

## **ANNOTATED SAMPLE FIRST NATION PROPERTY TRANSFER TAX LAW (BRITISH COLUMBIA)**

Property transfer tax (“PTT”) is a tax levied on an interest in land at the time the interest is transferred to another person. PTT is payable by the transferee (or purchaser) of the interest in land. First Nations wishing to implement PTT under the *First Nations Fiscal Management Act* (“FMA”) must enact a Property Transfer Tax Law that creates the First Nation PTT system on its reserve lands.

The FMA provides a framework for First Nation property taxation on reserve. First Nation fiscal powers are set out in Part 1 of the FMA and include, under section 5, the authority to make laws respecting taxation for local purposes of reserve lands, interests in reserve lands, or rights to occupy, possess or use reserve lands. Laws enacted under the FMA must comply with the legislative framework, which includes all requirements in the FMA, any regulations made under paragraph 36(1)(d) of the FMA and any standards established by the First Nations Tax Commission (“Commission”) under section 35 of the FMA.

The Commission prepares sample laws for use and adaptation by First Nations. The sample First Nation Property Transfer Tax Law (“sample law”) complies with the legislative framework, including the Standards for First Nation Property Transfer Tax Laws (“PTT Law Standards”), and provides a comprehensive PTT law for First Nations wanting to implement the property transfer tax on their reserve lands.

This annotation of the sample law provides explanatory and additional information on key aspects of the sample law and is intended to assist First Nations in creating their own PTT laws. This annotated law is not intended to provide legal advice or legal interpretation and should not be relied upon as such.

### **General Considerations respecting the PTT Law:**

Property transfer taxes are levied in many provinces in Canada but are not generally levied by provincial or local governments on reserve lands. When considering a PTT law and the implementation of a PTT regime on its reserve lands, a First Nation may wish to consider the following issues:

- **Administrative Capacity:** First Nations will need the administrative capacity to implement PTT. An administrator is required to review each PTT Return, confirm the calculation of the tax payable, and determine the applicability of exemptions.
- **Registration System:** Because the PTT is collected at the time an application is made for registration of a transfer in the land registry, First Nations that directly accept land transfer registrations will be in the best position to administer a PTT regime. If a First Nation does not directly accept registrations, it would need to coordinate collection with the land registry operator (for example, AANDC).
- **Nature of Leasehold Interests:** The PTT is levied at the time of transfer of leasehold interests in lands. First Nations may wish to undertake a review and estimate of the PTT tax potential from leasehold transfers on their reserve lands before undertaking PTT law development.
- **Expenditures:** As taxes levied under the FMA authority, PTT revenues must be placed in the local revenue account and budgeted and expended in accordance with the First Nation’s annual expenditure law in accordance with the legislative framework.
- **Stakeholder Engagement:** First Nations may wish to engage stakeholders (for example, taxpayers, realtors, adjacent governments) early in its law development process, as the PTT will be a new form of taxation on reserve. Early engagement will provide more time during which the First Nation can provide information on the proposed tax and respond to any concerns raised.

**PROPERTY TRANSFER TAX LAW**

**EXPLANATORY NOTES &  
COMMENTS**

**FIRST NATION  
PROPERTY TRANSFER TAX LAW, 20\_\_**

(BRITISH COLUMBIA)

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WHEREAS:

A. Pursuant to paragraph 5(1)(a) of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands, interests in reserve lands or rights to occupy, possess or use reserve lands;

→ The title of the law should include the legal name of the First Nation and the year the law will be enacted.

→ This indicates that the sample law has been created for First Nations located in B.C. This wording should be deleted in the First Nation’s law.

→ When the drafting is complete, ensure that all of the Part numbers and headings correspond to the Part numbers and the headings used in the law.

→ When the drafting is complete, ensure that the Schedule numbers and names correspond to the numbers and names used in the law.

→ These recitals are recommended in order to show the authority for the law and the fulfillment of notice requirements. Additional recitals can also be included as the First Nation determines appropriate.

B. The Council of the \_\_\_\_\_  
First Nation deems it to be in the best interests of the  
First Nation to make a law that provides for the levy  
and collection of a tax on certain interests in land in  
the reserve at the time of the transfer of those  
interests; and

C. The Council of the \_\_\_\_\_  
First Nation has given notice of this law and has  
considered any representations received by the  
Council, in accordance with the requirements of the  
*First Nations Fiscal Management Act*;

NOW THEREFORE the Council of the  
\_\_\_\_\_ First Nation duly enacts  
as follows:

## PART I CITATION

### Citation

1. This Law may be cited as the \_\_\_\_\_  
*First Nation Property Transfer Tax Law, 20\_\_* .

## PART II DEFINITIONS AND REFERENCES

### Definitions and References

2.(1) In this Law:

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

“administrator” means a person appointed by Council under subsection 3(1) to administer this Law;

→ The property transfer tax law is subject to the public input requirements set out in sections 6 and 7 of the FMA.

→ The enactment clause is required in order to show Council’s intention to enact the law.

→ The citation includes the First Nation’s legal name and the year the law is made. Proper citation of the law should be used when referencing it in documents, forms or other laws.

→ The definitions used are the same as set out in the *Indian Act*, the FMA and the Regulations. Where terms are not defined in those statutes or regulations, additional definitions are included to assist in the interpretation of the law.

→ When drafting is complete, any definitions that are not used in the law should be deleted.

→ This term is used to refer to the individual appointed by Council to administer the law. The First Nation can use a different term—for example, “tax administrator” or “Land Manager”—provided that a person is appointed to administer the law and fulfill the obligations required of that person under the law.

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| <p>“correcting transfer” means a taxable transfer that was intended to be transferred to the transferee when the original transfer was registered;</p>   | <p>→ This definition and the definition for “original transfer” are used in section 12.</p>   |
| <p>“Council” has the meaning given to that term in the Act;</p>  | <p>→ This term is defined in the FMA and it therefore cannot be changed in this law.</p>  |
| <p>“expenditure law” means a law enacted under paragraph 5(1)(b) of the Act;</p>   |   |
| <p>“fair market value” means the fair market value determined in accordance with the applicable rules and formulae set out in Schedule I;</p>  | <p>→ Fair market value must be determined in accordance with the PTT Law Standards. These rules are attached as Schedule I to the law.</p>                                      |
| <p>“First Nation” means the _____ First Nation, being a band named in the schedule to the Act;</p>   |   |
| <p>“First Nation Corporation” means a corporation in which at least a majority of the shares are held in trust for the benefit of the First Nation or all of the members of the First Nation;</p>  | <p>→ This definition can be modified to create a greater share holding requirement than a majority but cannot be modified to allow a share holding of less than a majority.</p> |
| <p>“first-time home buyer” means an individual who</p> <ul style="list-style-type: none"> <li>(a) is a Canadian citizen or a permanent resident as defined in the <i>Immigration and Refugee Protection Act</i> (Canada) on the registration date of a taxable transfer,</li> <li>(b) has not previously <ul style="list-style-type: none"> <li>(i) owned land in British Columbia or elsewhere that constituted the individual’s principal residence,</li> <li>(ii) held an interest in land under a lease that constituted the individual’s principal residence, or</li> <li>(iii) held an interest in reserve lands under a lease that constituted the individual’s principal residence, and</li> </ul> </li> <li>(c) has not previously obtained a first-time home buyers’ exemption or refund under this Law or under any other federal, provincial or first nation enactment;</li> </ul> | <p>→ This definition is required only if the First Nation will be providing a first-time home buyer exemption as part of its law. (See ss.16-19.)</p>                           |
| <p>“holder” means a person in possession of an interest in land or a person who, for the time being,</p> <ul style="list-style-type: none"> <li>(a) is entitled through a lease, licence or other legal means to possess or occupy the interest in land,</li> <li>(b) is in actual occupation of the interest in land,</li> <li>(c) has any right, title, estate or interest in the interest in land, or</li> <li>(d) is a trustee of the interest in land;</li> </ul>   | <p>→ This definition is used in the PTT Law Standards and in other Commission Standards and sample laws and therefore should remain consistent in this law.</p>                 |

