

ANNOTATED SAMPLE FIRST NATION PROPERTY TRANSFER TAX LAW (ONTARIO)

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, INAC).
- **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.

_____ FIRST NATION
PROPERTY TRANSFER TAX LAW, 20__
(ONTARIO)

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EXPLANATORY NOTES AND COMMENTS

The title of the law should include the name of the First Nation, and the year the First Nation will enact the law.

This indicates that the sample law has been created for First Nations located in Ontario. 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 actual 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.

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;

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 conveyance 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:

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.

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

**PART I
CITATION**

Citation

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

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

**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 definitions used are the same as set out in the FMA, the *Indian Act*, the FMA Regulations. Where terms are not defined in those enactments, 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.

“conveyance” means

- (a) a transfer, grant 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 transfer, grant or other disposition of a life estate in a lease, including by court order (including an order absolute of foreclosure) or by the operation of any enactment,
- (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;

“Council” has the meaning given to that term in the Act;

“expenditure law” means a law enacted under paragraph 5(1)(b) of the Act;

“First Nation” means the _____ First Nation, being a band named in the schedule to the Act;

“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;

“holder” means a person in possession of an interest in land or a person who, for the time being,

- (a) is entitled through a lease, licence or other legal means to possess or occupy the interest in land,
- (b) is in actual occupation of the interest in land,
- (c) has any right, title, estate or interest in the interest in land, or
- (d) is a trustee of the interest in land;

“improvement” means any building, fixture, structure or similar thing, other than land, that is included in the definition of “land”, “real property” and “real estate” in the *Assessment Act* (Ontario) and any manufactured home, and includes a structure to be constructed as part of an agreement to convey an interest in land;

This term sets out the types of transfers that are taxable under the Law.

This term is defined in the FMA and it therefore cannot be changed in this law.

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. Note that this definition cannot be expanded to include non-corporate business ventures.

This definition is used in the Commission Standards and sample laws, and therefore should remain consistent in this law.

This definition follows the Ontario definition and sample laws, and therefore should remain consistent in this law.

“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;

This definition is used in the Commission Standards and sample laws, and therefore should remain consistent in this law.

“lease” means a leasehold interest or estate in the reserve, and includes a sublease or any further sublease;

This definition is intended to capture leases, subleases, and any further subleasing of those interests.

“lease modification agreement” means an agreement that extends the term of a lease;

“local revenue account” means the account referred to in section 13 of the Act;

“manufactured home” means a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to

This definition is used in provincial assessment legislation and therefore should remain consistent in this law.

(a) be moved from one place to another by being towed or carried, and

(b) provide

(i) a dwelling house or premises,

(ii) a business office or premises,

(iii) accommodation for any other purpose,

(iv) shelter for machinery or other equipment, or

(v) storage, workshop, repair, construction or manufacturing facilities;

“member” means a member of the First Nation;

“Notice of Property Transfer Tax Assessment” means a notice containing the information set out in Schedule III and includes an amended Notice of Property Transfer Tax Assessment;

“permanent resident of Canada” means a permanent resident as defined in the *Immigration and Refugee Protection Act (Canada)*;

This definition is required for the refund program in section 19. If the First Nation chooses to not include this program, this definition should be deleted.

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

“principal residence” means the usual place where an individual makes his or her home;

This definition is required for the refund program in section 19. If the First Nation chooses to not include this program, this definition should be deleted.

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

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

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

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

“Request for Information or Documents” 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*;

Laws made under the FMA can apply only on the reserve lands of a First Nation, as that term is defined in 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];

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.

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

“single family residence” means a structure or part of a structure that is designed for occupation as a residence, including a condominium unit, and includes a residence that is to be constructed as part of the arrangement relating to a conveyance;
[Note to First Nation: Include this definition only if including the additional tax on single family residences.]

“spouse” includes a common law partner;

A “common law partner” is a defined term in *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.

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

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;

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

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

“transferee” means a person to whom an interest in land is conveyed or whose interest in land is created, increased or given effect to under a conveyance;

“transferor” means a person making a conveyance to a transferee; and

“value of the consideration” means the fair market value determined in accordance with the applicable rules and formulae set out in Schedule I.

(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.

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.

