps;

(5) The vendor's total inventory of cigarettes at the end of the last day of the monthly period, stating separately the quantities and types of cigarettes within the vendor's inventory bearing tax stamps, tax-credit stamps, and tax-exempt stamps;

(6) The name and address of each distributor, manufacturer, or other person from whom the vendor purchased or acquired the cigarettes, stating separately the quantities and types of cigarettes acquired or purchased from each distributor,

manufacturer or other person bearing tax stamps, tax-credit stamps, and tax-exempt stamps; and

(7) Such other information as the Department may require.

(B) All returns filed pursuant to this Section shall be confidential and shall be subject to the disclosure restrictions set forth in J.A.N.C § 11-1-32.

## **§ 8 PAYMENT OF TAX.**

Every vendor shall, on or before the twenty-fifth (25th) day of the month succeeding the end of each monthly period, pay the cigarette taxes due for the monthly period to the Department, at the same time the return for the monthly period is submitted to the Department.

## **§ 9 RECORDS.**

(A) Every vendor shall keep and preserve records of all sales of cigarettes made by the vendor and all acquisitions of cigarettes made by the vendor and such other documents, books, and accounts as are necessary to determine the amount of tax due under this Chapter.

(B) Every vendor shall open all such records, documents, books, and accounts and the vendor's inventory of cigarettes for examination and inspection at any time by the Department, provided that the Department shall have no authority to examine or inspect the records, documents, books, accounts, or inventory of the Nation except upon further resolution of the Legislative Council of the Nation.

(C) All information acquired by the Department pursuant to this Section shall be confidential and shall be subject to the disclosure restrictions set forth in J.A.N.C § 11-1-32.

## **§ 10 ADMINISTRATION.**

Except as otherwise provided in this Chapter, the administration of this Chapter shall be governed by the Tax Administration Ordinance, J.A.N.C. Title 11, Chapter 1, and the administrative regulations, rulings, instructions, and orders issued by the Department in accordance therewith.

## **§ 11 NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing in this Chapter shall be construed to waive or restrict the sovereign immunity of the Nation.

## **§ 12 INTERGOVERNMENTAL AGREEMENTS.**

The Nation, at its sole discretion, may decide to enter into an intergovernmental agreement with the State of New Mexico to enforce, administer or otherwise implement the provisions of this Chapter or the provisions of the New Mexico Cigarette Tax Act, or



to provide for the cooperative collection or administration of the tribal cigarette tax or the State's cigarette tax.

**§ 13 SEVERABILITY.**

If any part or application of this Chapter is held invalid, the remainder of the Chapter, or its other valid applications, shall not be affected.

**§ 14 EFFECTIVE DATE.**

The effective date of this Chapter, and of the tribal cigarette tax, is July 1, 2010.

## **CHAPTER 9: LODGING TAX**

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**§ 1 TITLE.**

This Chapter shall be known as the Jicarilla Apache Nation Lodging Tax Ordinance

**§ 2 REVENUE AND TAXATION DEPARTMENT.**

The Revenue and Taxation Department of the Jicarilla Apache Nation shall administer this Chapter and shall keep all records and accounts concerning this Chapter. Any inquiries concerning the Jicarilla Apache Nation lodging tax shall be made through the Revenue and Taxation Department of the Nation.

**§ 3 ADMINISTRATION.**

The Tax Administration Ordinance, J.A.N.C., Title 11, Chapter 1, applies to and governs the interpretation, administration and enforcement of this Chapter.

**§ 4 DEFINITIONS.**

(A) **DEPARTMENT** means the Revenue and Taxation Department of the Jicarilla Apache Nation, the Director of the Department or an employee of the Department designated by the Director to exercise the powers of the Department under this Chapter, as the case may be.

(B) **CHARGES FOR PERSONAL SERVICES** means charges that are unrelated to the cost of the actual occupancy of a lodge room. Charges for personal services do not include any lodging tax paid by the lodge occupant.

(C) **GROSS RECEIPTS** means the amount paid by a person for charges relating to the cost of occupancy of a lodge room and related services.

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(D) **LODGE** means any building, or portion of a building, located within Jicarilla Apache Lands, in which members of the public may obtain occupancy for consideration. A lodge includes, without limitation, a hotel, motel, lodging house, inn, rooming house, guest ranch, guest resort, or other premises for temporary lodging. A lodge further includes, without limitation, a lodge owned, in whole or in part, by the Nation or an enterprise of the Nation and a lodge owned by a person or persons other than the Nation. A lodge does not include:

(1) Religious, charitable, educational or philanthropic facilities offering accommodations, including without limitation, youth summer camps;

(2) Clinics, hospitals or other medical facilities;

(3) Senior assisted living facilities or facilities for the temporary shelter of indigent or abused persons;

(4) Facilities of the United States government or any subdivisions or agencies thereof; or

(5) Facilities that do not offer at least three (3) separate rooms within or attached to the facility for occupancy.

(E) **NATION** means the Jicarilla Apache Nation.

(F) **JICARILLA APACHE LANDS** means, solely for purposes of this Chapter, all land held by the United States in trust for the Jicarilla Apache Nation and all lands owned by the Nation within the exterior boundaries of the territory designated by the United States as Indian reservation lands of the Nation.

(G) **OCCUPANCY** means the use or possession, or the right to the use or possession, of any room in a lodge.

(H) **OPERATOR** means the person who is the proprietor of the lodge, whether in the capacity of owner, lessee, sub lessee, mortgagee in possession or any other capacity, including, without limitation, any enterprise or corporation of the Nation.

(I) **PERSON** means an individual, firm, partnership, joint venture, association, corporation, limited liability company, trust, estate, governmental entity, political entity or other identifiable entity.

(J) **ROOM** means any room or rooms of any kind in any part or portion of a lodge let out for occupancy or possession and for which the lodge receives consideration.

### § 5 IMPOSITION OF TAX.

Pursuant to the provisions of this Chapter, a lodging tax is imposed on any person who, under a lease, concession, permit, right of access, license, contract or agreement, pays for the occupancy of a room or related services at a lodge located within Jicarilla Apache lands.