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| <p>“improvement” means any building, fixture, structure or similar thing constructed, placed or affixed on, in or to land, or water over land, or on, in or to another improvement and includes a manufactured home;</p>   | <p>→ This definition is used in the PTT Law Standards and in other Commission Standards and sample laws and therefore should remain consistent in this law.</p> |
| <p>“interest in land” means land or improvements, or both, in the reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;</p>  | <p>→ This definition is used in the PTT Law Standards and in other Commission Standards and sample laws and therefore should remain consistent in this law.</p> |
| <p>“lease” includes a sublease or any further sublease;</p>  | <p>→ This definition is intended to capture leases, subleases, and any further subleasing of those interests.</p>   |
| <p>“lease modification agreement” means an agreement that extends the term of a lease;</p>   |   |
| <p>“local revenue account” means the account referred to in section 13 of the Act;</p>   |   |
| <p>“manufactured home” means a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to</p> <ul style="list-style-type: none"> <li>(a) be moved from one place to another by being towed or carried, and</li> <li>(b) provide <ul style="list-style-type: none"> <li>(i) a dwelling house or premises,</li> <li>(ii) a business office or premises,</li> <li>(iii) accommodation for any other purpose,</li> <li>(iv) shelter for machinery or other equipment, or</li> <li>(v) storage, workshop, repair, construction or manufacturing facilities;</li> </ul> </li> </ul> | <p>→ This definition is used in other sample laws for First Nations located in B.C. and therefore should remain consistent in this law.</p>                     |
| <p>“member” means a member of the First Nation;</p>  |   |
| <p>“Notice of Tax Assessment” means a notice containing the information set out in Schedule III and includes an amended Notice of Tax Assessment;</p>  |   |
| <p>“original transfer” means a taxable transfer to a transferee that was in error, or an error was made in the description or survey under which an interest in land was registered;</p>   | <p>→ This definition and the definition for “correcting transfer” are used in section 12.</p>   |

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“principal residence”,

(a) for the purposes of section 14, means an interest in land

(i) on which the person in relation to whose residency the exemption in section 14 is claimed usually resided and used as his or her home,

(ii) on which there are improvements that are designed to accommodate and that are used to accommodate three (3) or fewer families,

(iii) on which all of the improvements are residential improvements, and

(iv) that is not larger than a half (0.5) hectare, and

(b) for the purposes of sections 16 to 18, means the usual place where an individual makes his or her home;

“qualifying property” means an interest in land

(a) with a fair market value that does not exceed five hundred thousand dollars (\$500,000) on the registration date, and

(b) with a total parcel area of a half (0.5) hectare or less;

“registration date” means the date on which an application is made to register a taxable transfer in the registry;

“registry” means the [insert name] land registry in which interests in land are registered;

“related individual” means

(a) a person’s spouse, child, grandchild, great-grandchild, parent, parent’s spouse, grandparent or great-grandparent,

(b) the spouse of a person’s child, grandchild or great-grandchild, or

(c) the child, parent, grandparent or great-grandparent of a person’s spouse;

→ This definition is used in certain exemptions from PTT relating to use of the interest in land as a principal residence. If a First Nation chooses to not include these exemptions, this definition should be deleted.

→ If the First Nation does not include the first-time home buyer exemption, this definition should be modified to delete paragraph (b).

→ This definition is required only if the First Nation will be providing a first-time home buyer exemption as part of its law. (See ss. 16-19.)

→ This definition is necessary because the tax is payable on the date an application is made to register a taxable transfer, rather than the date that the transfer is actually registered.

→ The name of the First Nation’s specific land registry should be included.

→ This definition is used in a number of exemptions from PTT that a First Nation may choose to provide in the law. If a First Nation chooses to not include these exemptions, this definition should be deleted.

“Request for Information” means a request containing the information set out in Schedule V;

“Request for Reconsideration” means a request containing the information set out in Schedule VI;

“reserve” means any land set apart for the use and benefit of the First Nation within the meaning of the *Indian Act*;

“residential”, in respect of an interest in land, means used for residential purposes or zoned for residential uses under the [insert zoning law citation];

“residential improvement” means an improvement, or a part of an improvement, constructed on and permanently affixed to land and that is intended to be a dwelling;

“Return” means a tax return containing the information set out in Schedule II and in the form or forms determined by the administrator;

“settlor” means, in relation to an interest in land held in trust, the person who

(a) contributed the interest in land to the trust estate, or

(b) contributed to the trust estate the assets used to acquire the interest in land, whether or not that person is the creator of the trust;

“spouse” includes a common law partner;

“tax” means the property transfer tax imposed under this Law and includes all penalties, interest, and costs added to taxes under this Law;

→ If the First Nation has a zoning law that defines a residential use, the name of the law should be inserted here. If not, the reference to the zoning law should be deleted.

→ This definition is used in certain exemptions from PTT relating to a person’s principal residence that a First Nation may choose to provide in the law. It is also used in the first-time home buyer exemption. This definition may be deleted if a First Nation chooses to not include these exemptions in its law.

→ The Commission has sample forms of Returns for use and adaptation by First Nations.

→ This definition is used in certain trust-related exemptions from PTT that a First Nation may choose to provide in the law. This definition may be deleted if a First Nation chooses to not include these exemptions in its law.

→ A “common law partner” is a defined term in the *Indian Act* and therefore it isn’t necessary to define it in this law. It requires cohabitation for a period of at least one year.

→ The term “tax” refers only to the PTT levied under this law and not to other taxes. It also includes any penalties, interest and costs added to these taxes in accordance with this law.

“Tax Certificate” means a certificate containing the information set out in Schedule IV;

“taxable transfer” means

(a) a transfer, grant, assignment or other disposition of a lease by any method, including by court order (including an order absolute of foreclosure) or by the operation of any enactment,

(b) a grant of a life estate in a lease,

(c) the extension of the term of a lease by a lease modification agreement, and

(d) a grant of an option to renew or extend the term of a lease;

“taxpayer” means a person liable for payment of tax under this Law;

“transferee” means a person to whom an interest in land is transferred or whose interest in land is created, increased or given effect to under a taxable transfer; and

“transferor” means a person from whom a transferee receives a taxable transfer.

(2) For the purpose of calculating tax payable under this Law, a person registered in the registry as the holder of the interest in land, other than a person registered only as the owner of a charge, is deemed to be the legal and beneficial holder of the interest in the land, even if the person holds the interest in land in trust.

(3) For the purposes of this Law, a person is considered to have only one (1) principal residence at a time.

(4) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 3(4)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

→ A tax certificate is used to show the PTT owing in respect of an interest in land.

→ This definition reflects all of the possible transfers that may be subject to PTT in accordance with the PTT Law Standards. Any modifications to this definition should be carefully considered, as the intended scope of the tax could be affected.

→ The terms “transferee” and “transferor” are used to refer to the persons usually thought of as the purchaser and seller of an interest, respectively. These terms are used because they are broader in scope, as in some cases interests are not purchased or sold but are transferred under other circumstances, such as on death, bankruptcy, etc.

→ This provision ensures that the person to be registered as the new holder of the interest in land is liable for the tax levy.

→ This provision relates to the applicability of certain exemptions based on use as a principal residence.



**PART III**  
**ADMINISTRATION**

**Administrator**

3.(1) Council must appoint an administrator to oversee the administration and enforcement of this Law.

(2) The administrator must fulfill the responsibilities given to the administrator under this Law and such other duties assigned to the administrator by the First Nation from time to time.

(3) The administrator may, with the consent of [insert title], assign the performance of any duties of the administrator to any officer, employee, contractor or agent of the First Nation.

(4) The administrator must report annually to Council on the administration of this Law during the previous fiscal year, which report must include

- (a) the amount of all taxes levied;
- (b) the amount of all taxes received;
- (c) the amount of any exemptions from taxes;
- (d) the amount of any refunds of taxes;
- (e) a list of all requests for reconsideration received by the administrator and the decision made respecting each request;
- (f) any appeals filed; and
- (g) any enforcement proceedings taken.

(5) The administrator must deliver the report required under subsection (4) no later than [insert date] in each year.

**Authorization of First Nations Financial Management Board**

4. Notwithstanding any other provision of this Law, if the First Nations Financial Management Board gives notice to Council pursuant to the Act that third-party management of the revenues raised under this Law is required, Council authorizes the First Nations Financial Management Board to act as agent of the First Nation to fulfill any of the powers and obligations of the Council under this Law and the Act.

→ The law must provide for the appointment of an administrator, as the administrator has specific required duties under the law.

→ PTT Law Standards subsection 1.1.