The terms “transferee” and “transferor” are used to refer to the persons usually thought of as the seller and purchaser 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 term is used in the Ontario Land Transfer Tax Act. However, for the valuation of leases the fair market value is determined using the rules set out in the Schedule to the Law. These rules are required by section 3 of the PTT Law Standards.

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 ensures that a person does not claim more than one principal residence for the purposes of a refund.

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 tax administrator is not able to personally fulfill all of the duties at any given time.

(4) The administrator must, in each year no later than **[insert date]**, report 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.

Revenues and Expenditures

4. Taxes collected by the First Nation must be placed in the local revenue account of the First Nation and expended under the authority of an expenditure law or in accordance with section 13.1 of the Act.

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.

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.

PART IV

TAX LIABILITY AND LEVY

Tax Liability

5.(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 conveyance 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 conveyance relating to that interest in land; and
- (b) must be paid by the transferee in accordance with this Law.

(3) A person who is a transferee of a conveyance is liable for the tax even if

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 conveyance in respect of an interest in land. A conveyance 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 conveyance and is payable by the transferee. PTT Law Standards subsection 2.3.

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.

(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 conveyance is exempt from tax under this Law.

(4) Where there is more than one (1) transferee in respect of a conveyance, 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 conveyance 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 refund, or the taxpayer's liability to taxation.

Tax Payment and Filing Return

6.(1) On application for registration of a conveyance in the registry, the transferee must

(a) pay the tax computed at the rate set out in this Law; and

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

(2) The registry must refuse to accept an application for registration of a conveyance 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 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 conveyance, 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. 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, money order or electronic transfer.

(4) Payments by cheque or money order must be made payable to the _____ First Nation, and payments by electronic transfer must be made as directed by the administrator.

(5) The First Nation must issue a receipt to the taxpayer for taxes paid under this Law.

Payment of Estimated Tax

7.(1) Despite section 6, where the amount of tax owing on a conveyance cannot be determined on the registration date because an appraisal or other valuation information is required to determine the value of the consideration of the conveyance, 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 conveyance 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 conveyance.

(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 conveyance on the registration date, based on the best information available to the administrator at the time of the determination under this subsection.

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 conveyance 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 conveyances. PTT Law Standards subsection 7.6.

(4) Where the administrator makes a determination of tax owing under subsection (2) or (3), the administrator must deliver a Notice of Property Transfer Tax Assessment to the transferee and section 21 applies.

Tax Rate

[Note to First Nation: The Law may set a tax rate that is the same or less than the rate set provincially. The rates and rate structure set out below reflect the current provincial rates.]

Subsection 8(1) sets out the rate of PTT, which must be a single rate or rate structure applicable to all conveyances, based on the fair market value. The rate structure shown follows the Ontario approach. PTT Law Standards section 4.

8.(1) The tax levied under this Law must be computed at the rate of

(a) one half of one percent (0.5 %) of the value of the consideration for the conveyance up to and including fifty-five thousand dollars (\$55,000);

(b) one percent (1 %) of the value of the consideration for the conveyance that exceeds fifty-five thousand dollars (\$55,000) up to and including two hundred and fifty thousand dollars (\$250,000);

(c) one and one-half percent (1.5 %) of the value of the consideration for the conveyance that exceeds two hundred and fifty thousand dollars (\$250,000) up to and including four hundred thousand dollars (\$400,000); and

(d) two percent (2 %) of the value of the consideration for the conveyance that exceeds four hundred thousand dollars (\$400,000).

(2) In addition to the rates set out in subsection (1), if the value of the consideration for the conveyance exceeds \$2,000,000 and the conveyance is a conveyance of an interest in land that contains at least one (1) and not more than two (2) single family residences, an additional tax must be added at the rate of one-half of one percent (.5%) of the amount by which the value of the consideration exceeds \$2,000,000.

(3) If a transferee

Subsections 8(3) to (6) address situations that where one or more transferees split conveyances 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.

(a) applies to register a conveyance, and

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

the tax owing on the conveyance referred to in paragraph (b) must be calculated based on the total value of the consideration of the conveyances referred to in paragraphs (a) and (b) as if all the conveyances referred to in paragraphs (a) and (b) were one conveyance.

(4) If

(a) a transferee applies to register a conveyance, and

(b) one or more members of his or her family 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 conveyances 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 value of consideration of the conveyances referred to in paragraphs (a) and (b) as if all those conveyances were a single conveyance, and the transferees referred to in paragraphs (a) and (b) are jointly and severally liable to pay the total tax owing.

