First Nations Tax Commission
Commission de la fiscalité des premières nations

I, Tracey C. Simon, do hereby affirm as the FMA Registrar for the First Nations Tax Commission that the attached copy is a true copy of the original law, *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017*, duly made on September 19, 2017 by the Council of the Tk'emlúps te Secwépemc and as such has been stamped FNTC Certified True Copy / CFPN copie certifiée authentique de l'original on each of the forty-one (41) pages.

Signed at Kamloops, British Columbia this 19th day December, 2017.

Tracey C. Simon, FMA Registrar
First Nations Tax Commission

TK'EMLÚPS TE SECWÉPEMC
PROPERTY TRANSFER TAX LAW, 2017

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SCHEDULES

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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;

B. The Council of Tk'emlúps te Secwépemc 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 Tk'emlúps te Secwépemc 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 Tk'emlúps te Secwépemc duly enacts as follows:

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PART I
CITATION

Citation

1.(1) This Law may be cited as the *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017.*

(2) The short title of this law is the *TteS PTT Law, 2017.*

PART II
DEFINITIONS AND REFERENCES

Definitions and References

2.(1) In this Law:

"Act" means the *First Nations Fiscal Management Act*, and the regulations enacted under that Act;

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

"correcting transfer" means a taxable transfer that was intended to be transferred to the transferee when the original transfer was registered;

"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;

"fair market value" means the fair market value determined in accordance with the applicable rules and formulae set out in Schedule I;

"First Nation" means Tk'emlúps te Secwépemc, being a band named in the schedule to the Act;

"First Nation Corporation" means a corporation in which 100% 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 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;

"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;

"lease" includes a sublease or any further sublease;

"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

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

(b) provide

(i) a dwelling house or premises,

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(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 Tax Assessment" means a notice containing the information set out in Schedule III and includes an amended Notice of Tax Assessment;

"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;

"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 12, means an interest in land

(i) on which the person in relation to whose residency the exemption in section 12 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 13 to 24, means the usual place where an individual makes his or her home;

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

"registry" means the Indian Land Registry or other 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;

"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;

"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;

"resolution" means a motion passed and approved by a majority of Council present at a duly convened meeting;

"Return" means a tax return containing the information set out in Schedule II and in the form or forms

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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" means a person who

(a) is married to another person, whether by a customary Aboriginal, religious, civil or other ceremony, or

(b) is the common-law partner of another person,

and, for greater certainty, does not include a former spouse;

"tax" means the property transfer tax imposed under this Law and includes all penalties, interest, and costs added to taxes under 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, a reference 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.

(5) Unless otherwise specified, all references to named enactments in this Law are to enactments of the Government of Canada.

PART III

ADMINISTRATION

Administrator

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

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

(3) The administrator may, with the consent of the Council, delegate the performance of any duties of the administrator to any officer, employee, contractor or agent of the First Nation.

(4) On or before August 31 of each year, the administrator must prepare and present to the Council, a briefing note on the administration of this Law during the previous fiscal year, which briefing note 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.

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 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.

(3) A person who is a transferee of a taxable transfer under this Law is liable for the tax even if that person is also liable to pay taxes imposed under other property taxation laws of the First Nation.

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

(5) In order to qualify for an exemption under this Law, every transferee of the taxable transfer must qualify for an exemption and that exemption must apply to the entirety of the interest in the land that is subject to the transfer.

(6) For greater certainty, no partial exemptions from taxation on a taxable transfer are available under this Law.

(7) 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.

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Tax Payment and Filing Return

6.(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

(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, cash, or electronic payment.

Payment of Estimated Tax

7.(1) Despite section 6, 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 31 applies.

Tax Rate

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

(a) one percent (1%) of the taxable transfer's fair market value that does not exceed two hundred thousand dollars ($200,000);

(b) two percent (2%) of that portion of the fair market value that exceeds two hundred thousand dollars ($200,000) but does not exceed two million dollars ($2,000,000); and

(c) three percent (3%) of that portion of the fair market value that exceeds two million dollars ($2,000,000).

(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

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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

(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*, on the registration date of the taxable transfer referred to in subsection (4).

Tax Return

9. 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.

Correcting Transfer

10.(1) Despite section 8, 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.