→ This provision provides flexibility where the administrator is not able to personally fulfill all of the duties at any given time.

→ The law must include these reporting requirements.

→ PTT Law Standards subsection 1.2.

→ The First Nation should include the date by which the report will be provided in each year. This could be a date that ties in with the First Nation's fiscal year.

→ Every property taxation law made under the FMA must include a "third-party management" provision that appoints the First Nations Financial Management Board as the First Nation's agent under the law, in certain defined circumstances under the FMA.

→ FMA subsection 5(5).

### **Special Levy**

5. If the First Nation is at any time required, as a borrowing member and in accordance with paragraph 84(5)(b) of the Act, to pay to the First Nations Finance Authority an amount sufficient to replenish the debt reserve fund, the Council must make or amend such property taxation laws as necessary in order to recover the amount payable.

### **Revenues and Expenditures**

6. Taxes collected by the First Nation must be placed in the local revenue account of the First Nation and expended only in accordance with an expenditure law enacted by the First Nation in accordance with the Act.

## **PART IV**

### **TAX LIABILITY AND LEVY**

#### **Tax Liability**

7.(1) This Law applies to all interests in land, and every transferee is subject to tax at the time of application for registration of a taxable transfer in respect of an interest in land in accordance with this Law.

(2) Except where an exemption applies as provided in Part V, a tax

(a) is levied and imposed on an interest in land at the time of the application for registration of a taxable transfer relating to that interest in land; and

(b) must be paid by the transferee in accordance with this Law.

→ Every property taxation law of a borrowing member of the First Nations Finance Authority (FNFA) for property taxation must include this clause. It confirms the First Nation's obligation to pay amounts required to replenish the debt reserve fund where required to do so by the FNFA in accordance with the legislative framework.

→ A First Nation may wish to include this clause in the event it might decide to become a borrowing member, so that an amendment would not be required in the future. When the First Nation is not a borrowing member, the clause has no effect.

→ FMA subsection 5(6).

→ Where a First Nation levies PTT, these revenues are shown in the expenditure law and the requirements that apply to other property taxes apply equally to PTT.

→ FMA section 13.

→ The law applies to all interests in land in the reserve, and every transferee is subject to the tax at the time of application for registration of a taxable transfer in respect of an interest in land. A taxable transfer is a defined term.

→ PTT Law Standards subsections 2.1 and 2.2.

→ Unless an exemption applies, the PTT is levied at the time of application for registration of a taxable transfer and is payable by the transferee.

→ PTT Law Standards subsection 2.3.

(3) A person who is a transferee of a taxable transfer under this Law is liable for the tax even if

(a) that person is also liable to pay taxes imposed under other property taxation laws of the First Nation; or

(b) the interest in land acquired by a co-transferee of the taxable transfer is exempt from tax under this Law.

(4) Where there is more than one (1) transferee in respect of taxable transfer, each transferee is jointly and severally liable to the First Nation for the tax imposed under this Law.

(5) Subsection (4) does not apply to a co-transferee of a taxable transfer who is exempt from tax under this Law.

(6) Taxes are due and payable under this Law notwithstanding any proceeding initiated or remedy sought by a taxpayer respecting those taxes, including without limitation respecting the assessment of taxes, the applicability of an exemption, or the taxpayer's liability to taxation.

### **Tax Payment and Filing Return**

8.(1) On application for registration of a taxable transfer in the registry, the transferee must

(a) pay the tax in accordance with this Law; and

(b) file a completed Return in accordance with this Law, whether or not the taxable transfer is exempt from tax under this Law.

(2) The registry must refuse to accept an application for registration of a taxable transfer if

(a) the transferee does not pay the tax owing at the time of registration;

(b) the transferee does not file a completed Return; or

→ This provision clarifies that PTT is payable regardless of whether a person is liable for other taxes imposed by the First Nation, and whether or not a co-transferee is exempt from PTT.

→ This provision clarifies that transferees are jointly and severally liable for the PTT, except where a co-transferee is exempt as provided in subsection (5).

→ This provision ensures that a transferee must pay the PTT even if the transferee is requesting a reconsideration or appealing an assessment of tax.

→ Because PTT is levied only at the time of registration of a taxable transfer, the transferee is required to complete and file a Return, and pay the tax in full, concurrent with the application for registration.

→ The First Nation will need to develop a form (or forms) for the Returns that transferees are required to complete. The Return must include the information set out in Schedule II to the sample law. The Commission has prepared sample Returns for use and adaptation by First Nations.

→ PTT Law Standards subsections 7.1, 7.2 and 7.5.

→ This provision requires the registry to refuse an application for registration if a transferee does not provide a completed Return or does not pay the tax in full. These processes will ensure taxes are collected up front and minimize collection and enforcement proceedings.

(c) the administrator or the registry staff have reasonable grounds to believe that the Return is incomplete, or the transferee does not qualify for an exemption being claimed on the Return.

(3) Payment of taxes must be made by cheque or money order payable to the \_\_\_\_\_ First Nation.

### **Payment of Estimated Tax**

9.(1) Despite section 8, where the amount of tax owing on a taxable transfer cannot be determined on the registration date because an appraisal or other valuation information is required to determine the fair market value of the taxable transfer, the administrator may, on the request of the transferee,

(a) estimate the tax owing using the best information available to the administrator on the registration date; and

(b) authorize the registry to accept the application for registration of the taxable transfer on payment by the transferee of the administrator's estimate of the tax owing.

(2) Where a transferee makes a payment of estimated tax owing under subsection (1), the administrator must, on receipt of the appraisal or other valuation information, determine the tax owing on the taxable transfer.

(3) Despite subsection (2), if the transferee was required to provide the appraisal or other valuation information and the transferee does not provide the information within the required time, the administrator must determine the tax owing on the taxable transfer on the registration date, based on the best information available to the administrator at the time of the determination under this subsection.

(4) Where the administrator makes a determination of tax owing under subsection (2) or (3), the administrator must deliver a Notice of Tax Assessment to the transferee and section 25 applies.

→ The law must include the acceptable forms of payment for the PTT. The law should list all forms of payment accepted by the First Nation.

→ PTT Law Standards subsection 7.5.

→ This section enables a transferee to proceed with registration of a taxable transfer in circumstances where the fair market value cannot be calculated because an appraisal or other valuation information is required. In these circumstances, the administrator may agree to allow the registration to proceed if the transferee chooses to pay an estimate of the PTT as determined by the administrator.

→ A First Nation may wish to include this section where property assessment information may not be available for all taxable transfers.

→ PTT Law Standards subsection 7.6.

## Tax Rate

10.(1) The rate of tax levied under this Law is

(a) one percent (1%) of the first two hundred thousand dollars (\$200,000) of the fair market value of the taxable transfer; and

(b) two percent (2%) of the remaining fair market value of the taxable transfer.

(2) If a transferee

(a) applies to register a taxable transfer, and

(b) within six (6) months after the application referred to in paragraph (a) applies to register one or more additional taxable transfers respecting the same interest in land,

the tax owing on the taxable transfer referred to in paragraph (b) must be calculated based on the total fair market value of the taxable transfers referred to in paragraphs (a) and (b) as if all the taxable transfers referred to in paragraphs (a) and (b) were a single taxable transfer.

(3) If

(a) a transferee applies to register a taxable transfer, and

(b) one or more related individuals of the person referred to in paragraph (a) apply, as transferees, at the same time as or within six (6) months after the application referred to in paragraph (a), to register one (1) or more taxable transfers respecting the same interest in land for which the transferor is not the person referred to in paragraph (a),

the tax owing must be calculated based on the total fair market value of the taxable transfers referred to in paragraphs (a) and (b) as if all those taxable transfers were a single taxable transfer, and the transferees referred to in paragraphs (a) and (b) are jointly and severally liable to pay the total tax owing.

(4) If

(a) a transferee that is a corporation (in this subsection and subsection (5) called the “corporate transferee”) applies for registration of a taxable transfer, and

→ Subsection 10(1) sets out the rate of PTT, which must be a single rate or rate structure applicable to all taxable transfers, based on the fair market value. Further, for First Nations in British Columbia the rate cannot exceed the provincial rate of 1% of the first \$200,000 and 2% of the remaining fair market value.