(5) If

(a) a transferee that is a corporation (in this subsection and subsection (6) called the "corporate transferee") applies for registration of a conveyance, and

(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 conveyances respecting the same interest in land for which the transferor is not the corporate transferee,

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

(6) For the purposes of subsection (5), 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 conveyance referred to in subsection (5).

[Note to First Nation: Subsection (7) is an optional provision where the First Nation can set an amount below which the tax will not be levied. A First Nation may wish to set this amount so that it does not collect tax on conveyances with low values where the administrative costs may exceed the tax that would be collected. Having a minimum threshold could be used instead of providing an exemption for leases with lower terms.]

(7) Despite subsection (1), a tax in an amount of less than _____ (\$____) must not be levied on a conveyance.

Subsection (7) 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 conveyances 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

9.(1) A Return must be dated and certified by

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.

- (a) each transferee of the conveyance to which the Return relates, or an agent authorized in writing to make the Return on the transferee's behalf;
- (b) the solicitor acting in the transaction as the solicitor for the transferee;
- (c) the presiding officer authorized to act for a corporation that is a transferee, or the vice-president, secretary, director or treasurer authorized to act for such corporation; or
- (d) either of two transferees who are spouses of each other and both of whom are transferees, where the transferee certifying the Return is acting on behalf of the other of such transferees.

(2) The Return must state that the person making it has personal knowledge of the facts stated in it, and it must also state, where applicable, the capacity in which the person certifying the Return has acted and the name of any transferee on whose behalf the person is certifying the Return.

Records to be Kept

10.(1) Every person required by this Law to deliver a Return must keep at their place of residence in Ontario or at their principal place of business in Ontario such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under this Law.

(2) Records referenced under subsection (1) must be kept for at least seven (7) years after the registration date of the conveyance to which they relate.

PART V EXEMPTIONS FROM TAXATION

[Note to First Nation: First Nations must decide what, if any, exemptions to provide from the property transfer tax. Exemptions can be included that are the same type of exemptions found in similar provincial legislation. Exemptions can also be given for transfers to members. Please refer to the Commission Standards for further information on exemptions. Note that all exemptions must be set out in this Law. What follows are examples of exemptions the First Nation may wish to consider including in its Law.]

Applicability of Exemptions

11.(1) A transferee is exempt from taxation on a conveyance under this Law where

(a) the conveyance is within any of the descriptions set out in sections 12 and 13; and

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 conveyance is within any of the descriptions in sections 12 or 13, and where the transferee files a claim for an exemption concurrently with a Return and an application for registration of the conveyance in the registry. A First Nation may wish to use a different form of Return where a transferee is claiming an exemption.

(b) the transferee files a claim for the exemption concurrently with the transferee's completed Return and application for registration of the conveyance 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 conveyance 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 conveyance and the transferee that the administrator considers necessary to confirm the qualification for the exemption.

Exemptions from Tax

12.(1) A transferee is exempt from taxation on a conveyance under this Law where the conveyance is

- (a) from a transferor who is the spouse or former spouse of the transferee and at least one (1) of the following conditions is met:
 - (i) the only consideration given for the conveyance apart from natural love and affection is the assumption of any encumbrances burdening the interest in land,
 - (ii) the conveyance is in compliance with the terms of a written agreement pursuant to which the parties have agreed to live separate and apart, 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 property transfers between spouses or former spouses where made pursuant to separation agreements or court orders.

(iii) the conveyance is in compliance with the direction of an order or judgment made by a court of competent jurisdiction under an applicable provincial, federal or First Nation enactment respecting the division of matrimonial or family property;

(b) from a transferor to or in trust for or vested in a dependent of the transferor pursuant to an order made by a court of competent jurisdiction under an applicable provincial, federal or First Nation enactment respecting the division of matrimonial or family property;

This exemption applies to property transfers to or for the benefit of a dependent where made pursuant to a court order.

[Note to First Nation: A First Nation may wish to include the exemption in paragraph (c) where it wishes to exempt the transfer of a head lease where the developer will be subdividing the head lease parcel for resale within not more than a five-year time frame. The First Nation would then collect the tax on each resale of the subdivided property, but not on the initial lease transfer.]