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PART V
EXEMPTIONS FROM TAXATION

Applicability of Exemptions

11.(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 12 and 13;

(b) the exemption applies to the entirety of the interest in land that is subject to the taxable transfer;

(c) every transferee of the taxable transfer qualifies for the exemption; and

(d) 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.

Exemptions from Tax

12.(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 twelve (12) 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

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or 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;

(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 referenced in subparagraph (i) is a related individual of the transferor or the person whose estate is the transferor, and

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(iii) the interest in land transferred was the principal residence of the minor at subparagraph (i), 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;

(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 for an interest in land that is intended for subdivision, development and re-sale of at least five (5) parcels on the land, provided that the transferee completes a subdivision to create at least five (5) parcels within five (5) years after the registration date; or

(v) 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)(v), 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;

(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

13.(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, and the interest in land will be the transferee's principal

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residence,

(ii) all of the transferees are members, and the interest in land will be the principal residence of at least one of the transferees, or

(iii) the member and the member's spouse are the only transferees, and the interest in land will be the transferee's principal residence,

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

(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, provided that at least one of the members will use the interest in land as their principal residence.

(2) Where an exemption is given under paragraph (1)(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 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 Definitions

14.(1) The following definitions apply to sections 15 to 18:

"first-time home buyer" means an individual who

(a) is a Canadian citizen or a permanent resident as defined in the *Immigration and Refugee Protection Act* on the registration date of a taxable transfer,

(b) has not previously

(i) owned land in British Columbia or elsewhere that constituted the individual's principal residence,

(ii) held an interest in land under a lease that constituted the individual's principal residence, or

(iii) held an interest in reserve lands under a lease that constituted the individual's principal residence, and

(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; and

"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.

First-Time Home Buyer Exemption

15.(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 exemption applies to the entirety of the interest in land that is subject to the taxable transfer;

(c) every transferee of the taxable transfer qualifies for the exemption;

(d) the residential improvement is the only improvement on the qualifying property;

(e) the transferee is a first-time home buyer;

(f) the transferee meets the requirements set out in section 16; and

(g) the transferee files a claim for the exemption concurrently with the transferee's completed Return

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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.

First-Time Home Buyer – Requirement to Establish a Residence

16.(1) A transferee who has applied for an exemption under section 15 or a refund under section 17 must establish a residence on the qualifying property in accordance with subsection (2) or (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 of the qualifying property on the registration date, would have been a qualifying property on the registration date.

First-Time Home Buyer – Refund on Application

17.(1) A transferee who is entitled to an exemption under section 15 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 15 only because the transferee does not meet a requirement set out in 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

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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 15 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

(b) if not satisfied that the transferee would have qualified for an exemption under section 15 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 15 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.

First-Time Home Buyer – Unqualified Transferee

18.(1) The administrator must, after the first anniversary of the registration date, confirm with each transferee who has obtained an exemption under section 15 or a refund under section 17 that the requirements in section 16 have been met.

(2) Where the administrator determines that a transferee who has obtained an exemption under section 15 or a refund under section 17

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

(b) fails, refuses or ceases to comply with section 16,

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 39.

(3) Subsection (2) does not apply where a transferee does not comply with section 16 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, court order, or domestic contract under the *Tk'emlúps te Secwépemc Matrimonial Real Property Law* or under a federal or provincial enactment relating to the division of matrimonial property.

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New Housing Exemption – Definitions

19. The following definitions apply to sections 20 to 24:

"qualifying individual" means an individual who is a Canadian citizen or a permanent resident of Canada;

"qualifying property" means an interest in land

(a) with a fair market value that does not exceed the sum of the qualifying value of an interest in land and fifty thousand dollars ($50,000) on the registration date, and

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

"qualifying value", in respect of an interest in land, means seven hundred and fifty thousand dollars ($750,000).