→ Subsections 10(2) to (5) address situations that where one or more transferees split taxable transfers such that each transfer has a lower fair market value which then results in less tax being payable. In these cases, the transfers will be treated as a single transfer and the fair market value and tax payable will be adjusted accordingly. These subsections are necessary only where the law provides for a tiered tax rate approach, such as the approach used in British Columbia.

→ PTT Law Standards section 4.

(b) one or more corporations associated with the corporate transferee apply, as transferees, at the same time as or within six (6) months after the application referred to in paragraph (a), for registration of one or more taxable transfers respecting the same interest in land for which the transferor is not the corporate transferee,

the tax owing on the taxable transfers must be calculated based on the total fair market value of the taxable transfers referred to in paragraphs (a) and (b) as if all those taxable transfers were a single taxable transfer, and the transferees referred to in paragraphs (a) and (b) are jointly and severally liable to pay that total tax.

(5) For the purposes of subsection (4), a corporation is associated with a corporate transferee if the corporation and the corporate transferee are associated, within the meaning of section 256 of the *Income Tax Act* (Canada), on the registration date of the taxable transfer referred to in subsection (4).

(6) Despite subsection (1), a tax in an amount of less than \_\_\_\_\_ (\$\_\_\_) must not be levied on a taxable transfer.

→ Subsection (6) provides optional wording where a First Nation wishes to include an amount below which PTT won't be levied. First Nations may wish to include a nominal amount to avoid having to administer the PTT for taxable transfers with very low fair market values.

→ First Nations should note that a "minimum tax" is not permitted for PTT. (A minimum tax is a minimum amount of tax to be paid regardless of fair market value.)

→ PTT Law Standards subsection 5.2.

## Tax Return

**11.** A Return must be dated and certified

(a) if no exemption is claimed, by the transferee or a person with actual authority to certify the Return on behalf of the transferee;

(b) if an exemption is claimed and the transferee is an individual, by the transferee or by an agent of the transferee who has personal knowledge of the matters certified; or

(c) if an exemption is claimed and the transferee is a corporation, by a person who has personal knowledge of the matters certified and actual authority to certify the return on behalf of the transferee.

→ Each Return must be dated and certified by the transferee or an authorized person. Certified means that the person signing the Return is giving a formal confirmation that the information in the Return is complete and correct in all respects.

→ PTT Law Standards subsection 7.4.

## Correcting Transfer

12.(1) Despite section 10, the tax payable for a correcting transfer is the tax payable determined under that section as if the fair market value of the taxable transfer were determined on the registration date of the original transfer.

(2) On the registration of a correcting transfer, the amount of tax paid by a transferee in respect of the original transfer is deemed to be tax

(a) paid by the transferee in respect of the correcting transfer; and

(b) paid on the registration date of the correcting transfer.

## PART V

### EXEMPTIONS FROM TAXATION

#### Applicability of Exemptions

13.(1) A transferee is exempt from taxation on a taxable transfer under this Law where

(a) the taxable transfer is within any of the descriptions set out in sections 14 and 15; and

(b) the transferee files a claim for the exemption concurrently with the transferee's completed Return and application for registration of the taxable transfer in the registry.

(2) A claim for an exemption under this section must

(a) be in the form required by the administrator;

(b) provide sufficient information for the administrator to confirm that the taxable transfer or the transferee, as the case may be, qualifies for the exemption claimed; and

(c) include a consent by the transferee to the administrator conducting inquiries respecting the taxable transfer and the transferee that the administrator considers necessary to confirm the qualification for the exemption.

→ This section provides a process for applying a PTT payment made where a transfer was made in error, and a further transfer is required to correct the original transfer (the "correcting transfer").

→ In these situations, the PTT paid on the original transfer is applied to the PTT levied on the correcting transfer, and the amount of PTT payable on the correcting transfer is determined as though the transfer were made on the date of the original transfer. This ensures that PTT is paid only on the intended transfer and as though that transfer were in fact effected on the intended date of transfer.

→ This Part provides sample wording for exemptions from PTT that a First Nation may wish to include in the law. It is the First Nation's decision whether to provide any exemptions from PTT. All exemptions provided must be set out in the law.

→ PTT Law Standards section 6.

→ Exemptions will apply only where a taxable transfer is within any of the descriptions in sections 14 or 15, and where the transferee files a claim for an exemption concurrently with a Return and an application for registration of the taxable transfer in the registry.

→ A First Nation may wish to use a different form of Return where a transferee is claiming an exemption. The Commission has developed sample Returns for use when a transferee is claiming an exemption.

## Exemptions from Tax

14.(1) In this section a related individual must be a person who is a Canadian citizen or a permanent resident as defined in the *Immigration and Refugee Protection Act*.

(2) A transferee is exempt from taxation on a taxable transfer under this Law where the taxable transfer is

(a) from a transferor who is not a trustee to a transferee who is a related individual, if the interest in land transferred has been the principal residence of either the transferor or the transferee for a continuous period of at least six (6) months immediately before the registration date;

(b) from a trustee of a deceased's estate or of a trust established under a deceased's will and who is registered in that capacity in the registry, to a transferee, if

(i) the transferee is a beneficiary of the estate or trust,

(ii) the transferee beneficiary was a related individual of the deceased at the time of the deceased's death, and

(iii) immediately before the deceased's death, the interest in land to be transferred was the deceased's principal residence or had been the transferee's principal residence for a continuous period of at least six (6) months;

(c) from a trustee of a trust that is settled during the lifetime of the settlor and who is registered in that capacity in the registry, if

(i) the transferee is a beneficiary of the trust,

(ii) the transferee beneficiary is a related individual of the settlor of the trust, and

(iii) the interest in land transferred was the principal residence of either the settlor or the transferee for a continuous period of at least six (6) months immediately before the date of transfer or of the transferee beneficiary for that period;

(d) from a transferor to a transferee who is a spouse or former spouse of the transferor where the transfer is made pursuant to a written separation agreement, a court order, or other legally binding order or

→ This section sets out some exemptions that are provided in provincial property transfer tax legislation. Each First Nation should review these exemptions to determine which, if any, it wishes to include in its PTT law.

→ The sample law does not include all of the exemptions from PTT that are provided in provincial legislation.

→ In determining which exemptions to include, First Nations may wish to consider issues such as the likelihood of each exemption arising, the potential lost tax revenues, and the benefits of harmonizing with provincial exemptions.

→ If a First Nation wishes to modify an exemption, it should ensure that the modified exemption complies with the legislative framework.

→ Once a First Nation decides which exemptions to include in its law, if any, the definitions should be reviewed to delete any corresponding definitions that are not required in the law.

→ PTT Law Standards subsection 6.2.

→ This exemption applies to certain principal residence property transferred into a trust.

→ This exemption applies to property transfers between spouses or former spouses where made pursuant to separation agreements or court orders.



agreement under an applicable provincial, federal or First Nation enactment respecting the division of matrimonial or family property;

(e) to change a joint tenancy to a tenancy in common, if

(i) the persons holding the interest in land are the same before and after the transfer, and

(ii) each person holding a share of the interest in land after the transfer has an interest equal to that held by the other holders;

(f) by operation of law to the survivor of a joint tenancy consequent on the death of a joint tenant holder of the interest in land;

(g) in relation to the subdivision of a parcel into smaller parcels, where

(i) the transferee of one or more of the resulting subdivided parcels was one of the registered holders of the original parcel immediately before its subdivision, and

(ii) the transferee's proportionate share of the fair market value of those smaller parcels, calculated using the fair market values as they were immediately after the subdivision, does not exceed the transferee's proportionate share of the fair market value of the original parcel, calculated using the fair market value as it was immediately before the subdivision;

(h) by which an interest in land reverts, escheats or is forfeited to the First Nation or the federal or provincial Crown, or by which an interest in land that has reverted, escheated or been forfeited to the First Nation or the Crown is returned to its previous holder;

(i) to the trustee in bankruptcy of an interest in land forming part of the estate of a bankrupt;

(j) from the trustee in bankruptcy to the bankrupt of an interest in land forming part of the estate of the bankrupt, if no consideration for the transfer is paid by or on behalf of the bankrupt transferee and a declaration to that effect is made by the transferee and the transferor on the application for the exemption;

→ This exemption applies when joint tenants change their ownership to a tenancy in common. The owners and their ownership shares remain the same both before and after the change.

→ This exemption applies to property that is subdivided provided there is no change in ownership or ownership shares.