### § 6 RATE OF TAX.

The rate of the lodging tax imposed by this Chapter is five percent (5%) of the amount paid by the lodge occupant with respect to each day of occupancy of a lodge room and related services. The rate of the lodging tax shall be and remain the same as herein established unless amended by ordinance of the Legislative Council. Upon

passage of any ordinance changing the rate of the lodging tax, notice shall be given to all lodge operators and shall be published in newspapers of general circulation and posted or published at such places as the Department designates.

## **§ 7 REGISTRATION OF LODGE OPERATORS.**

Each operator of a lodge shall register with the Department. The registration shall include, as applicable, the name, address, telephone number, social security number, federal taxpayer identification number and state taxpayer identification number of the lodge operator and such other information as required by the Department.

## **§ 8 COLLECTION OF TAX; ASSESSMENTS; PENALTIES.**

(A) The operator of a lodge shall collect the lodging tax imposed by this Chapter on the occupant at the same time as the consideration for occupancy and related services of a lodge is paid and collected. The amount of the tax shall be separately stated from the amount of the occupancy charge and related services, and each paying lodge occupant is entitled to receive a receipt of payment from the lodge operator.

(B) No operator of a lodge may advertise or state in any manner, whether directly or indirectly, that the lodging tax or any part thereof will be assumed or absorbed by the lodge operator, or that it will not be added to the charge for occupancy or related services, or that if added, any part will be refunded.

(C) The lodging taxes collected from the occupant by the operator of a lodge pursuant to this Chapter shall be held in trust for the benefit of the Nation until payment is remitted by the operator of a lodge to the Department.

(D) Any operator of a lodge who appropriates or converts the lodging tax collected from the occupant to its own use or to any other use to the extent that the tax required to be collected is not available for payment on the due date set forth in this Chapter shall be liable to the Nation upon assessment by the Department for the amount of the tax plus interest and penalty imposed by the Department pursuant to the Tax Administration Ordinance, J.A.N.C., Title 11, Chapter 1.

(E) Any operator of a lodge who fails to collect the lodging tax imposed on the occupant or having collected the tax fails to pay it to the Department, whether such failure is the result of the lodge operator's acts or the result of the acts or conditions beyond the lodge operator's control, shall be liable to the Nation upon assessment by the Department for the amount of the tax, plus interest and penalties as established in the Tax Administration Ordinance, J.A.N.C., Title 11, Chapter 1.

## **§ 9 TAX REPORTING AND REMITTANCE.**

Each operator of a lodge shall comply with the following reporting and remittance requirements and such other requirements as are adopted by the Department:

(A) Each operator of a lodge shall, on or before the twenty-fifth (25th) day of the month succeeding the end of each monthly period, prepare a return for the

preceding monthly period, setting forth the gross receipts and the lodging taxes due for each monthly period to the Department.

(B) The lodging tax for any monthly period is due and payable to the Department at the time for filing the return for such monthly period.

#### **§ 10 GROSS RECEIPTS DETERMINATION.**

(A) The calculation of lodge gross receipts for any monthly period, and the recognition of the includable lodge gross receipts, shall be made on the basis of the methods regularly applied in maintaining the books and records of the lodge.

(B) If there is no method, or a method is not regularly applied or does not clearly reflect lodge receipts, the Department may apply such method or methods as it determines will clearly reflect the lodge gross receipts.

(C) A method shall be used consistently from one monthly period to the next, and any change in the method must be pre-approved by the Department in writing.

#### **§ 11 EXTENSION OF TIME FOR PAYING TAX.**

Upon filing with the Department of a timely written request for an extension of time within which to pay assessed lodging taxes, and upon a showing of good cause, the Department may extend, for a period not to exceed sixty (60) days, the due date for payment of taxes assessed, but no further extension shall be allowed. Such a request for extension, to be timely, must be filed on or before the date the assessed taxes are due. No penalty for late payment as provided for in J.A.N.C. § 11-1-25 shall be imposed on any payment for which an extension has been granted, but interest shall accrue as provided by J.A.N.C., § 11-1-24.

#### **§ 12 CHARGES SUBJECT TO TAX.**

In addition to the tax imposed on occupancy of a lodge room, all charges to the occupant for items or services, other than charges for personal services, which are furnished primarily in connection with the occupancy for a lodge room, are subject to the lodging tax. Charges to the occupant for items or services, which are furnished primarily in connection with the occupancy of a lodge room, include without limitation, charges for the furnishings of additional beds or cots in any room. Such charges are subject to the lodging tax whether or not separately stated.

#### **§ 13 CHARGES NOT SUBJECT TO TAX.**

Charges to the occupant for personal services are not subject to the lodging tax if they are separately stated. Charges to the occupant for personal services include without limitation, charges for the cost of food and meals served by or at the lodge, charges for room service, messenger service, ancillary media service, valet service, telephone or spa related charges.

**§ 14 EXEMPTION.**

The lodging tax imposed on an occupant pursuant to the Chapter shall not apply to and shall not be collected from any person who received complimentary occupancy of a lodge room and does not pay for that occupancy.

**§ 15 USE OF LODGING TAX PROCEEDS.**

All monies received by the Department from lodging taxes shall be deposited with the Treasurer of the Nation in the General Fund to be budgeted by the Legislative Council and expended to defray the cost of providing governmental services. The Department may execute vouchers for approval for payment against this Fund to make refund adjustments, payments of interest or payments for any purpose which this Chapter may require.

**§ 16 SEVERABILITY.**

If any part of this Chapter or its application to any situation or person is held invalid, the remainder of the Chapter or its application to other situations or persons shall not be affected.

**§ 17 EFFECTIVE DATE.**

This Chapter shall become effective on September 1, 2016, after adoption by the Legislative Council, and subject to the subsequent approval of this Chapter by the Secretary of the Interior, as provided in the Revised Constitution of the Jicarilla Apache Nation.

## **TITLE 11 HISTORY**

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**Title 11, Chapter 1, Tax Administration**, was enacted by Ordinance No. 2000-O-209-06 on June 7, 2000 and received Secretarial approval on August 22, 2000. Ordinance No. 2000-O-209-06 was amended by Ordinance No. 2000-O-577-12 on December 7, 2000, by adopting technical amendments. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Jicarilla Revised Constitution and therefore deemed approved as of April 6, 2001.

**Ordinance No. 2003-O-343-07** was enacted on July 17, 2003, and rescinded by Resolution No. 2003-O-415-08, adopted on August 20, 2003.