(c) of a lease for an interest in land that is intended for subdivision, development and resale of at least five (5) parcels on the land, provided that the transferee completes a subdivision to create at least five (5) parcels within _____ () years after the registration date. **[Note to First Nation: The number of years must not be more than five.]**

[Note to First Nation: The exemption in paragraph (d) would exempt from the property transfer tax all leases having a term of 50 years or less, following the exemption given in Ontario. In deciding whether to include this exemption, the First Nation may wish to consider the nature of the leasehold interests on its lands, and how this exemption could impact its property transfer tax regime. If this exemption is included, a First Nation may consider adding the wording in subsection (2) to prevent transferees from “stacking” leases. If this exemption is not included, consider deleting s. 6(1)(a) of Schedule I, as the tax will have already been paid on an initial term under 50 years and therefore should not be counted again for a lease modification

agreement.]

(d) of a lease (other than a lease modification agreement) with an unexpired term that cannot exceed fifty (50) years remaining as of the registration date, including any renewals or extensions of the term provided for in the lease or in a separate option to lease or other document entered into as part of the arrangement relating to the lease (whether or not the lessee and the optionee or person named in the document are the same persons).

(2) Despite paragraph (1)(d), the exemption from taxation in that paragraph does not apply to a conveyance where

- (a) two (2) or more conveyances are made in respect of the same interest in land;
- (b) the applications for registration of the conveyances are made at the registry within six (6) months of each other;
- (c) each of the conveyances 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 fifty (50) years in total.

Additional Exemptions

13.(1) A transferee is exempt from taxation on a conveyance under this Law where the conveyance 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 conveyance,
 - (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,

This wording addresses a situation where a lessee enters into one or more back-to-back leases, each with terms shorter than 50 years. Under this provision, the terms are added, and the tax applied to the sum of the lease terms.

This section provides wording for exemptions for members for certain conveyances 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

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) Subject to subsection (3), 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.

(3) The requirement in subsection (2) does not apply to an exemption given under paragraph (1)(b) where all of the shares in the First Nation Corporation are held in trust for the benefit of the First Nation or all of the members of the First Nation.

PART VI

REVIEWS, INFORMATION REQUESTS AND INSPECTIONS

Review by Administrator

14.(1) The administrator must review every Return, every claim for an exemption, and every application for a refund submitted under 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.

(2) The administrator may determine whether

(a) a Return is accurate;

(b) a claim for an exemption is accurate;

(c) an application for a refund is accurate;

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

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

Request for Information or Documents

15.(1) The administrator may, for any purpose related to the administration or enforcement of this Law, deliver a Request for Information or Documents to any person, including a transferor, a transferee, or

This section provides a process for requests for information in order to ensure the administrator has the information required to fulfill his or her duties.

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 Request, such books, letters, accounts, invoices, financial statements or such other documents as the administrator considers necessary to determine compliance with this Law.

(2) The administrator is not bound by any information provided under subsection (1), and may, despite any information delivered or if no information is delivered, make a tax assessment in respect of taxes payable, or make any other determination or take such action as the administrator determines appropriate.

Inspections

16.(1) The administrator or another person authorized by the First Nation may, for any purpose related to the administration or enforcement of this Law, at all reasonable times enter into any premises or place where any business is carried on or any property is kept, or where anything is done in connection with any business or where any books or records are or should be kept, and,

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) audit or examine the books and records and any account or other document that relates or may relate to the information that is or should be in the books or records or to an amount payable under this Law;

(b) examine property described in any conveyance or any property, process or matter which may, in his or her opinion, assist in determining the accuracy of any Return required by this Law or in ascertaining the information that is or should be in the books or records or in a Return, or in ascertaining any amount payable under this Law; and

(c) require a transferee who is liable or possibly liable to pay tax under this Law, and any officer, director, agent or representative of that transferee or any person on the premises,

(i) to give him or her all reasonable assistance with his or her audit or examination,

(ii) to answer all questions relating to the audit or examination either orally or, if he or she so requires, in writing, on oath or by statutory declaration, and

(iii) to attend at the premises or place with him or her for the purposes of giving reasonable assistance and answering questions relating to the audit or examination.

(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

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

(a) a decision of the administrator under section 22, or

(b) an order of the court under section 23,

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 (3).

