

Subject: **FREEHOLD MINERAL RIGHTS TAX ACT – TAX NOTICE
AND VESTING TITLE TO THE CROWN**

BACKGROUND

The Crown owns 81 per cent of the mineral rights held on behalf of Albertans. The Federal Government owns 10.6 per cent of the rest of the total lands through national parks or held by First Nations on reserve lands. The remaining 8.4 per cent is freehold and is privately owned by freehold mineral owners. Ninety per cent of freehold land is owned by corporations, religious organizations or is held in trusts, and around 10 percent of the rights are held by individuals. Most of the corporations are oil and gas companies a few corporations and/or trusts are set up by individuals to manage their freehold mineral rights, often in family situations.

Freehold mineral owners include very early settlers, and successors to the early railroads and Hudson's Bay Company, who received grants of land including mineral rights. Freehold mineral rights are private property and are subject to the *Land Titles Act*, the *Law of Property Act* and common law. An owner of these rights can lease, sell or will them as one would any parcel of private land. Private freehold rights are enforceable through the courts and the government is not privy to such agreements. It is the freehold owners' responsibility to understand the terms and associated risks when entering into a private business arrangement.

All freehold mineral rights owners are legally responsible for paying an annual tax on production under the *Freehold Mineral Rights Tax Act*. Freehold mineral tax is similar to other property taxes and it is the property owner who is ultimately liable to pay the tax. The average tax is 4 per cent of the revenues from each freehold property, and each owner is allowed up to a \$1,600 tax exemption per title owner and per substance (gas and oil) produced (11). There is no tax levied on non-producing properties.

Since 1983, Alberta has collected an annual freehold mineral tax on oil and gas production from freehold mineral rights. This replaced an earlier acreage tax that was in place from 1938 to 1972 as well as a tax based on reserves from 1973 to 1982.

Most large corporate owners pay their freehold taxes directly. As well, most lessees pay on behalf of the individual owners and simply deduct the individual owners' portion, as privately agreed, from the freehold owner's next royalty payment(s). Individuals and smaller trusts and corporations typically enter into private contracts, or have terms in their agreements, one of which may be for the oil and gas company to pay the freehold mineral tax on behalf of the owner. Many old private agreements state the freehold owner is to pay the taxes and then recover the agreed proportion from their lessee. The lessee registers their interest with the Department of Energy, therefore, the Department identifies who to expect the payments to come from, and who to contact regarding payment on behalf of the mineral rights owner.

In cases where the company does not pay the mineral tax on behalf of the owner, the Government of Alberta contacts both the company and the mineral title owner through issuing courtesy letters. The Department of Energy works with the company, and if necessary the owner, to find ways to have the tax paid, for example by instalments, without taking further action for collection.

If, after notifying the owner and the company the mineral tax is still not paid (12), the owner can be noted in default and steps will be taken that could ultimately result in the mineral rights being vested to the Crown.

All mineral rights other than petroleum rights and natural gas rights are exempt from the provisions of the Act (10).

REGISTRATION PROCEDURE

A. Notice of Tax Arrears

As per the *Freehold Mineral Rights Tax Act*, Section 14, “Enforcement of Tax” when the tax in respect to a mineral right is in arrears, the Minister may issue a “Notice of Tax Arrears”. (Notice of Tax Arrears)

1. The Minister responsible for the Act shall send a tax arrears notice to the Registrar.
2. The notice must include (2)
 - (a) the name(s) and address(s) of the person(s) on whom the default notice (1) was served
 - (b) the full description of the mineral right and proportionate interest (if applicable) to which the default notice relates
 - (c) the full legal description and affected title number(s), and
 - (d) must be signed by the Minister, Deputy Minister or an authorized delegate
3. An endorsement with the following particulars is entered on the title(s):

“Mineral Rights Tax Arrears Notice”

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – Endorsement

The code used for registration at Land Titles is: ORDE

B. Discharge of Tax Arrears Notice

1. On notification by the Minister that all taxes, interest and penalties outstanding under this Act have been paid to the Minister, the Registrar shall discharge the tax arrears notification in respect of each certificate of title (3). ([Notice to Discharge Tax Arrears](#))

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

C. Transfer of Mineral Title to the Crown

Unless the taxes, interest and penalties have been paid, the Minister, after the mailing of a default notice under section 13

1. the Minister may send the Registrar a notice directing cancellation of the certificate of title (4). ([Notice to Vest Tax Arrears Title](#))
2. The notice must include (2)
 - (a) the name(s) and address(s) of the person(s) on whom the default notice was served,
 - (b) the full description of the mineral right and proportionate interest (if applicable) to which the default notice relates,
 - (c) the full legal description and affected title number(s), and
 - (d) the mailing address of the Crown to be endorsed on title
3. On receipt of the notice, the Registrar shall cancel the certificate of title of the owner with respect to the taxable mineral right and issue a certificate of title to that taxable mineral right in the name of the Crown as owner (5).
4. When the certificate of title to a mineral right is cancelled, the title to the mineral right vests, free and clear of all estates, interests, liens and encumbrances, in the Crown in right of Alberta, as represented by the Minister (6).
5. When the title to a mineral right vests in the Crown in right of Alberta, any taxes, interest and penalties due and owing with respect to the mineral right are discharged (7).

6. Notwithstanding any statute, judgment or order, any tax, interest or penalty evidenced by a memorandum of a tax arrears notification on a certificate of title constitutes a charge on a taxable mineral right and a tax arrears notification cannot be discharged except by the Minister (see discharge of tax arrears notice above) or by the vesting of the mineral right in the Crown (8).
7. The title is issued in the name of HMQA; Minister of Energy.
8. An affidavit of value is not required. Consideration should be shown as 'Crown Acquisition'.
9. If the title is a combination surface and mineral title, the title must be split into a surface and mines and mineral title before vesting the mineral title to the crown.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – New Title

The code used for registration at Land Titles is: ORDT

D. Extension of Time

The Minister may extend or change any of the timeframes provided for in the Act (9).

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – Endorsement

The code used for registration at Land Titles is: ORDE

E. Redemption and Revival

The *Freehold Mineral Tax Act* does not provide for redemption and revival procedures. If the Crown wants to transfer title back to any owner, they would complete a standard transfer of land form (13).

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Transfer of Land

The code used for registration at Land Titles is: TFLA

STATUTE AND CASE REFERENCES

Statute references are to the Freehold Mineral Rights Tax Act, R.S.A. 2000, c. F-26, unless otherwise indicated.

1. s. 13
2. s. 14(1)
3. s. 14(3)
4. s. 14(5)
5. s. 14(6)
6. s. 15(1)
7. s. 15(2)
8. s. 16
9. s. 21
10. s. 2 Freehold Mineral Rights Tax Regulation A.R. 223/2013
11. s. 5 Freehold Mineral Rights Tax Regulation A.R. 223/2013
12. s. 8 Freehold Mineral Rights Tax Regulation A.R. 223/2013
13. s. 12 Mines and Minerals Act R.S.A. 2000, c. M-17