**Ordinance No. 2003-O-409-08** amended and re-codified Title 11, Chapter 4 to Title 11, Chapter 1 on August 20, 2003. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Jicarilla Revised Constitution and therefore deemed approved as of December 18, 2003.

**Ordinance No. 2003-O-499-09** was enacted on September 29, 2003, amending portions of Title 11, Chapters 1, 2, 3 and 4. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Revised Constitution and therefore deemed approved as of January 27, 2004.

**Ordinance No. 2000-O-209-06** reads as follows:

WHEREAS, pursuant to Article XI of the Revised Constitution of the Jicarilla Apache Tribe, the Jicarilla Apache Tribal Council is responsible for the management of all tribal natural resources and other tribal assets and is authorized to impose and collect taxes; and

WHEREAS, pursuant to its duly authorized authority, the Jicarilla Apache Tribe has enacted Tax Ordinances protecting its oil and gas resources and maximizing the revenue gained from those resources; and

WHEREAS, the revenue collected from taxation of Jicarilla Apache Tribal resources is critical to the economic well-being of the Tribe and its members; and

WHEREAS, the provisions of the current Tax Ordinances require clarification with regard to the calculation of volume and value, the identification of interests subject to the taxes and the provision of information to the Department of Revenue and Taxation necessary for the proper collection of the taxes, and required amendment to authorize the taxes to be imposed on natural resources other than oil and gas, among other issues; and

WHEREAS, it is desirable for the administration and collection of taxes to be performed according to uniform procedures; and

NOW, THEREFORE, BE IT RESOLVED, that the Jicarilla Apache Tribal Council hereby adopts the proposed amendments to the Severance Tax, Privilege Tax and Possessory Interest Tax Ordinance and adopts the new Tax Administration Ordinance.  
[Text of Ordinance]

**Ordinance No. 2000-O-577-12** reads as follows:

WHEREAS, pursuant to Article XI of the Revised Constitution of the Jicarilla Apache Tribe, the Jicarilla Apache Tribal Council is responsible for the management of all tribal natural resources and other tribal assets and is authorized to impose and collect taxes; and

WHEREAS, pursuant to its duly authorized authority, the Jicarilla Apache Tribe has enacted Tax Ordinances protecting its oil and gas resources and maximizing the revenue gained from those resources; and

WHEREAS, the revenue collected from taxation of the Jicarilla Apache Tribal resources is critical to economic well-being of the Tribe and its members; and

WHEREAS, on June 7, 2000, the Tribal Council adopted amendments to the Jicarilla Apache Possessory Interest Tax Ordinance and adopted the newly Tax Administration Ordinance to properly enforce, monitor and collect tribal taxes; and

WHEREAS, the Department of Revenue and Taxation has deemed it necessary to further clarify procedure and language for the proper collection of the Possessory Interest Tax Ordinance and the enforcement of the newly Tax Administration Ordinance hereby recommends amendments to Section 3, Definitions (A), (C.1), (K) and Section 5, Computation of Value of Possessory Interest (A), (C), (D) of the Possessory Interest Tax Ordinance and Section 3, Applicability of the Tax Administration Ordinance.

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NOW, THEREFORE, BE IN RESOLVED that the Jicarilla Apache Tribal Council hereby adopts the proposed amendments to the Possessory Interest Tax Ordinance and the Tax Administration Ordinance.

**Ordinance No. 2003-O-409-08 reads as follows:**

WHEREAS, Article X, Section 1 of the Nation's Revised Constitution states that Ordinances enacted by the Legislative Council shall be available for public inspection by members of the Nation at all reasonable times; and

WHEREAS, the Ordinances of the Nation are compiled in the Jicarilla Apache Nation Code, so that members of the Nation and others will have access to the laws of the Nation; and

WHEREAS, the Jicarilla Apache Nation Code was re-compiled in 1987 at the direction of the Legislative Council, and the Council has since 1987 enacted and amended numerous Ordinances which are not contained in the 1987 Compilation of the Laws of the Nation and has amended certain Ordinances contained in the 1987 Compilation; and

WHEREAS, on February 1, 2001 by Ordinance No. 2001-O-052-02 the Legislative Council changed the name of the Nation and of various officials of the Nation, but the Ordinances enacted before February 1, 2001 continue to reflect the old names; and

WHEREAS, certain sections of the Jicarilla Apache Nation Code need to be amended in order to make them consistent with other Ordinances enacted after those sections were first enacted by Council; and

WHEREAS, some of the existing Ordinances of the Nation do not all follow a uniform method of organization, consistent with the requirements of the Jicarilla Apache Nation Code; and

WHEREAS, in order to make them easier to locate and enforce, certain Chapters of the Jicarilla Apache Nation Code should be moved to a Title other than the Title in which they now are codified; and

WHEREAS, the published version of the Jicarilla Apache Nation Code needs to be amended and re-compiled so that the Code conforms fully with all enactments of the Council since 1987, including Ordinance No. 2001-O-052-02; and

WHEREAS, the interest of the Nation will be served by re-compiling and amending the Jicarilla Apache Nation code so that all members of the Nation and non-members who deal with the Nation will have access to a complete and accurate statement of the laws of the Nation.

NOW, THEREFORE, BE IT ORDAINED by the Legislative Council of the Jicarilla Apache Nation that the Council hereby amends Titles 1 through 21 of the Jicarilla Apache Nation Code as shown on Attachment A, such that deleted text is marked with {brackets and strike through} and new text is marked with double underline.

BE IT FURTHER ORDAINED THAT the following Chapters of the Jicarilla Apache Nation Code, as amended above, are hereby re-codified as follows, and all citations to the affected Chapters in the Jicarilla Apache Nation Code shall be deemed amended to refer to the new Title and Chapter numbers:

Title 11, Chapter 1 shall become Title 11, Chapter 4;

Title 11, Chapter 4 shall become Title 11, Chapter 1;

Title 18, Chapter 4 shall become Title 22, Chapter 1;

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Title 18, Chapter 5 shall become Title 22, Chapter 2;  
Title 18, Chapter 6 shall become Title 23, Chapter 1;  
Title 18, Chapter 7 shall become Title 12, Chapter 4; and  
Title 19, Chapter 8 shall become Title 18, Chapter 13.

BE IT FURTHER ORDAINED THAT title 18 shall be re-named "Oil and Gas," Title 22 shall be renamed "Business", and Title 23 shall be renamed "Indian Preference."