(2) If, after a person has paid tax under section 6,

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

(b) the application for registration is rejected and not resubmitted,

the administrator must refund the tax paid, including interest calculated in accordance with subsection (3).

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, or an application is rejected and not resubmitted. Where a refund is required in these circumstances, the First Nation must pay interest in accordance with subsection 17(3). PTT Law Standards subsections 8.3, 8.4 and 8.5.

(3) 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

18.(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.

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 18(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 22. PTT Law Standards subsection 8.2.

(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.

(5) As a limitation on subsection (4), the administrator must not provide a refund for an amount paid more than four (4) years before the date on which the application for a refund is submitted under paragraph (2)(a). **[Note to First Nation: Must be at least 2 years. In Ontario, the time limit is 4 years.]**

(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 the notice is deemed to be a Notice of Property Transfer Tax Assessment for the purpose of allowing the taxpayer to make a Request for Reconsideration under this Law.

[Note to First Nation: Section 19 provides for a first-time home buyers' refund, similar to the refund program offered in Ontario. First Nations who do not wish to provide for this refund should delete this section and renumber the remaining sections of the Law accordingly.]

Refund on Purchase of Qualifying Home

This section provides for a refund program similar to the program offered in Ontario by the province.

19.(1) In this section,

“purchaser” means an individual who is at least eighteen (18) years of age, who is a Canadian citizen or permanent resident of Canada, and who has never owned a qualifying home anywhere in the world and whose spouse has not owned a qualifying home anywhere in the world while he or she was a spouse of the individual; and

“qualifying home” means

- (a) a detached house;
- (b) a semi-detached house, including a dwelling house that is joined to another dwelling house at the footing or foundation by a wall above or below grade or both above and below grade;

- (c) a townhouse;
- (d) a share or shares of the capital stock of a co-operative corporation if the share or shares are acquired for the purpose of acquiring the right to inhabit a housing unit owned by the corporation;
- (e) a manufactured home that is suitable for year-round permanent residential occupation;
- (f) a condominium unit;
- (g) a residential dwelling that is a duplex, triplex or fourplex; or
- (h) a partial ownership interest as a tenant in common of real property if the ownership interest was acquired for the purpose of acquiring the right to inhabit a housing unit forming part of the real property.

(2) The administrator must refund, in accordance with this section and without interest, the tax payable under this Law by a purchaser in respect of the acquisition by the purchaser of a qualifying home to be used by the purchaser as his or her principal residence, provided the purchaser occupies the home as his or her principal residence no later than nine (9) months after the registration date of the conveyance.

(3) If an individual who would otherwise be eligible for a refund under subsection (2) is not eligible because the individual is not a purchaser within the meaning of subsection (1) because the individual is not a Canadian citizen or permanent resident of Canada on the registration date, that individual is eligible for the refund if he or she becomes a Canadian citizen or permanent resident of Canada within eighteen (18) months after the registration date of the conveyance.

(4) The maximum amount of tax refundable under subsection (2) in respect of the acquisition of a qualifying home is four thousand dollars (\$4000).

(5) If the purchaser is not the only transferee in respect of a conveyance, the refund payable under subsection (2) to the purchaser must be reduced to the portion of the refund, determined for all transferees, applicable to,

- (a) the purchaser's interest acquired under the conveyance; and

(b) the interest of the spouse of the purchaser who previously owned a qualifying home anywhere in the world prior to the time he or she became the spouse of the purchaser, if the spouse is named in the conveyance and is a Canadian citizen or a permanent resident of Canada on the registration date, or becomes a Canadian citizen or permanent resident of Canada within eighteen (18) months after the registration date.

(6) An application for a refund under this section may be made at the time of application for registration of the conveyance, and must be made before the expiration of eighteen (18) months after the registration date of the conveyance.

(7) Where a purchaser makes an application for a refund at the time of application for registration of the conveyance, the administrator may deduct from the tax payable the amount of the refund under this section.

(8) An application for a refund under this section must

- (a) be in the form required by the administrator;
- (b) include a declaration that the transferee meets all of the requirements set out in this section;
- (c) provide sufficient information to confirm that the interest in land is a qualifying home; 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 refund.

Recovery of a Refund Wrongly Obtained

20.(1) If a refund is made under this Law and the administrator subsequently determines that the person was not entitled to the refund, or was entitled only to a refund in a lesser amount, the amount of the refund to which the person was not entitled is deemed to be tax imposed by section 6 which was required to have been paid by the person on the date the refund was made to the person.