→ This exemption applies to property that has reverted, forfeited or escheated, and also that if such property is returned to its previous owner.

→ This exemption applies to trustees in bankruptcy when taking ownership of the bankrupt's property.

→ This exemption and the exemption in paragraph (k) apply to certain transfers to or from a trustee in bankruptcy.

(k) from the trustee in bankruptcy to the spouse or former spouse of the bankrupt of an interest in land forming part of the estate of the bankrupt, if

(i) the interest in land transferred was the principal residence of the bankrupt immediately before the date of the bankruptcy, and

(ii) no consideration for the transfer is paid by or on behalf of the transferee and a declaration to that effect is made by the transferee and the transferor on the application for the exemption;

(l) to a person in his or her capacity as personal representative, if the interest in land transferred is part of the deceased's estate;

(m) of a life estate in a lease, if the transferee of that life estate transferred the lease in the same interest in land to the transferor of the life estate in a concurrent transaction;

(n) to a mortgagee, if the mortgagee was the immediately preceding holder of the interest in land that was subject to the mortgage;

(o) to the provincial public guardian and trustee or the Minister of Indian Affairs and Northern Development, if

(i) the interest in land transferred is to be held in trust by the public guardian and trustee or the Minister of Indian Affairs and Northern Development, as the case may be, for the sole benefit of a minor,

(ii) the minor is a related individual of the transferor or the person whose estate is the transferor, and

(iii) the interest in land transferred was the principal residence of the minor, the transferor, or the person whose estate is the transferor;

(p) from the provincial public guardian and trustee or the Minister of Indian Affairs and Northern Development, if

(i) the interest in land transferred was held in trust by the public guardian and trustee or the Minister of Indian Affairs and Northern Development, as the case may be, for the sole benefit of a minor, and

(ii) the transferee is the beneficiary;

→ This exemption applies to executors and personal representatives when taking ownership of a deceased's property when administering the estate.

→ This exemption applies to an owner transferring a lease (on which PTT would be levied) and taking a concurrent life estate back.

→ This exemption applies where a mortgagee (lender) receives a transfer and was the holder of the interest in land immediately before the current owner.

→ This exemption and the exemption in paragraph (p) apply to transfers to and from guardians acting for the benefit of property held by a minor.

(q) from a transferor to a transferee, each of whom is registered in the registry as a trustee of the interest in land, if

(i) the change in trustee is for reasons that do not relate, directly or indirectly, to a change in beneficiaries or in a class of beneficiaries or to a change in the terms of the trust, and

(ii) the transferor and the transferee make a declaration to that effect on the application for the exemption;

(r) for the purpose of transferring an interest in land

(i) that was transferred in error, or

(ii) in respect of which an error was made in the description or survey relating to the registration of the interest in land;

(s) to a not-for-profit educational institution, including a public school, university, technical institute or public college, if the interest in land being transferred will be used for an educational purpose;

(t) to a not-for-profit hospital or health institution, if the interest in land being transferred will be used for hospital or health care related purposes;

(u) of a lease with a term of thirty (30) years or less remaining as of the registration date, other than a lease modification agreement.

(3) Despite paragraph (2)(u), the exemption from taxation in that paragraph does not apply to a taxable transfer where

(a) two (2) or more taxable transfers are made in respect of the same interest in land;

(b) the applications for registration of the taxable transfers are made at the registry within six (6) months of each other;

→ This exemption applies to transfers that are required because of a change in a trustee.

→ This exemption applies when property is transferred in order to correct a transfer error.

→ This exemption and the exemption in paragraph (t) apply to transfers to certain non-profit entities.

→ In British Columbia, an exemption is given to lease transfers having a term or remaining term of 30 years or less. In deciding whether to include this exemption, First Nations may wish to consider the nature of the leasehold interests in its lands and the potential lost revenues if the exemption is included.

→ If this exemption is included, a First Nation may consider adding the optional wording in subsection (3) to prevent transferees from “stacking” leases.

→ This wording addresses a situation where a lessee enters into one or more back-to-back leases, each with terms shorter than 30 years. Under this provision, the terms are added and the tax applied to the sum of the lease terms.

(c) each of the taxable transfers provides a term during which a person is given a right to occupy the interest in land under a lease; and

(d) the terms referred to in paragraph (c) exceed thirty (30) years in total.

### **Additional Exemptions**

**15.(1)** A transferee is exempt from taxation on a taxable transfer under this Law where the taxable transfer is to

- (a) the First Nation as the sole transferee;
- (b) a First Nation Corporation as the sole transferee;
- (c) a member where, in respect of the taxable transfer,
  - (i) the member is the only transferee,
  - (ii) all of the transferees are members, or
  - (iii) the member and the member's spouse are the only transferees,

provided that the transferee will hold the interest in land directly and not as a trustee;

(d) a trustee who will hold the interest in land in trust only for the sole benefit of one (1) or more members and no other person.

(2) Where an exemption is given under paragraph (1)(b), (c) or (d), the First Nation must

- (a) pay into the local revenue account an amount equivalent to the taxes that would have been payable by the exempted person or corporation had the exemption not applied; and
- (b) make the payment under paragraph (a) using moneys that are not local revenues.

### **First-Time Home Buyer Exemption**

**16.(1)** A transferee who applies for registration of a taxable transfer of a qualifying property is exempt from taxation under this Law if

- (a) the taxable transfer is referenced in paragraph (a) or (b) of the definition of "taxable transfer";
- (b) the residential improvement is the only improvement on the qualifying property;
- (c) the transferee is a first-time home buyer;

→ This section provides wording for exemptions for members for certain taxable transfers and for the First Nation itself.

→ Where a First Nation provides PTT exemptions for members or First Nation Corporations, the First Nation must pay into the local revenue account, from non-local revenues, an amount equivalent to the amount of the exemption given.

→ PTT Law Standards subsection 6.4.

→ Sections 16-19 provides wording for the first-time home buyer exemption, an exemption program available under British Columbia provincial legislation. This exemption provides for an exemption from PTT for those buying their first residential property to be used as a principal residence.

→ Each First Nation should decide whether it wishes to include this exemption in its law.

(d) the transferee meets the requirements set out in section 17; and

(e) the transferee files a claim for the exemption concurrently with the transferee's completed Return and application for registration of the taxable transfer in the registry.

(2) A claim for an exemption under this section must

(a) be in the form required by the administrator;

(b) include a declaration that the transferee is a first-time home buyer;

(c) provide sufficient information to confirm that the interest in land is a qualifying property; and

(d) include a consent by the transferee to the administrator conducting inquiries respecting the transferee that the administrator considers necessary to confirm the qualifications of the transferee for the exemption.

#### **Requirement to Establish a Residence**

17.(1) A transferee who has applied for an exemption under section 16 or a refund under section 18 must establish a residence on the qualifying property in accordance with subsection (2) or subsection (3).

(2) For the purposes of subsection (1), a transferee establishes a residence on the qualifying property if, on the registration date, the qualifying property contains a residential improvement that the transferee inhabits as the transferee's principal residence within ninety-two (92) days after the registration date and continuing to a date that is not earlier than the first anniversary of the registration date.

(3) If, on the registration date, the qualifying property does not contain a residential improvement as required by subsection (2), a transferee may establish a residential improvement before the first anniversary of the registration date provided

(a) the transferee inhabits the residential improvement as the transferee's principal residence beginning at the time it is completed and continuing to a date that is not earlier than the first anniversary of the registration date; and

(b) the qualifying property, taking into consideration the total costs incurred to establish the residential improvement and the fair market value

→ If this exemption is included, the First Nation may want to create a form of Return to be used when a transferee is claiming this exemption, as there are a number of requirements that must be fulfilled in order to qualify for the exemption. The Commission has developed a sample Return for use when a transferee is claiming this exemption.

→ Sections 16 to 19 do not include the provincial provisions respecting partial exemptions and the requirement that an applicant is a resident of the province of British Columbia to qualify.

→ This section enables a person to claim the exemption where the property has an existing residential improvement that is occupied within 92 days of the registration date, or where a residential improvement is constructed on the property and occupied before the first anniversary of the registration date. In the latter circumstances, section 19 sets out the process for ensuring the requirement is fulfilled.

of the qualifying property on the registration date, would have been a qualifying property on the registration date.