New Housing Exemption – Qualifications

20.(1) A transferee who applies for registration of a taxable transfer of a qualifying property that contains a residential improvement 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" in subsection 2(1);

(b) the transferee is a qualifying individual on the registration date;

(c) the taxable transfer is in respect of either of the following:

(i) a qualifying property in respect of which the residential improvement

(A) was constructed or placed on the property, and

(B) on the registration date, has not been used as a dwelling since the construction of the residential improvement began or since the residential improvement was placed on the property, as the case may be, or

(ii) a qualifying property that resulted from a subdivision of a parcel and in respect of which the residential improvement

(A) was developed from the division of an improvement that was on the parcel that was subdivided, and

(B) on the registration date, has not been used as a dwelling since the subdivision of the parcel;

(d) the qualifying property does not, on the registration date, contain a residential improvement other than a residential improvement that falls within the description in subparagraph (c)(i) or (ii);

(e) the application is the first application for registration in respect of the qualifying property,

(i) in the case of a qualifying property described in subparagraph (c)(i), since the residential improvement was completed or since the residential improvement was placed on the property, as the case may be, or

(ii) in the case of a qualifying property described in subparagraph (c)(ii), since the subdivision of the parcel;

(f) 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) If the fair market value of a qualifying property exceeds the qualifying value of the property, the exemption under subsection (1) is the amount calculated as follows:

$$PTT \times ((QV+50{,}000-FMV)/50{,}000)$$

where

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FMV is the fair market value of the property;

PTT is the amount of tax that would be payable on the taxable transfer but for the exemption under subsection (1); and

QV is the qualifying value of the qualifying property.

(3) 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 and the taxable transfer meet all of the requirements for the exemption;

(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 and the transfer for the exemption.

New Housing Exemption – Obligation to Inhabit as Principal Residence

21. A transferee who has applied for an exemption under section 20 or a refund under section 22 must,

(a) beginning on a date that is not more than ninety-two (92) days after the registration date, and

(b) continuing to a date that is not earlier than the first anniversary of the registration date,

inhabit as the transferee's principal residence the residential improvement on the property.

New Housing Exemption – Refund where Principal Residence on Registration Date

22.(1) A transferee who is entitled to an exemption under section 20 and who fails to apply for that exemption on the registration date may, within eighteen (18) months after that date, apply to the administrator for a refund of the tax paid by the transferee on the registration date of the taxable transfer.

(2) A transferee who is not entitled on the registration date to an exemption under section 20 because the transferee is not a qualifying individual on that date may apply to the administrator for a refund of the tax paid on the registration of the transaction by the transferee if

(a) the transferee becomes a qualifying individual on or before the first anniversary of the registration date; and

(b) the application for the refund is made within eighteen (18) months after the registration date.

(3) On receiving an application under subsection (1), the administrator,

(a) if satisfied that the transferee would have qualified for an exemption under section 20 on the registration date, must refund the portion of the amount of tax paid by the transferee that is equivalent to the amount of the exemption to which the transferee would have been entitled had the application for the exemption been made on the registration date; or

(b) if not satisfied that the transferee would have qualified for an exemption under section 20 on the registration date, must refuse the application and provide the transferee with written notice stating the reasons for the refusal.

(4) On receiving an application under subsection (2), the administrator,

(a) if satisfied that the transferee

(i) would have qualified for an exemption under section 20 on the registration date but for the transferee's failure to be a qualifying individual on that date, and

(ii) became a qualifying individual on or before the first anniversary of the registration date,

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must refund that portion of the amount of tax paid by the transferee that would have been exempted under section 20 had the transferee been a qualifying individual on the registration date; and

(b) if not satisfied that the requirements for the refund set out in paragraph (a) have been met, must refuse the application and provide the transferee with written notice stating the reasons for the refusal.

(5) A notice given under paragraph (3)(b) or (4)(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.

New Housing Exemption – Refund where no Principal Residence on Registration Date

23.(1) A transferee of a qualifying property that does not, on the registration date, contain a residential improvement may apply for a refund of the tax paid on the registration date by the transferee if

(a) the transferee is a qualifying individual on the registration date or becomes a qualifying individual on or before the first anniversary of the registration date;

(b) before the first anniversary of the registration date, the transferee establishes a residential improvement on the property

(i) that the transferee inhabits, as the transferee's principal residence,

(A) beginning at the time the residential improvement is completed, and

(B) subject to subsection (2), continuing to a date that is not earlier than the first anniversary of the registration date, and

(ii) in respect of which the total costs incurred to establish the residential improvement, when added to the fair market value of the property at the registration date, do not exceed the sum of the qualifying value of the property and fifty thousand dollars ($50,000); and

(c) the application for the refund is made on a date that is

(i) after the first anniversary of the registration date, and

(ii) on or before the date that is eighteen (18) months after the registration date.