BE IT FURTHER ORDAINED THAT all provisions of existing Titles 1 through 21 of the existing Jicarilla Apache Nation Code that are not hereby deleted shall continue in full force and effect.

BE IT FURTHER ORDAINED THAT any review of this Ordinance by the Secretary of the Interior that may be required by the Revised Constitution of the Nation or by federal law shall be strictly confined by review of the deletion and additions contained in this Ordinance, and shall not extend to review of the provisions of existing Titles 1 through 21 that continue in full force and effect as previous enactments of the Council, as codified in amended Titles 1 through 23.

**Ordinance No. 2003-O-499-09** reads as follows:

WHEREAS, Article XI, Section 1 of the Revised Constitution of the Jicarilla Apache Nation vests the inherent powers of the Jicarilla Apache Nation in the Legislative Council, including the power to impose taxes on persons doing business within the Nation; and

WHEREAS, at the request of the Nation's Revenue and Taxation Department ("Department"), on July 17, 2003 the Legislative Council enacted Ordinance No. 2003-O-343-07 amending certain sections of Title 11, Chapters 1, 2, 3, and 4; and

WHEREAS, Ordinance No. 2003-O-343-07 was enacted in order to lessen the burden on the designated agent in collecting and reporting information regarding the total gross value of oil taxable products, to allow companies to act as designated agents under certain conditions, to ensure that the Department is notified as soon as possible of any changes to the designated agent or to ownership of taxable products or possessory interests, to increase the amount of penalties for failure to comply with the Tax Administration Ordinance in order to deter non-compliance, and to clarify the Department's authority to impose penalties and the role of the Nation's Court in enforcing those penalties; and

WHEREAS, the Council met on August 18 and August 20, 2003 to consider enactment of an updated, amended and re-compiled version of the entire Jicarilla Apache Nation Code, including Title 11(Taxation); and

WHEREAS, in order to make amendments presented on August 18 and 20, 2003 consistent with the substance of the amendments contained in Ordinance No. 2003-O-343-07, the Council decided to rescind Ordinance No. 2003-O-343-07 and to re-enact the substance of those amendments after enactment of the amendment and recompilation of the entire Jicarilla Apache Nation Code; and

WHEREAS, on August 20, 2003, Ordinance No. 2003-O-343-07 was not yet in effect, because the 120-day period for review by the Secretary of the Interior had not passed and the Secretary had not taken any action on that Ordinance; and

WHEREAS, on August 20, 2003, the Council enacted the amended and recompiled Jicarilla Apache Code; including amendments of Title 11; and



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WHEREAS, Jicarilla Apache Code, Title 11, Chapter 1 through 4 as amended on August 20, 2003 should be further simplified by re-numbering certain sections as stated below in Section 1 of this Ordinance; and

WHEREAS, the amendments contained in rescinded Ordinance No. 2003-O-343-07 have been re-drafted to conform to the revisions of Title 11 enacted on August 20, 2003 and with Section 1 of this Ordinance and are before the Council for enactment.

NOW, THEREFORE, BE IT ORDAINED that the Legislative Council of the Jicarilla Apache Nation hereby enacts the following amendments to Title 11, Chapters 1, 2, 3 and 4, as amended on August 20, 2003, such that deleted text is marked with {brackets and strike through} and new text is marked with double underline, as follows:

Ordinance § 1. The following sections of Title 11, Chapters 2, 3, and 4 as amended through August 20, 2003 are hereby re-numbered as indicated and all references in the Code to those sections are hereby amended to conform with the new numbering of these sections: [Text of Ordinance]

Ordinance § 2. J.A.N.C. § 11-1-2(B) is amended as follows: [Text of Ordinance]

Ordinance § 3. J.A.N.C. § 11-1-7(A)(3) is amended as follows: [Text of Ordinance]

Ordinance § 4. J.A.N.C. § 11-1-7(A)(5) is amended as follows: [Text of Ordinance]

Ordinance § 5. J.A.N.C. § 11-1-20(B) is amended as follows: [Text of Ordinance]

Ordinance § 6. J.A.N.C. § 11-1-25(C) is amended as follows, a new subsection (D) is enacted and former subsection (D) is re-designated as subsection (E) as follows: [Text of Ordinance]

Ordinance § 7. J.A.N.C. § 11-1-26(B) is amended as follows: [Text of Ordinance]

Ordinance § 8. J.A.N.C. § 11-2-2(B) is amended as follows: [Text of Ordinance]

Ordinance § 9. J.A.N.C. § 11-2-8 is amended as follows: [Text of Ordinance]

Ordinance § 10. J.A.N.C. § 11-3-3(B) is amended as follows: [Text of Ordinance]

Ordinance § 11. J.A.N.C. § 11-3-6 is amended as follows: [Text of Ordinance]

Ordinance § 12. J.A.N.C. § 11-4-2(B) is amended as follows: [Text of Ordinance]

**Title 11, Chapter 1, § 30, Measurement of Gas**, was amended by Ordinance No. 98-O-437-09 on September 3, 1998, and approved by the Secretary of the Interior on January 1, 1999. See Title 18, Chapter 12, "Offsite Measurement of Natural Gas Production" for Legislative History.

**Title 11, Chapter 2, Privilege Tax**, was enacted by Ordinance No. 85-O-434 on March 8, 1985 and received Secretarial approval on April 12, 1985.

**Ordinance No. 2000-O-209-06** adopted on June 7, 2000, amended Ordinance No. 85-O-434. Ordinance No. 200-O-209-06 received Secretarial approval on August 22, 2000. See Legislative History for Title 11, Chapter 1.

**Ordinance No. 2001-O-685-12** enacted on December 4, 2001, further amended Ordinance No. 85-O-434. Ordinance No. 2001-O-685-12 received Secretarial approval on February 11, 2002.

**On July 17, 2003, Ordinance No. 2003-O-343-07** was enacted and later rescinded by Resolution No. 2003-O-415-08 on August 20, 2003.

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**Ordinance No. 2003-O-499-09**, enacted on September 29, 2003, amended portions of Title 11, Chapters 1, 2, 3 and 4. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Revised Constitution and therefore deemed approved as of January 27, 2004. See Legislative History for Title 11, Chapter 1.