This provision provides that any refund wrongly obtained is deemed to be a tax that was not paid, as of the date the refund was given. This provision assists in the collection of the refund.

(2) Where the administrator makes a determination under subsection (1), the administrator must give a Notice of Property Transfer Tax Assessment to the person stating the reasons the person was not entitled to the refund, or was entitled only to a refund in a lesser amount, and the amount of taxes payable, including interest and penalties where section 28 applies.

This provision requires that the administrator give a Notice of Property Transfer Tax Assessment where a refund was wrongly obtained, in order to collect the amount as taxes.

PART VIII
ASSESSMENT, RECONSIDERATION AND
APPEAL

Tax Assessment by Administrator

21.(1) The administrator may determine, in respect of a conveyance, and on information available to the administrator,

The administrator has the authority to determine the fair market value of a conveyance, 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 Property Transfer Tax Assessment to the transferee.

- (a) the value of the consideration of a conveyance;
- (b) the applicability of an exemption claimed under this Law;
- (c) the applicability of a refund under section 19; and
- (d) the tax owing by a transferee under this Law.

(2) If the administrator determines that

- (a) the value of the consideration indicated on a Return is not correct,
- (b) an exemption claimed by a transferee is not applicable,
- (c) a refund applied for by a transferee under section 19 is in whole or in part refused, or
- (d) 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 Property Transfer Tax Assessment to the transferee.

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

Where the administrator issues a Notice of Property Transfer Tax Assessment, it must include the information required under subsection 21(3). A form of Notice of Property Transfer Tax Assessment is attached as Schedule III to the sample law. PTT Law Standards subsections 9.1 and 9.2.

- (a) the name and address of the transferee;
- (b) a description of the interest in land;
- (c) the administrator's determination of the value of the consideration of the conveyance;
- (d) the administrator's determination of the applicability of an exemption claimed by the transferee;
- (e) the administrator's determination of the applicability of a refund under section 19;
- (f) the administrator's determination of the total amount of tax payable on the conveyance;
- (g) the amount of tax paid by the transferee;
- (h) any penalty and interest owing by the transferee under Part X, as of the date of the Notice of Property Transfer Tax Assessment;
- (i) the balance of tax owing or overpaid; and
- (j) the date of the Notice of Property Transfer Tax Assessment.

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

The law gives the transferee 30 days to pay any amount owing as indicated on the Notice of Property Transfer Tax Assessment.

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

(8) Except as provided in subsections (9), (10) or (11), the administrator must issue a Notice of Property Transfer Tax Assessment within one (1) year after the registration date of a conveyance.

(9) Where a claim for an exemption is made under paragraph 12(1)(c), the administrator must issue a Notice of Property Transfer Tax Assessment within _____ () months after the registration date of the conveyance relating to the exemption. **[Note to First Nation: This provision is only required if the exemption set out in paragraph 12(1)(c) is included in the law. Determine the number of months by determining the number of months provided for in the exemption under paragraph 12(1)(c) and adding an additional 2 to 4 months.]**

(10) Where an application for a refund is made under section 19, the administrator must issue a Notice of Property Transfer Tax Assessment within twenty-four (24) months after the registration date of the conveyance relating to the refund.

(11) Despite the time limitations set out in this section, where the administrator determines that a person has made any misrepresentation that is attributable to neglect, carelessness or willful default, or has committed any fraud, in supplying any information under this Law, in claiming an exemption or applying for a refund, or in omitting to disclose any information, or the person has failed to deliver a Return required by this Law, the administrator may make a tax assessment and deliver a Notice of Property Transfer Tax Assessment to that person at any time.

Reconsideration of Tax Assessment

22.(1) A transferee who receives a Notice of Property Transfer 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 Property Transfer Tax Assessment.

In most cases, the administrator must deliver a Notice of Property Transfer Tax Assessment within one year of the registration date of the conveyance.

Where an exemption is claimed under paragraph 12 (1) (c) of the law (transfers after subdivision), the time is extended to 24 months after the date of the first transfer after the subdivision.

This provides for the tax administrator to issue a Notice of Property Transfer Tax Assessment at any time where there has been a misrepresentation in supplying information to claim an exemption or a refund.