(2) The requirement set out in clause (1)(b)(i)(B) is deemed to have been met in respect of a property if the transferee fails to meet that requirement only because, before the first anniversary of the registration date,

(a) the transferee dies; or

(b) the property is transferred by the transferee pursuant to a written separation agreement or a court order under the *Tk'emlúps te Secwépemc Matrimonial Real Property Law* or under an applicable federal or provincial enactment respecting the division of matrimonial or family property.

(3) On receiving an application under subsection (1), the administrator,

(a) if satisfied that

(i) the property was, on the registration date, a qualifying property that did not contain a residential improvement, and

(ii) the requirements for the refund set out in subsection (1) have been met,

must refund the portion of the amount of tax paid by the transferee that is equivalent to the amount of the exemption to which the transferee would have been entitled under section 20 had the property contained a residential improvement meeting the requirements in subsection 20(1); or

(b) if not satisfied that the requirements for the refund set out in subsection (1) have been met, must refuse the application and provide the transferee with written notice stating the reasons for the refusal.

(4) A notice given under paragraph (3)(b) is deemed to be a Notice of Tax Assessment for the purpose

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of allowing the taxpayer to make a Request for Reconsideration under this Law.

New Housing Exemption – Unqualified Transferee

24.(1) A transferee who has obtained an exemption under section 20 or a refund under section 22 is liable under subsection (2) if the transferee,

(a) in the case of a transferee who obtained an exemption under section 20 or a refund under paragraph 22(3)(a), is not a qualifying individual on the registration date;

(b) in the case of a transferee who obtained a refund under paragraph 22(4)(a), does not become a qualifying individual on or before the first anniversary of the registration date;

(c) in the case of a transferee who obtained an exemption under section 20, fails or refuses to comply with paragraph 20(1)(f) or subsection 20(3); or

(d) fails to inhabit the residential improvement referred to in section 21 as the transferee's principal residence as required by that section.

(2) A transferee referred to in subsection (1) must pay to the First Nation tax in the same amount that the transferee would have been obliged to pay under this Law had the transferee not received the exemption or refund.

(3) Where the administrator determines that subsection (1) applies to a transferee, the administrator must deliver a Notice of Tax 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 39.

(4) A transferee not referred to in subsection (1) who has obtained an exemption under section 20 or a refund under section 22 or 23 for an amount greater than the amount to which the transferee is entitled under this Law must pay to the First Nation as a tax liability the amount by which the exemption or refund received exceeded the exemption or refund to which the transferee was entitled, plus interest calculated on the tax from the registration date and any penalty assessed under section 39.

(5) Subsections (1) to (4) do not apply to a transferee who has obtained an exemption under section 20 or a refund under section 22 if the transferee does not comply with section 21 only because, before the first anniversary of the registration date,

(a) the transferee dies; or

(b) the property is transferred by the transferee pursuant to a written separation agreement or a court order under the *Tk'emlúps te Secwépemc Matrimonial Real Property Law* or under an applicable federal or provincial enactment respecting the division of matrimonial or family property.

Rule Respecting Exemptions

25. Despite sections 14 to 24, a transferee is not entitled to and must not apply for both a first-time home buyers' exemption or refund and a new housing exemption or refund in respect of the same taxable transfer.

PART VI

INVESTIGATIONS, INFORMATION REQUESTS AND INSPECTIONS

Review and Investigations

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

(2) The administrator may investigate whether

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(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

27.(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

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

(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

29.(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 32, or

(b) an order of the court under section 33,

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 6,

(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).

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

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(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

30.(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.

(5) As a limitation on subsection (4), the administrator must not provide a refund for an amount paid more than two (2) 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 the notice 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.

PART VIII
ASSESSMENT, RECONSIDERATION AND APPEAL

Tax Assessment by Administrator

31.(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,

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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;

(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), (10) and (11), 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 12(2)(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 15 or 20, or an application for a refund is made under any of sections 17, 22 or 23, 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.

(11) Where a claim for an exemption is made under paragraph 12(2)(u), the administrator must issue a Notice of Tax Assessment within sixty-four (64) months after the registration date of the taxable transfer relating to the exemption.