### **Refund on Application**

18.(1) A transferee who is entitled to an exemption under section 16 who does not apply for that exemption on the registration date may, within eighteen (18) months after that date, apply to the administrator under subsection (3) for a refund of the tax paid on the taxable transfer by the transferee.

(2) If a transferee is not entitled on the registration date to an exemption under section 16 only because the transferee does not meet a requirement under paragraph (a) of the definition of “first-time home buyer” on the registration date, the transferee may apply to the administrator under subsection (3) for a refund of the tax paid on the taxable transfer by the transferee if

(a) the transferee meets the requirements of paragraph (a) of that definition on or before the first anniversary of the registration date; and

(b) the transferee makes the application for a refund within eighteen (18) months after the registration date.

(3) To claim a refund under subsection (1) or subsection (2), a transferee must provide to the administrator

(a) a written application for a refund, in the form required by the administrator, signed by the transferee;

(b) a claim for the exemption in the form required by the administrator; and

(c) any additional information or evidence necessary to satisfy the administrator that the applicant is entitled to claim the exemption.

(4) On receiving an application under subsection (1) and additional information under subsection (3), the administrator must,

(a) on being satisfied that the transferee would have qualified for an exemption under section 16 on the registration date, pay to the transferee a refund of the tax paid by the transferee equivalent to the amount of the tax exemption had the application for the exemption been made on the registration date; or

→ This section enables a transferee who would have qualified for the exemption on the registration date, but did not apply, to apply for a refund of PTT paid up to 18 months after the registration date.

(b) if not satisfied that the transferee would have qualified for an exemption under section 16 on the registration date, refuse the application and provide a written notice to the transferee stating the reasons for the refusal.

(5) On receiving an application under subsection (2) and additional information under subsection (3), the administrator must,

(a) on being satisfied that the transferee would have qualified for an exemption under section 16 on the registration date but for the transferee's failure to meet a requirement under paragraph (a) of the definition of "first-time home buyer" on that date, pay to the transferee a refund of the tax paid by the transferee equivalent to the amount of the tax exemption had the transferee met the requirement on the registration date; or

(b) if not satisfied that the transferee met that requirement on or before the first anniversary of the registration date, refuse the application and provide a written notice to the transferee stating the reasons for the refusal.

(6) A notice given under paragraph (4)(b) or (5)(b) is deemed to be a Notice of Tax Assessment for the purpose of allowing the taxpayer to make a Request for Reconsideration under this Law.

### **Unqualified Transferee**

19.(1) The administrator must, after the first anniversary of the registration date, confirm with each transferee who has obtained an exemption under section 16 or a refund under section 18 that the requirements in section 17 have been met.

(2) Where the administrator determines that a transferee who has obtained an exemption under section 16 or a refund under section 18

(a) did not qualify for the exemption on the registration date, or

(b) fails, refuses or ceases to comply with section 17,

the administrator must deliver a Notice of Assessment to the transferee and the transferee must pay to the First Nation the tax that would have been owing by the transferee had the transferee not received the exemption or refund, plus interest calculated on the tax from the registration date and any penalty assessed under section 33.

→ This section provides a process for the administrator to confirm that a transferee who obtained an exemption (or refund) met the residence requirements in section 17.

(3) Subsection (2) does not apply where a transferee does not comply with section 17 only because

(a) the transferee dies before the first anniversary of the registration date; or

(b) the interest in land is transferred by the transferee to a spouse or former spouse pursuant to a written separation agreement or court order under a federal, provincial or First Nation enactment relating to the division of matrimonial property.

## **PART VI**

### **INVESTIGATIONS, INFORMATION REQUESTS AND INSPECTIONS**

#### **Review and Investigations**

20.(1) The administrator must review every Return and every claim for an exemption submitted under this Law.

(2) The administrator may investigate whether

(a) a Return is accurate;

(b) a claim for an exemption is accurate;

(c) the tax owing has been paid as required by this Law; and

(d) any provision of this Law has been contravened.

#### **Requests for Information**

21.(1) The administrator may deliver a Request for Information to any person, including a transferor, a transferee, or a holder of an interest in land on which tax has or should have been levied, and that person must provide to the administrator, within fourteen (14) days or a longer period as specified in the notice, information, including the production of records, for any purpose related to the administration of this Law.

(2) The administrator is not bound by the information provided under subsection (1).

#### **Inspections**

22.(1) The administrator or another person authorized by the First Nation may, for any purpose related to the administration or enforcement of this Law,

→ This section requires the administrator to review every Return and every claim for an exemption. The administrator must ensure that Returns are complete and accurate, and that the determination of fair market value and the calculation of PTT owing are accurate.

→ This section provides key powers of inspection for the administrator in order to ensure the necessary tools are available for the administrator to fulfill his or her duties.



(a) during normal office hours enter into a place where a business is carried on, or where anything is done in connection with a business, or where business records are or should be kept, and inspect the records that relate or may relate to the amount of tax payable under this Law; and

(b) examine any interest in land an examination of which may, in the person's opinion, assist in determining the accuracy of a Return or a claim for an exemption, information that is or should be in the Return or the claim for an exemption, or the amount of tax payable under this Law.

(2) If a record has been inspected or produced under this section, the person by whom it is inspected or to whom it is produced may make copies of that record.

(3) A person must not obstruct a person doing anything that he or she is authorized by this section to do.

## **PART VII REFUNDS**

### **Refund of Taxes Paid**

**23.**(1) If a person has paid tax pursuant to a Notice of Tax Assessment and, as a result of

(a) a decision of the administrator under section 26, or

(b) an order of the court under section 27,

the tax payable is less than the amount actually paid, the administrator must refund the excess tax paid, including interest on the amount overpaid calculated in accordance with subsection (4).

(2) If, after a person has paid tax under section 8,

(a) the person withdraws the application for registration, or

(b) the application for registration is rejected and not re-submitted,

the administrator must refund the tax paid, including interest calculated in accordance with subsection (4).

(3) If a person is deemed to have paid tax in respect of a correcting transfer and the tax payable is less than the amount deemed to have been paid, the administrator must refund the overpaid tax, including interest on the amount overpaid calculated in accordance with subsection (4).

→ This section provides for a refund where a person has paid tax pursuant to a Notice of Tax Assessment, but a decision on reconsideration or of a court subsequently determines that the tax payable is less than the amount actually paid.

→ A refund is also required where a person withdraws an application for registration, an application is rejected and not resubmitted, or the amount owing on a correcting transfer is less than that paid on the original transfer.

→ Where a refund is required in these circumstances, the First Nation must pay interest in accordance with subsection 23(4).

→ PTT Law Standards subsections 8.3, 8.4 and 8.5.

(4) Where interest is payable on a refund of taxes under this Law, the administrator must calculate the interest payable as follows:

- (a) interest accrues from the date that the taxes were originally paid to the First Nation;
- (b) the interest rate during each successive three (3) month period beginning on January 1, April 1, July 1 and October 1 in every year, is two percent (2%) below the prime lending rate of the principal banker to the First Nation on the 15th day of the month immediately preceding that three (3) month period;
- (c) interest will not be compounded; and
- (d) interest stops running on the earliest of the day payment of the money owed is mailed, delivered or actually received by the person to whom it is owed.

### **Refund of Taxes on Application**

24.(1) Where a person has paid an amount as tax under this Law in circumstances where there was no legal obligation to pay the amount as tax, the person may apply to the administrator for a refund of the amount paid.

(2) To claim a refund under subsection (1), a person must

(a) submit to the administrator a written application, in the form required by the administrator, signed by the person who paid the amount claimed; and

(b) provide sufficient evidence to satisfy the administrator that the person who paid the amount is entitled to the refund.

(3) For the purposes of paragraph (2)(a), if the person who paid the amount claimed is a corporation, the application must be signed by an authorized signatory of the corporation.

(4) Where the administrator receives an application for a refund under this section and is satisfied that person paid an amount as tax in circumstances where there was no legal obligation to pay the amount as tax, the administrator must refund that amount to the person entitled to it, without interest.

→ This section enables a transferee to apply for a refund in circumstances where PTT was paid but there was no legal obligation to pay it. In such cases the person must submit an application to the administrator for a refund and provide sufficient evidence to satisfy the administrator that the person is entitled to a refund.

→ Under subsection 24(5), the First Nation may include a time limit on applying for a refund that is not less than 2 years from the date the payment was originally made.