**Ordinance No. 2007-O-456-10**, enacted on October 9, 2007, further amended Title 11, Chapter 2.

**Ordinance No. 2001-O-685-12** reads as follows:

WHEREAS, pursuant to Article XI of the Revised Constitution of the Jicarilla Apache Nation, the Jicarilla Apache Legislative Council is responsible for the management of all tribal natural resources and is authorized to impose and collect taxes; and

WHEREAS, Title 11, Chapter 1 of the Jicarilla Apache Nation Code provides that a severance tax shall be assessed on oil and gas taxable products that are severed from the Jicarilla Apache Reservation; and

WHEREAS, Title 11, Chapter 2 of the Jicarilla Apache Nation Code provides that a privilege tax shall be assessed on the value of oil and gas taxable products that are severed from the Jicarilla Apache Reservation; and

WHEREAS, Title 11, Chapter 1, sections 2 and 3 provide that the severance tax rate on both gas and oil taxable products respectively, shall automatically adjust on February 1 of each year, beginning February 1, 2001, based on the Consumer Price Index; and

WHEREAS, Title 11, Chapter 2, section 2 provides that the privilege tax rate for oil and gas taxable products shall automatically adjust on February 1 of each year, beginning with February 1, 2001, based on the Consumer Price Index; and

WHEREAS, the Legislative Council has determined that the tax on companies severing oil and gas taxable products from the Jicarilla Apache Reservation may become burdensome if the severance and privilege tax rates continue to rise with inflation; and

NOW, THEREFORE, BE IT RESOLVED, that the Legislative Council of the Jicarilla Apache Nation has decided to freeze the rate of the severance tax and of the privilege tax on oil and gas taxable products as of February 1, 2001, and accordingly the Council hereby adopts the following amendments: [Text of Ordinance]

**Ord. No. 2007-O-456-10** reads as follows:

WHEREAS, pursuant to Article XI of the Revised Constitution of the Jicarilla Apache Nation, the Jicarilla Apache Legislative Council is responsible for the management of all Jicarilla Apache natural resources and is authorized to impose and collect taxes; and

WHEREAS, Title 11, Chapter 2 Privilege Tax Due Date of Tax of the Jicarilla Apache Nation Code provides that the privilege tax is due at the time of severance and payable monthly, within forty-five (45) days following the end of the calendar month during with the taxable product was severed; and

WHEREAS, Title 11, Chapter 4 Severance Tax Due Date of Tax of the Jicarilla Apache Nation Code provides that the severance tax is due at the time of severance and payable monthly, within forty-five (45) days following the end of the calendar month during with the taxable product was severed; and

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WHEREAS, the Revenue and Taxation Department (Department) of the Jicarilla Apache Nation has determined and recommends that the due date of the Privilege and Severance Tax be amended to be consistent with the due date of the Jicarilla Apache Nation Capital Improvements Tax, Gasoline Tax, Gross Receipt Tax, Federal and State Production Reports; which are required by the Department to be remitted along with the Privilege and Severance Tax return; and

WHEREAS, the Taxpayers of Privilege and Severance Taxes have also expressed concern regarding the due date of taxes often finding it difficult to comply with inconsistent due dates of Jicarilla Taxes and Production Reports; and

WHEREAS, the Legislative Council hereby acknowledges that the due date of the Privilege and Severance Taxes must be amended to maintain consistency with other tax and report due dates and to address the concerns of the Department and Taxpayers.

NOW, THEREFORE, BE IT ORDAINED that the Legislative Council of the Jicarilla Apache Nation hereby amends Title 11, Chapter 2, Section 3 and Title 11, Chapter 4, Section 3 as follows: [Text of Ordinance]

**Title 11, Chapter 2, § 6, Measurement of Gas**, was amended by Ordinance No. 98-O-437-09 on September 3, 1998, and approved by the Secretary of the Interior on January 1, 1999. For Legislative History, see Title 18, Chapter 12.

**Title 11, Chapter 3, Possessory Interest Tax**, was enacted by Ordinance No. 88-R-152 on October 2, 1987.

**Resolution No. 89-R-329**, adopted on February 3, 1989, amended Ordinance 88-R-152.

On March 6, 1998, Ordinance No. 98-O-152-03 further amended Ordinance No. 88-R-152 by replacing Section 18, "Use of Tax Proceeds." Ordinance No. 98-O-152-03 received Secretarial approval on April 7, 1998.

**Ordinance No. 2000-O-209-06** was adopted on June 7, 2000, and again further amended Ordinance No. 88-R-152. Ordinance No. 2000-O-209-06 received Secretarial approval on August 22, 2000. See Legislative History for Title 11, Chapter 1.

On December 7, 2000, further technical amendments to Ordinance No. 88-R-152 were adopted by Ordinance No. 2000-O-577-12. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Revised Constitution and therefore deemed approved as of April 6, 2001.

On July 17, 2003, Ordinance No. 2003-O-343-07 was enacted and later rescinded by Resolution No. 2003-O-415-08 on August 20, 2003.

**Ordinance No. 2003-O-499-09**, enacted on September 29, 2003, amended portions of Title 11, Chapter 1, 2, 3 and 4. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Revised Constitution and therefore deemed approved as of January 27, 2004. See Legislative History for Title 11, Chapter 1.

**Ordinance No. 88-R-152** reads as follows:

WHEREAS, the budget of the Jicarilla Apache Tribe has increased substantially as a result of the need to provide essential governmental services to all persons, both

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members and non-members, working, residing, or doing business within the Boundaries of the Jicarilla Apache Reservation; and

WHEREAS, the Tribal Council recognizes a need to raise revenues to continue providing tribal services within the Reservation boundaries which benefit all individuals and businesses on the Reservation; and

WHEREAS, a possessory interest tax with revenues dedicated to offset tribal governmental budgetary expenditures is an appropriate and equitable form of raising revenues to provide essential governmental services to residents and businesses on the Reservation; and

WHEREAS, a tax study commissioned by the Tribal Council indicates that a reasonable percentage tax on the assessed value of said possessory interests would generate tax revenues needed by the Tribe and still not have substantial impact on the businesses owning said possessory interests; and

WHEREAS, the Possessory Interest Ordinance has been prepared by the tribal attorneys and recommended by the Mineral and Water Resources Committee of the Tribe; and

WHEREAS, the Supreme Court of the United States has specifically upheld the sovereign authority of Indian tribes to levy and collect taxes upon persons and businesses within the Reservation boundaries; and

WHEREAS, under the Constitution of the Jicarilla Apache Tribe, the Tribal Council may impose taxes and fees upon persons and businesses present within the Reservation boundaries, including non-members of the Tribe.