Reconsideration of Tax Assessment

32.(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 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.

(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

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

(b) vary the assessment or provide a refund, or both, 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 paragraph (3)(b), 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.

(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 Tax Assessment given under subsection (5).

Appeal to Court

33.(1) An appeal lies from a decision of the administrator under section 32 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

34. 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

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

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Tax Certificate

36.(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 fifty dollars ($50) for each taxable transfer.

PART X

PENALTIES AND INTEREST

Interest

37. 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.

Penalty

38. 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.

Penalty and Interest in Certain Situations

39. 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 17, 22, 23 or 30, or

(c) relating to the fair market value of a taxable 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

40.(1) Except where a penalty is applied under section 39, 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 18, 24 or 39, 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

41.(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.

(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.

Notice of Enforcement Proceedings

42.(1) Before taking enforcement proceedings for the recovery of taxes, the administrator must give

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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

43.(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.

(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

44.(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.

Disclosure for Research Purposes

45. Notwithstanding section 44,

(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;

(b) the 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 the Council to comply with the Council's requirements respecting the use, confidentiality and security of the information.

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Validity

46. 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 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

47.(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.

Notices

48.(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

49.(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.

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PART XIII

TRANSITIONAL PROVISIONS AND COMING INTO FORCE

50. Despite anything to the contrary in this Law, as a transitional measure, the tax does not apply to a transfer of a residential property where a written agreement respecting the transfer of that property was duly executed by both the purchaser and the vendor on or before the date this Law comes into force, and the sale and transfer closes and completes no later than ninety (90) days after the date on which this Law comes into force.

Force and Effect

51. 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 19th day of September, 2017, at Kamloops, in the Province of British Columbia.

A quorum of Council consists of four (4) members of Council.

Chief Fred Seymour

Councillor Howard Campbell

Councillor Russell Gray (Eagle) Casimir

Councillor Rosanne Casimir

Councillor Nacoma George

Councillor Katy Gottfriedson

Councillor Janet (Jeanette) Jules

Councillor Viola (Ola) Thomas

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SCHEDULE I

FAIR MARKET VALUE DETERMINATION

Interpretation

1. In this Schedule,

(a) a reference to the "rent" does not include an amount that is separately calculated under a lease and is payable to a lessor in reimbursement for

(i) taxes, or

(ii) reasonable expenses relating to the operation of a multi-tenant premises of which the demised interest in land forms a part;

(b) "appraisal" means an appraisal conducted by an independent appraiser who is designated Accredited Appraiser Canadian Institute by the Appraisal Institute of Canada or designated, registered or licensed as a certified appraiser under the laws of the Province of British Columbia, as applicable; and

(c) "assessed value" means the most recent assessed value of an interest in land determined in accordance with the First Nation's assessment law made under subparagraph 5(1)(a)(i) of the Act.

Determination of Lease Term and Life Estate Term

2.(1) Subject to section 6, and subsections (2), (3) and (5), the term of a lease is the sum of

(a) the number of years for which a transferee has the right to occupy the demised interest in land; and

(b) the maximum number of years not counted under paragraph (a) that, by the exercise of rights or options to renew or extend the lease, the transferee may occupy the demised interest in land.

(2) Subject to subsection (3), the term of a lease is the unexpired portion of the term determined under subsection (1) on the registration date.

(3) If the lease is a time-share or fractional ownership plan, the term of the lease must be determined by adding together the number of years during which the transferee may, for any part of a year, occupy the interest in land.

(4) Subject to subsection (5), the term of a life estate is the number of years of life expectancy based on Table 3 remaining to the holder of the life estate on the registration date of the life estate in the registry.

(5) Where the term of a lease or life estate would otherwise be expressed as a fraction of a year or as a number of years plus a fraction of a year, the term must be rounded up to the next whole number.

Fair Market Value of Prepaid Leases

3.(1) The fair market value of a transfer involving the granting or transfer of a prepaid lease is the amount of the purchase price paid by the transferee where

(a) the rent under the lease is not subject to adjustment or renegotiation and has been paid for the term of the lease before the registration date or will be paid within one (1) year of that date; and

(b) the lessor and the transferee deal with each other at arm's length.