This section sets out the process for requesting a reconsideration. A transferee who receives a Notice of Property Transfer 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 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.

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

(3) 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.

(4) Where, under subsection (3), 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.

(5) Where, under subsection (3), the administrator decides to vary an assessment or provide a refund, the administrator must determine the taxes and interest owing on the conveyance, if any, or the refund payable, as the case may be, and deliver an amended Notice of Property Transfer Tax Assessment to the transferee reflecting the decision.

(6) 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.

(7) A Request for Reconsideration may not be made in respect of a reconsideration decision, or in respect of an amended Notice of Property Transfer Tax Assessment given under subsection (5).

Appeal to Court

23.(1) An appeal lies from a decision of the administrator under section 22 to a court of competent jurisdiction.

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.

(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 AND TAX CERTIFICATES

Record of Taxes Levied

24. 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.

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.

Tax Certificate

25.(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 conveyance, and if not, the amount of taxes outstanding.

(2) The fee for a Tax Certificate is _____ dollars (\$____) for each conveyance.

PART X PENALTIES AND INTEREST

Interest

26. 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 until paid or recovered.

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

27. Where this Law provides for a penalty to be added to unpaid taxes, a one-time 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

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

Because PTT will in most cases be assessed and paid on the registration date of a conveyance, 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.

- (a) in support of an exemption from tax under this Law,
- (b) in support of an application for a refund under this Law, or
- (c) relating to the value of the consideration of a conveyance,

the transferee must pay, in addition to the taxes owing on the conveyance, a penalty on the unpaid taxes added as of the registration date or the date a refund was given, as applicable, and interest calculated from the registration date or the date a refund was given, as applicable.

Penalty and Interest Where Notice of Property Transfer Tax Assessment Not Paid

29.(1) Except where a penalty is applied under section 28, a penalty must be added to taxes that remain unpaid on the day after the due date shown on a Notice of Property Transfer Tax Assessment.

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

(2) Except where interest is applied under section 28, interest must accrue on taxes that remain unpaid on the day after the due date shown on a Notice of Property Transfer Tax Assessment, starting on the first day after the due date until the date the taxes are actually paid.

PART XI COLLECTION AND ENFORCEMENT

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.

Recovery of Unpaid Taxes

30.(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 Property Transfer 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.

(3) Costs incurred by the First Nation in the collection and enforcement of unpaid taxes

(a) are determined in accordance with Schedule VII; and

(b) are payable by the debtor as unpaid taxes.

Creation of Lien

31.(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.

(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.

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.

(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

32.(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 conveyance 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.

Disclosure for Research Purposes

33. Notwithstanding section 32,

- (a) the administrator may disclose information and records to a third party for research purposes, including statistical research, provided the information and records do not contain information in an individually identifiable form or business information in an identifiable form;

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.

This section enables the First Nation to disclose information for research and statistical purposes provided the information is not in an identifiable form. PTT Law Standards section 12.

(b) Council may disclose information and records to a third party for research purposes, including statistical research, in an identifiable form where

(i) the research cannot reasonably be accomplished unless the information is provided in an identifiable form, and

(ii) the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

Council may disclose this information in an identifiable form provided Council takes steps to protect the confidentiality of the information.

Validity

34. 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 a determination made by the administrator, the First Nation or any person authorized by the First Nation;

(b) an incorrect or incomplete assessment, a failure to make an assessment, or an error, defect, or omission in procedure in a Notice of Property Transfer 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.

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.

Limitation on Proceedings

35.(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 wouldn't apply where the law specifically provides otherwise, for example, where a refund is required under Part VII.

Notices

36.(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

This section sets out notice provisions that apply under the law unless otherwise specified.

- (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

37.(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 this Law and must be construed as being inserted for convenience of reference only.

These general rules apply to the interpretation of the law. The federal *Interpretation Act* also applies when interpreting the law.

Force and Effect

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

The law comes into force on the day after the Commission approval. The First Nation can specify a later date for the law to come into force by modifying this language.

THIS LAW IS HEREBY DULY ENACTED by Council on the ____ day of _____, 20____, at _____, in the Province of Ontario.

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

A quorum of Council consists of _____ (____) members of Council.

[Name]
Chief [please spell out name]

[Name]
Councillor [please spell out name]

SCHEDULES:

The sample law contains seven 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.