NOW, THEREFORE, BE IT ORDAINED, by the Tribal Council of the Jicarilla Apache Tribe that effective as set forth hereinafter, a possessory interest tax is hereby imposed on all possessory interests within the Reservation boundaries as follows: [Text of Ordinance]

**Ordinance No. 98-O-152-03** reads as follows:

WHEREAS, the Jicarilla Apache Tribal Council is responsible under Article XI, Section 1(c) of the Revised Constitution of the Jicarilla Apache Tribe for the management of all funds within the control of the Tribe; and

WHEREAS, the Jicarilla Apache Tribal Council is authorized by Article XI, Section 1(d) of the Revised Constitution of the Jicarilla Apache Tribe to enact ordinances to promote the peace, safety, property, health and general welfare of the people of the Reservation; and

WHEREAS, as the Jicarilla Apache Tribal Council is authorized by Article XI, Section 1(e) of the Revised Constitution of the Jicarilla Apache Tribe to levy and collect taxes on the Reservation; and

WHEREAS, by Tribal Ordinance No. 88-R-152 and Resolution No. 89-R-329 the Tribal Council has required ten percent of the amount of possessory interest tax payments not paid under protest shall be placed in a restricted account to cover the amount of funds that may result from audit adjustments of the taxpayer's liability under the possessory interest tax ordinance; and

WHEREAS, the Revenue and Taxation Department of the Tribe has advised the Tribal Council that the restricted account for audit refunds is no longer necessary and has requested that the possessory interest tax ordinance be amended to eliminate the ten percent set aside account.

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NOW, THEREFORE, BE IT ORDAINED, that the Tribal Council of the Jicarilla Apache Tribe hereby amends Ordinance No. 88-R-152, as amended by Resolution No. 89-R-329 by replacing the current Section 18 with a new Section 18 as follows: [Text of Ordinance]

**Title 11, Chapter 3, § 18, Use of Tax Proceeds**, was amended by Resolution No. 89-R-329 on February 3, 1989 and further amended by Ordinance No. 98-O-152-03 on March 6, 1998. Ordinance No. 98-O-152-03 received Secretarial approval on April 7, 1998.

**Resolution No. 89-R-329** reads as follows:

WHEREAS, the Possessory Interest Tax Ordinance, No. 88-R-152, Section 13, now provides that tax payments which are not paid under protest shall be deposited in the general fund of the Tribe to be budgeted by the Tribal Council and expended to defray costs of providing essential government services on the Reservation; and

WHEREAS, Ordinance No. 88-R-152, Section 13, further provides that the Treasurer of the Tribe may execute vouchers against the general fund to make refunds, adjustments, interest payments, and other payments authorized by that Ordinance; and

WHEREAS, the Tax Administration Division has determined through audits that some taxpayers who paid the possessory interest tax without protests have overpaid the tax and are entitled to refund adjustments, and further believes that this situation will arise with additional taxpayers in the future; and

WHEREAS, at the request of the Tax Administration Division, the Mineral and Water Resources Committee has recommended that the Tribal Council amend Ordinance No. 88-R-152 to create a restricted account, to be funded from possessory interest taxes paid without protest, to cover the contingent liability for refund adjustments resulting from audits of taxpayers who paid their tax without protest; and

WHEREAS, the Tribal Council finds that the amendment recommended by the Mineral and Water Resources Committee will advance the prudent administration of the taxes collected under Ordinance No. 88-R-152.

NOW, THEREFORE, BE IT RESOLVED, by the Tribal Council of the Jicarilla Apache Tribe that Ordinance No. 88-R-152, is hereby amended by replacing the current Section 18 with a new Section 18 as follows: [text of ordinance]

**Ordinance No. 98-O-152-03** reads as follows:

WHEREAS, the Jicarilla Apache Tribal Council is responsible under Article XI, Section 1(c) of the Revised Constitution of the Jicarilla Apache Tribe for the management of all funds within the control of the Tribe; and

WHEREAS, the Jicarilla Apache Tribal Council is authorized by Article XI, Section 1(d) of the Revised Constitution of the Jicarilla Apache Tribe to enact ordinances to promote the peace, safety, property, health and general welfare of the people of the Reservation; and

WHEREAS, the Jicarilla Apache Tribal Council is authorized by Article XI, Section 1(e) of the Revised Constitution of the Jicarilla Apache Tribe to levy and collect taxes on the Reservation; and

WHEREAS, by Tribal Ordinance No. 88-R-152 and Resolution No. 89-R-329 the Tribal Council has required that ten percent of the amount of possessory interest tax payments not paid under protest shall be placed in a restricted account to cover the

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amount of funds that may result from audit adjustments of the taxpayer's liability under the possessory interest tax ordinance; and

WHEREAS, the Revenue and Taxation Department of the Tribe has advised the Tribal Council that the restricted account for audit refunds is no longer necessary and has requested that the possessory interest tax ordinance be amended to eliminate the ten percent set aside account.

NOW, THEREFORE, BE IT ORDAINED, the Tribal Council of the Jicarilla Apache Tribe hereby amends Ordinance No. 88-R-152, as amended by Resolution No. 89-R-329 by replacing the current Section 18 with a new Section 18 as follows: [Text of Ordinance]

BE IT FURTHER ORDAINED, that upon approval of this Ordinance by the Secretary of the Interior, this Ordinance shall become effective as of December 01, 1997.

**Title 11, Chapter 4, Severance Tax**, was enacted by Ordinance No. 77-O-02 on July 9, 1976 and received Secretarial approval on December 22, 1976. Ordinance No. 77-O-02 was amended by Ordinance No. 77-O-195 on January 26, 1977, and received Secretarial approval on February 3, 1977.

**Ordinance No. 2000-O-209-06** adopted on June 7, 2000, further amended Ordinance No. 77-O-02. The Ordinance received Secretarial approval on August 22, 2000. See Legislative History for Title 11, Chapter 1.