(2) If a lessor and a transferee are not at arm's length, the fair market value is the amount that would have been paid if the leasehold interest in land had been sold on the registration date in the open market by a willing seller to a willing purchaser free of any trust and unencumbered by a judgment for the payment of money, or a mortgage, or any other financial instrument that secures the payment of money or the performance of an obligation.

Fair Market Value of Lease Having a Term Not Exceeding 100 Years

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4.(1) The fair market value of a transfer involving the grant or transfer of a lease

(a) to which section 3 does not apply,

(b) the term of which does not exceed one hundred (100) years, and

(c) where the lessor and the transferee deal with each other at arm's length,

is, subject to an election under subsection (2), the amount determined in accordance with the following formula:

$$LSC + (ARP \times PVF)$$

where

LSC = any lump sum consideration paid by the transferee for the grant or transfer of the lease, including for any improvements on the leasehold property;

ARP = the annual rent payment to be made during the last year for which rents are fixed pursuant to a lease; and

PVF = the present value factor set out in Column 2 of Table 2 that is opposite the number of years in Column 1 that corresponds to the term of the lease.

(2) The transferee may elect to calculate the fair market value of the lease under section 5.

Fair Market Value of Other Leases

5.(1) Subject to subsection (2), the fair market value of a lease to which section 4 does not apply is the amount determined in accordance with the following formula:

$$VSI \times P$$

where

VSI = the fair market value of the fee simple interest, including improvements, in the demised interest in land; and

P = the percentage set out in Column 2 of Table 1 opposite the period in Column 1 that corresponds to the term of the lease.

(2) For the purposes of subsection (1) where part of the improvements on a parcel of land are leased, the fair market value of the demised interest in land is determined in accordance with the following formula:

$$\frac{VSI \times P \times ARADP}{ARA}$$

where

VSI = the fair market value of the fee simple interest, including improvements, within which the demised interest in land is situated;

P = the percentage set out in Column 2 of Table 1 opposite the period in Column 1 that corresponds to the term of the lease;

ARADP = the aggregate rentable area of the demised interest in land; and

ARA = the aggregate rentable area of the improvements on the land within which the demised interest in land is situated.

(3) The VSI in subsections (1) and (2) is the assessed value of the leasehold interest in land, if available.

(4) If an assessed value is not available, the administrator may

(a) determine the VSI using the best available data, which may include assessed values or appraisal data of comparable properties; or

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(b) require the transferee to provide an appraisal of the VSI at the transferee's cost.

(5) If the administrator determines the VSI under paragraph (4)(a), the transferee may, within ten (10) days after the administrator advised the transferee of the VSI, elect to provide an appraisal of the VSI to the administrator at the transferee's cost and within an additional twenty-one (21) days or such additional time frame as agreed to by the administrator.

(6) If the transferee provides an appraisal under subsection (5), the administrator must use the VSI determined by the appraisal for the purposes of this section.

Fair Market Value of a Lease Modification Agreement

6.(1) The term of the lease modification agreement for the purposes of this section is the sum of

(a) the term of the lease before extension by the lease modification agreement, calculated under subsection 2(1) without regard to subsection 2(2) from the date the lease agreement was first executed; and

(b) the number of years, applying subsection 2(5), by which the lease is extended by the lease modification agreement.

(2) For the purposes of paragraph (1)(b), options or rights to renew or extend the lease pursuant to the lease modification agreement are deemed exercised to give the maximum possible extension.

(3) Subject to subsection (5), where the term of the lease modification agreement is one hundred (100) years or less, its fair market value is the amount determined in accordance with the following formula:

$$LSC + (ARP \times PVF)$$

where

LSC = any lump sum consideration paid by the transferee for the lease modification, including for any improvements on the leasehold property;

ARP = the annual rent payment to be made during the last year for which rents are fixed pursuant to the lease as extended by the lease modification agreement; and

PVF = the present value factor set out in Column 2 of Table 2 that is opposite the number of years in Column 1 that corresponds to the number of years applicable under paragraph (1)(b).

(4) Where the term of the lease modification agreement exceeds one hundred years (100) years, section 5 applies for the purpose of calculating the fair market value of the lease modification agreement except that "P" equals the percentage in Column 2 of Table 1 that is opposite the period in Column 1 that corresponds to the number of years applicable under paragraph (1)(b).