→ Where a refund is given under this section, interest is not payable.

→ Where the administrator refuses a refund under this section, the administrator must give written notice of the refusal, with reasons, and the applicant may request a reconsideration of that decision under section 26.

→ PTT Law Standards subsection 8.2.

(5) As a limitation on subsection (4), the administrator must not provide a refund for an amount paid more than \_\_ ( ) years before the date on which the application for a refund is submitted under paragraph (2)(a).

(6) Where the administrator determines that a refund is not payable under this section, the administrator must give a written notice to the transferee stating the reasons a refund is not payable and section 26 applies.

## PART VIII

### ASSESSMENT, RECONSIDERATION AND APPEAL

#### Tax Assessment by Administrator

25.(1) The administrator may determine, in respect of a taxable transfer, and on information available to the administrator,

- (a) the fair market value of a taxable transfer;
- (b) the applicability of an exemption claimed under this Law; and
- (c) the tax owing by a transferee under this Law.

(2) If the administrator determines that

- (a) the fair market value indicated on a Return is not correct,
- (b) an exemption claimed by a transferee is not applicable, or
- (c) for any reason a transferee has not paid the correct amount of tax,

the administrator must make a tax assessment and deliver a Notice of Tax Assessment to the transferee.

(3) The Notice of Tax Assessment must set out, as applicable,

- (a) the name and address of the transferee;
- (b) a description of the interest in land;
- (c) the administrator's determination of the fair market value of the taxable transfer;
- (d) the administrator's determination of the applicability of an exemption claimed by the transferee;
- (e) the administrator's determination of the total amount of tax payable on the taxable transfer;
- (f) the amount of tax paid by the transferee;

→ The administrator has the authority to determine the fair market value of a taxable transfer, the applicability of an exemption, and the PTT owing by a transferee.

→ Where the administrator reviews a Return and determines that the fair market value is not correct, a claimed exemption is not applicable, or the transferee has not paid the correct amount of tax, the administrator must make an assessment of the PTT owing and deliver a Notice of Tax Assessment to the transferee.

→ Where the administrator issues a Notice of Tax Assessment, it must include the information required under subsection 25(3). A form of Notice of Tax Assessment is attached as Schedule III to the sample law.

→ PTT Law Standards subsections 9.1 and 9.2.

(g) any penalty and interest owing by the transferee under Part X, as of the date of the Notice of Tax Assessment;

(h) the balance of tax owing or overpaid; and

(i) the date of the Notice of Tax Assessment.

(4) The delivery of a Notice of Tax Assessment by the administrator constitutes a statement of and demand for payment of the taxes where taxes are owing.

(5) Where a Notice of Tax Assessment indicates an overpayment of taxes, the administrator must refund any excess taxes that have been paid, in accordance with this Law.

(6) Where a Notice of Tax Assessment indicates taxes owing, the taxes are due and payable within thirty (30) days after the date shown on the Notice of Tax Assessment, whether or not a taxpayer delivers a Request for Reconsideration in respect of the tax assessment.

(7) Subject to being varied on reconsideration, a Notice of Tax Assessment is valid and binding despite any error, defect, omission, or error in procedure.

(8) Except as provided in subsections (9) and (10), the administrator must issue a Notice of Tax Assessment within one (1) year after the registration date of a taxable transfer.

(9) Where a claim for an exemption is made under paragraph 14(g), the administrator must issue a Notice of Tax Assessment within twenty-four (24) months after the date of the first transfer after the subdivision.

(10) Where a claim for an exemption is made under section 16, or an application for a refund is made under section 18, the administrator must issue a Notice of Tax Assessment within twenty-four (24) months after the registration date of the taxable transfer relating to the exemption or refund.

### **Reconsideration of Tax Assessment**

**26.(1)** A transferee who receives a Notice of Tax Assessment may request that the administrator reconsider that tax assessment by delivering a Request for Reconsideration to the administrator within sixty (60) days after the date shown on the Notice of Tax Assessment.

(2) A transferee who receives a notice of the administrator's refusal to provide a refund under section 24 may request that the administrator recon-

→ The transferee must pay any amount owing within 30 days after the date shown on the Notice of Tax Assessment.

→ In most cases, the administrator must deliver a Notice of Tax Assessment within one year of the registration date of the taxable transfer.

→ Where an exemption is claimed under paragraph 14(g) of the law (transfers after subdivision), the time is extended to 24 months after the date of the first transfer after the subdivision.

→ Where a first-time home buyer exemption or refund is claimed, the time is extended to 24 months after the registration date of the taxable transfer.

→ This section sets out the process for requesting a reconsideration. A transferee who receives a Notice of Tax Assessment, or a notice of refusal to provide a refund, may request a reconsideration by the administrator.

→ The request for reconsideration must be made within 60 days, and the administrator must consider the request and make a decision within 30 days of

sider that refusal by delivering a Request for Reconsideration to the administrator within sixty (60) days after the date of the notice given by the administrator under that section.

(3) A Request for Reconsideration must include the reasons for the request and set out all relevant facts, including an estimate of the fair market value if that information is relevant to the request.

(4) On receipt of the Request for Reconsideration, the administrator must consider the request and, within thirty (30) days after receiving the Request for Reconsideration, either

(a) confirm the assessment or the refusal to provide a refund, as the case may be; or

(b) vary the assessment or provide a refund, as the case may be.

(5) Where, under subsection (4), the administrator confirms the assessment or the refusal to provide a refund, the administrator must give a written notice of that decision to the transferee.

(6) Where, under subsection (4), the administrator decides to vary an assessment or provide a refund, the administrator must determine the taxes and interest owing on the taxable transfer, if any, or the refund payable, as the case may be, and deliver an amended Notice of Tax Assessment to the transferee reflecting the decision.

(7) The administrator may extend the time limit for a transferee to deliver a Request for Reconsideration where

(a) an application for extension is made before the expiry of the time allowed under subsection (1); and

(b) the application contains the reason for the extension and specifies the period of time applied for.

(8) A Request for Reconsideration may not be made in respect of a reconsideration decision, or in respect of an amended Notice of Tax Assessment given under subsection (6).

receiving the request. The administrator must provide a written notice of the decision, either confirming the assessment or refusal to provide a refund, or varying the assessment or providing a refund, as the case may be.

→ A First Nation may modify the sample wording for reconsiderations, provided the requirements in the PTT Law Standards are met.

→ PTT Law Standards subsection 9.3.

### **Appeal to Court**

27.(1) An appeal lies from a decision of the administrator under section 26 to a court of competent jurisdiction.

(2) An appeal under this section must be commenced within sixty (60) days of the notice of the administrator's decision.

(3) An appeal under this section is a new hearing that is not limited to the evidence and issues that were before the administrator.

(4) The court may dismiss the appeal, allow the appeal, vary the decision from which the appeal is made or refer the decision back to the administrator for reconsideration.

(5) An appeal lies from a decision of the court to the appellate court with leave of a justice of that court.

## **PART IX**

### **RECORDS, RECEIPTS AND TAX CERTIFICATES**

#### **Record of Taxes Levied**

28. The administrator must keep the following records in respect of the administration of this Law:

- (a) all taxes levied;
- (b) all Returns received;
- (c) all applications for exemptions received and the decision made respecting each request;
- (d) all tax payments made and receipts issued;
- (e) all requests for reconsideration received by the administrator and the decision made respecting each request;
- (f) all refund applications received and all refunds paid; and
- (g) all enforcement proceedings taken.

#### **Receipts for Payments**

29. On receipt of a payment of taxes, the administrator must issue a receipt to the taxpayer.

- This section provides for a right of appeal from a reconsideration decision.
- An appeal must be made within 60 days of the date of the notice of the reconsideration decision.
- A First Nation may provide for a longer time period but may not provide for a period that is shorter than 60 days.
- PTT Law Standards subsection 9.4 and 9.5.

- The administrator has a duty to maintain records in respect of the administration of the law, as set out in this section.
- PTT Law Standards subsection 11.1.

- The administrator should maintain a system to ensure receipts are issued for all PTT payments made.
- PTT Law Standards subsection 11.2.

## **Tax Certificate**

30.(1) On receipt of a written request and payment of the fee set out in subsection (2), the administrator must issue a Tax Certificate showing whether taxes have been paid in respect of a taxable transfer, and if not, the amount of taxes outstanding.