**Ordinance No. 77-O-02** was again further amended by Ordinance No. 2001-O-685-12, adopted on December 4, 2001. Ordinance No. 2001-O-685-12 received Secretarial approval on February 11, 2002. See Legislative History for Title 11, Chapter 2, "Privilege Tax."

**On August 20, 2003, Ordinance No. 2003-O-409-08** amended and re-codified Title 11, Chapter 1 to Title 11, Chapter 4. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Jicarilla Revised Constitution and therefore deemed approved as of December 18, 2003. See Legislative History for Title 11, Chapter 1, "Tax Administration."

**On July 17, 2003, Ordinance No. 2003-O-343-07** was enacted and later rescinded by Resolution No. 2003-O-415-08 on August 20, 2003.

**Ordinance No. 2003-O-499-09**, enacted on September 29, 2003, amended portions of Title 11, Chapters 1, 2, 3 and 4. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Revised Constitution and therefore deemed approved as of January 27, 2004. See Legislative History for Title 11, Chapter 1.

**Ordinance No. 2007-O-456-10**, enacted on October 9, 2007, further amended Title 11, Chapter 4, Section 3. See Legislative History for Title 11, Chapter 2.

**Ordinance No. 77-O-02** reads as follows:

WHEREAS, under the Constitution of the Jicarilla Apache Tribe, the Tribal Council may impose taxes and fees upon persons and corporations doing business on the Reservation, including non-members of the Tribe; and

WHEREAS, under the Constitution of the Tribe, the Tribal Council has the authority and the obligation to govern the development of Tribal lands and other

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resources, and to develop such resources on sustained yield principles for the general welfare of the Tribe as a whole; and

WHEREAS, the Tribe has substantial reserves of oil and natural gas, which have been extracted from Tribal lands and exported from the Reservation, as a result of which the Tribe's resources are being rapidly depleted; and

WHEREAS, the only means by which the Tribe can establish adequate reserve funds to provide for the general welfare of the Tribe after depletion of its oil and gas is to impose a severance tax on oil and gas production.

NOW, THEREFORE, BE IT RESOLVED: That effective on the date set forth hereinafter, a severance tax is imposed on any oil and natural gas severed, saved and removed from Tribal lands, as follows: [Text of Ordinance]

**Ordinance No. 77-O-195 reads as follows:** See Legislative History for Ordinance No. 77-O-02 above.

**Title 11, Chapter 5, Gasoline Tax**, was enacted by Ordinance No. 2001-O-387-07 on July 31, 2001. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Article 2 of the Revised Constitution and therefore deemed approved as of November 28, 2001. Ordinance No. 2001-O-387-07 was amended by Ordinance No. 2003-O-416-08 on August 20, 2003. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days and therefore deemed approved as of December 18, 2003.

**Ordinance No. 2001-O-387-07** reads as follows:

WHEREAS, the Legislative Council is authorized by Article XI, Section XI Section 1(e) to levy and collect taxes on business activity within the Reservation; and

WHEREAS, the Legislative Council finds that it would be in the best interest of the Jicarilla Apache Nation to impose tribal tax on gasoline imported into the Reservation for sale or use with the Reservation.

NOW, THEREFORE, BE IT ORDAINED by the Legislative Council of the Jicarilla Apache Nation that the following ordinance be and it hereby is enacted as attached. [Text of Ordinance]

**Ordinance No. 2003-O-416-08** reads as follows:

WHEREAS, the Legislative Council is authorized by Article XI, Section 1(e) to levy and collect taxes on business activity within the Reservation; and

WHEREAS, the Legislative Council, on July 31, 2001, enacted ordinance 2001-O-387-07, the "Gasoline Tax Ordinance" as Title 11, Chapter 5; and

WHEREAS, the Jicarilla Apache Nation has imposed a tax on gasoline sold within Jicarilla Apache Nation boundaries, subject to certain deductions as set forth under Section 3; and

WHEREAS, under Section 3(D) the Jicarilla Apache Nation did not impose a tax in accordance with State Law that exempts gasoline obtained from certain Indian wholesalers (Nambe and Santo Domingo); and

WHEREAS, the Jicarilla Apache Nation desires to impose its gasoline tax regardless of where a Distributor obtains its gasoline.

NOW, THEREFORE, BE IT ORDAINED by the Legislative Council of the Jicarilla Apache Nation that the Council hereby amends Title 11, Chapter 5, Section 3 to repeal (D) of that section. The subsection repealed is as follows (in strikethrough):

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(D) Gasoline that may be deducted under § 7-13-1(F) NMSA 1978 in computing the amount of the New Mexico gasoline tax imposed by § 7-13-3 NMSA 1978. Section 3(E) is hereby re-designated as Section 3(D).

BE IT FURTHER ORDAINED that the foregoing ordinance is effective January 1, 2004, subject to approval of the Secretary of Interior.

BE IT FURTHER ORDAINED that all retail gasoline businesses within the Jicarilla Apache Nation's boundaries are to be notified of this tax change immediately upon enactment.

**Title 11, Chapter 6, Capital Improvements Tax**, was enacted by Ordinance No. 2002-O-630 on October 9, 2002. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Revised Constitution and therefore deemed approved as of February 6, 2003.

The Ordinance reads as follows:

WHEREAS, pursuant to Article XI of the Revised Constitution of the Jicarilla Apache Nation, the Legislative Council is responsible for the management of all tribal natural resources and other tribal assets and is authorized to impose and collect taxes; and

WHEREAS, there is a great demand for capital improvement projects to provide the governmental services to adequately serve the community living and working on the Jicarilla Apache Reservation; and

WHEREAS, at the request of the Jicarilla Apache Nation, the State of New Mexico passed the Capital Improvements Tax Credit, which provides a credit against state taxes imposed on oil and gas of seven-tenths (7/10) of one percent of the taxable value of the products severed from qualifying oil and gas wells located on Indian Reservations if the operator has paid a tribal capital improvements tax of equal value on the same production; and

WHEREAS, the state tax credit is available only if the tribe imposing the capital improvements tax has entered into a cooperative agreement with the State to assist in the sharing and collection of information necessary to administer the tax credit.

NOW, THEREFORE, BE IT ORDAINED that the Jicarilla Apache Legislative Council hereby adopts the attached Capital Improvements Tax, which shall be codified as Chapter 6 to Title ii of the Jicarilla Apache Code. [Text of Ordinance]

**Title 11, Chapter 7, Gross Receipts Tax**, was enacted by Ordinance No. 2003-O-344-07 on July 17, 2003. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Jicarilla Revised Constitution and therefore deemed approved as of November 17, 2003.

**Resolution No. 2005-R-255-08** was enacted on August 1, 2005, postponing the effective date. The effective date of approval is based upon the failure of the Secretary to disapprove within the required 120 days pursuant to Article XI, Section 2 of the Revised Constitution and therefore deemed approved as of November 29, 2005.

**Ordinance No. 2003-O-344-07** was amended by Ordinance No. 2005-O-315-09 on September 2, 2005, and received Secretary approval on September 26, 2005.

**Ordinance No. 2003-O-344-07** reads as follows:



## Jicarilla Apache Nation Code

WHEREAS, the Jicarilla Apache Legislative Council is authorized by Article XI, Section 1(e) of the revised Constitution of Jicarilla Apache Nation to levy and collect taxes on the Reservation; and

WHEREAS, the revenue collected from taxation within the jurisdiction of the Jicarilla Apache Nation is critical to the economic well being of the Nation and its members and funds the provision of governmental services; and

WHEREAS, the Jicarilla Apache Nation's ability to impose a gross receipts tax has been hampered by the fact that the State of New Mexico imposes a gross receipts tax that is assessed on non-Indian businesses operating on the Reservation; and

WHEREAS, dual taxation of gross receipts would have created an economic hardship on businesses operating on the Reservation and hampered economic development within the Reservation; and

WHEREAS, the 2002 New Mexico Legislature passed a bill, which was signed into law by Governor Richardson, allowing the State and the Jicarilla Apache Nation to enter into a cooperative agreement to eliminate the dual tax burden on taxpayers; and

WHEREAS, the Jicarilla Apache Nation desires to impose its own gross receipts tax and enter into a cooperative agreement with the State of New Mexico to eliminate the dual tax burden.

NOW, THEREFORE, BE IT ORDAINED, that the Jicarilla Apache Legislative Council hereby adopts the Jicarilla Apache Gross Receipts Tax Ordinance as Chapter 6, Title 11, of the Jicarilla Apache Code as forth in the attached Gross Receipts Tax Ordinance. [Text of Ordinance]

**Resolution No. 2005-R-255-08** reads as follows:

WHEREAS, the Jicarilla Apache Nation adopted a Gross Receipts Tax which was to take effect upon the conclusion of a Cooperative Agreement with the State of New Mexico Taxation and Revenue Department (NMTRD) concerning the application of reciprocal tax credits to eliminate dual taxation; and

WHEREAS, the Cooperative Agreement was signed on December 28, 2004 and went into effective January 1, 2005; and

WHEREAS, there are potentially more than 200 taxpayers subject to the tax who were confused as to the effect of the tax and cooperative agreement and who had no knowledge of the tax until sometime after January 1, 2005; and

WHEREAS, to further assist in educating the taxpayers affected by the Nation's gross receipts tax and the cooperative agreement, the Jicarilla Apache Revenue and Taxation Department (JATRD) has conducted two information sessions to educate the taxpayers about the new gross receipts tax; and

WHEREAS, the taxpayers have now been fully briefed and allowed a chance to ask questions regarding compliance with the reporting requirements under state and tribal law; and

WHEREAS, the JARTD has recommended the Legislative Council extend the effective date of the gross receipts tax to July 1, 2005; and

WHEREAS, it appears a postponement of the effective date to July 1, 2005 will encourage compliance with the tax and avoid reporting complications.

NOW, THEREFORE, BE IT RESOLVED that the Legislative Council hereby authorizes a postponement of the effective date for the Gross Receipts Tax to July 1, 2005.

**Ordinance No. 2005-O-315-09** reads as follows:

WHEREAS, Article XI of said Constitution vests in the Tribal Council the inherent powers of the Nation, including taxation; and

WHEREAS, the Nation has enacted a gross receipts Tax set out at J.A.N.C. §11-7-1; and

WHEREAS, oil and gas operators utilize the services of independent contractors and Vendors to provide equipment and services for oil and gas leases and wells; and

WHEREAS, the Jicarilla Apache Revenue & Taxation Department ("Department") desires to require that all Vendors register with the Department; and

WHEREAS, the Nation desires to amend Title 11, Chapter 7, and Title 18, Section 1 of the Jicarilla Apache Nation Code to require such oil and gas operators to submit the names of such independent contractors and Vendors and the amount paid to same to assure the Gross Receipts Taxes are being properly and fully paid by such independent contractors and Vendors, and to require all Vendors to register with the Department.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE NATION as follows:

1. A new section J.A.N.C. §11-7-10 is added as follows:

**J.A.N.C. §11-7-10 REPORTING REQUIREMENTS FOR OIL AND GAS LESSEE/ OPERATORS:**

Oil and gas lessees, and/or the agents or operators designated by such oil and gas lessees, operating within the boundaries of Jicarilla Apache Lands under leases or mineral development agreements shall submit to the Department a listing of Vendors and independent contractors retained by such lessees and/or agents or operators to provide goods and services for such lessees and/or agents or operators and the amount paid to such and properly paid. The listing of Vendors and independent contracts and the amount paid to same shall be submitted quarterly by each oil and gas lessee, operator or agent designated by such oil and gas lessee to the Department. Failure to comply with this Section shall subject either the oil and gas lessee and/or agent or operator designated by such oil and gas lessee to the penalties set forth in J.A.N.C. §11-1-25.

2. Renumber sections 11-1-10 through 11-10-16 accordingly.

3. J.A.N.C. Title 18 is hereby amended as follows:

Insert a new section J.A.N.C. §18-1-4(k).

(k) Certification that the applicant has complied with all requirements imposed by Title 11 of the Jicarilla Apache Tribal Code and paid all taxes and submitted all required reports when due.

4. A new subsection (F) is added to §11-7-9 as follows:

Every Vendor shall register with the Department on the registration form provided by the Department. The Vendor shall be responsible for updating the information on the Registration Form. Failure to register shall be subject to penalties pursuant to §11-1-20.

5. The word "Registration" shall be added to the title of §11-7-9.

6. **EFFECTIVE DATE.**

The effective date of these amendments shall be thirty days after the date of its enactment by the Legislative Council. Vendors and record owners of interests in