(2) The fee for a Tax Certificate is \_\_\_\_\_ dollars (\$\_\_\_\_) for each taxable transfer.

## **PART X**

### **PENALTIES AND INTEREST**

#### **Interest**

31. Where this Law provides for the payment of interest on unpaid taxes, the interest accrues on the unpaid taxes at the rate of fifteen percent (15%) per year.

- Where interest accrues on unpaid taxes under the law, it will accrue at this rate.
- The law may set a lower interest rate but may not set a rate higher than 15%.
- *First Nations Taxation Enforcement Regulations* subsection 4(2).

#### **Penalty**

32. Where this Law provides for a penalty to be added to unpaid taxes, a penalty of ten percent (10%) of the portion of the taxes that remain unpaid must be added to the amount of the unpaid taxes and the amount added is, for all purposes, deemed to be part of the taxes.

- Where a penalty is assessed on unpaid taxes under the law, it will be a one-time penalty of 10% of the unpaid amounts.
- The law may set a lower penalty amount but may not set a penalty at more than 10%.
- *First Nations Taxation Enforcement Regulations* subsection 4(3).
- PTT Law Standards subsection 10.3.

#### **Penalty and Interest in Certain Situations**

33. If the administrator determines that a transferee provided information that is false or misleading

- (a) in support of an exemption from tax under this Law,
- (b) in support of an application for a refund under section 18, or
- (c) relating to the fair market value of a taxable transfer,

- Because PTT will in most cases be assessed and paid on the registration date of a taxable transfer, interest and penalties will only be assessed in certain cases.
- This section provides that a penalty and interest will be assessed where a person has provided false or misleading information in support of an exemption claim or a refund, or relating to the fair market value of a transfer.

the transferee must pay, in addition to the taxes owing on the taxable transfer, a penalty on the unpaid taxes added as of the registration date and interest calculated from the registration date.

### **Penalty and Interest Where Notice of Assessment Not Paid**

34.(1) Except where a penalty is applied under section 33, a penalty must be added to taxes that remain unpaid on the day after the due date shown on a Notice of Tax Assessment.

(2) Except where interest is applied under section 19 or 33, interest must accrue on taxes that remain unpaid on the day after the due date shown on a Notice of Tax Assessment, starting on the first day after the due date until the date the taxes are actually paid.

## **PART XI**

### **COLLECTION AND ENFORCEMENT**

#### **Recovery of Unpaid Taxes**

35.(1) Taxes levied under this Law are a debt owed to the First Nation, recoverable by the First Nation in a court of competent jurisdiction or in any manner permitted by law and, unless otherwise provided, the use of one method does not prevent seeking recovery by one or more other methods.

(2) A copy of a Notice of Tax Assessment that refers to the taxes payable by a person, certified as a true copy by the administrator, is evidence of that person's debt for the taxes.

#### **Notice of Enforcement Proceedings**

36.(1) Before taking enforcement proceedings for the recovery of taxes, the administrator must give written notice to the taxpayer of the intention to enforce payment.

(2) Failure to give notice under subsection (1) does not affect the validity of proceedings taken for the recovery of taxes or money to be collected as taxes under this Law.

#### **Creation of Lien**

37.(1) Unpaid taxes are a lien on the interest in land to which they pertain that attaches to the interest in land and binds subsequent holders of the interest in land.

(2) The administrator must maintain a list of all liens created under this Law and file a notice of the lien in the registry.

→ This section provides that a penalty and interest will be assessed where a person does not pay any taxes owing under a Notice of Tax Assessment when due.

→ This Part provides for the collection of unpaid taxes and enforcement processes.

→ Although they are not included in the sample law, First Nations can include the specific enforcement mechanisms set out in the *First Nations Taxation Enforcement Regulations*. First Nations can only use those methods if they are specifically set out in the law.

→ PTT Law Standards section 10.

→ If a First Nation chooses to create liens as part of its enforcement scheme, these provisions must be included in the law.

→ *First Nations Taxation Enforcement Regulations* sections 7 and 8.



(3) A lien listed under subsection (2) has priority over any unregistered or registered charge, claim, privilege, lien or security interest in respect of the interest in land.

(4) The administrator may apply to a court of competent jurisdiction to protect or enforce a lien under subsection (1) where the administrator determines such action is necessary or advisable.

(5) On receiving payment in full of the taxes owing in respect of which a lien was created, the administrator must register a discharge of the lien without delay.

(6) Discharge of a lien by the administrator is evidence of payment of the taxes with respect to the interest in land.

(7) A lien is not lost or impaired by reason of any technical error or omission in its creation or recording in the list of liens.

## **PART XII GENERAL PROVISIONS**

### **Disclosure of Information**

**38.(1)** The administrator or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

- (a) in the course of administering this Law or performing functions under it;
- (b) in court proceedings or pursuant to a court order; or
- (c) in accordance with subsection (2).

(2) The administrator may disclose to the agent of a transferee confidential information relating to the taxable transfer if the disclosure has been authorized in writing by the transferee.

(3) An agent must not use information disclosed under subsection (2) except for the purposes authorized in writing by the transferee referred to in that subsection.

→ This section sets out the circumstances under which information or records obtained or created under the Law can be disclosed.

→ PTT Law Standards section 12.

### **Disclosure for Research Purposes**

**39.** Notwithstanding section 38, Council may disclose information and records to a third party for research purposes, including statistical research, provided

(a) the information and records do not contain information in an individually identifiable form or business information in an identifiable form; or

(b) where the research cannot reasonably be accomplished unless the information is provided in an identifiable form, the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

### **Validity**

**40.** Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay tax or any other amount under this Law be affected by

(a) an error or omission in an determination made by the administrator, the First Nation or any person authorized by the First Nation;

(b) an error, defect, omission or error in procedure in a Notice of Tax Assessment or any notice given under this Law; or

(c) a failure of the First Nation, administrator or any person authorized by the First Nation to do something within the required time.

### **Limitation on Proceedings**

**41.(1)** Except as specifically provided in this Law, a person must not commence an action or proceeding for the return of money paid to the First Nation, whether under protest or otherwise, on account of a demand, whether valid or invalid, for taxes or any other amount paid under this Law, after the expiration of six (6) months from the date the cause of action first arose.

(2) If a person fails to start an action or proceeding within the time limit prescribed in this section, the money paid to the First Nation is deemed to have been paid voluntarily.

→ This section enables the First Nation to disclose information for research and statistical purposes.

→ A decision to disclose information for research purposes must be made by Council, and Council must take steps to protect the confidentiality of the information.

→ This section supports the validity of the law where errors or omissions are made. Although it may be helpful to include this type of provision, First Nations should strive for compliance with the law and not rely on this section to ensure the validity of its actions.

→ This section wouldn't apply where the law specifically provides otherwise—for example, where a refund is required under Part VII.

## Notices

42.(1) Where in this Law a notice is required to be given by mail or where the method of giving the notice is not otherwise specified, it must be given

- (a) by mail to the recipient's ordinary mailing address;
- (b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or
- (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address.

(2) Except where otherwise provided in this Law,

- (a) a notice given by mail is deemed received on the fifth day after it is posted;
- (b) a notice posted on property is deemed received on the second day after it is posted; and
- (c) a notice given by personal delivery is deemed received upon delivery.

## Interpretation

43.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of the enactment and must be construed as being inserted for convenience of reference only.

→ These provisions set out the requirements for giving notices under the law.

→ These general rules apply to the interpretation of the law.

→ The federal *Interpretation Act* also applies when interpreting the law.

**Force and Effect**

44. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, in the Province of British Columbia.

A quorum of Council consists of \_\_\_\_\_ (\_\_\_\_) members of Council.

\_\_\_\_\_ [Name]

Chief [please spell out the name]

\_\_\_\_\_ [Name]

Councillor [please spell out the name]

→ The law can provide that it comes into force on either the day after the Commission approval or on a later date specified in the law.

→ These enactment provisions must be filled in and completed at the time the law is enacted by the Council.

**SCHEDULES:**

The sample law contains six schedules. Each Schedule should be completed as much as possible, including by filling in the name of the First Nation and the references to the First Nation’s law where indicated.

If a change is made to the substance of the law, any related schedules should be carefully reviewed and changes made to those schedules as necessary to ensure consistency. Conversely, if a substantive change is made to a schedule, the law should be reviewed and changes made as necessary to ensure consistency.