(5) The transferee may elect to calculate the fair market value of the lease under section 5 as modified by subsection (4).

Fair Market Value of Life Estates

7. The fair market value of a life estate in a lease is the amount determined in accordance with the following formula:

VFS x P

where

VFS = the fair market value of the leasehold interest in land determined

(a) as though the life estate did not exist; and

(b) under section 3, 4 or 5 as applicable.

P = the percentage in Column 2 of Table 1 that is opposite the period in Column 1 that corresponds to

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the term of the life estate.

Transfers That Are Not Arm's Length

8. Where a transferor and a transferee do not deal with each other at arm's length, the administrator may

(a) use the assessed value; or

(b) require the transferee to provide with the Return, as applicable and at the transferee's cost, an appraisal of

(i) the valuation required under subsection 3(2),

(ii) the ARP under section 4 or section 6 that would be paid on the open market on the registration date by an arm's length transferee, or

(iii) the VSI under section 5 that would be paid on the open market on the registration date by an arm's length transferee.

TABLE 1 – PERCENTAGE OF FAIR MARKET VALUE

Column 1 Term of Lease Agreement or Life Expectancy	Column 2 Percentage of Fair Market Value of the Demised Premises or the Land Subject to the Life Estate
5 years or less	40%
More than 5 years but not more than 10 years	50%
More than 10 years but not more than 20 years	60%
More than 20 years but not more than 30 years	70%
More than 30 years but not more than 40 years	80%
More than 40 years but not more than 50 years	90%
More than 50 years	100%

TABLE 2 – PRESENT VALUE FACTORS

Column 1 Term of Lease Agreement	Column 2 Present Value Factor (at 8%)
1	1.0

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Column 1	Column 2
Term of Lease Agreement	**Present Value Factor (at 8%)**
2	1.8
3	2.6
4	3.3
5	4.0
6	4.6
7	5.2
8	5.7
9	6.2
10	6.7
11	7.1
12	7.5
13	7.9
14	8.2
15	8.6
16	8.9
17	9.1
18	9.4
19	9.6
20	9.8
21	10.0
22	10.2
23	10.4
24	10.5
25	10.7
26	10.8
27	10.9
28	11.1
29	11.2
30	11.3
31	11.3
32	11.4
33	11.5
34	11.6
35	11.7
36	11.7
37	11.8
38	11.8
39	11.9
40	11.9
41	12.0
42	12.0
43	12.0
44	12.1
45	12.1
46	12.1

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Column 1	Column 2
Term of Lease Agreement	**Present Value Factor (at 8%)**
47	12.2
48	12.2
49	12.2
50	12.2
51	12.3
52	12.3
53	12.3
54	12.3
55	12.3
56	12.3
57	12.3
58	12.4
59	12.4
60	12.4
61	12.4
62	12.4
63	12.4
64	12.4
65	12.4
66	12.4
67	12.4
68	12.4
69	12.4
70	12.4
71	12.4
72	12.5
73	12.5
74	12.5
75	12.5
76	12.5
77	12.5
78	12.5
79	12.5
80	12.5
81	12.5
82	12.5
83	12.5
84	12.5
85	12.5
86	12.5
87	12.5
88	12.5
89	12.5
90	12.5
91	12.5

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Column 1	Column 2
Term of Lease Agreement	**Present Value Factor (at 8%)**
92	12.5
93	12.5
94	12.5
95	12.5
96	12.5
97	12.5
98	12.5
99	12.5
100	12.5

TABLE 3 – LIFE EXPECTANCY

Age of Transferee	Male Life Expectancy	Female Life Expectancy
0	71.88	78.98
1	71.67	78.65
2	70.73	77.70
3	69.77	76.74
4	68.80	75.77
5	67.84	74.79
6	66.86	73.81
7	65.88	72.83
8	64.90	71.84
9	63.91	70.86
10	62.92	69.87
11	61.94	68.88
12	60.95	67.90
13	59.97	66.91
14	59.00	65.93
15	58.04	64.95
16	57.10	63.97
17	56.16	63.00
18	55.23	62.02
19	54.31	62.05
20	53.39	60.08
21	52.47	59.11
22	51.55	58.14
23	50.63	57.16
24	49.71	56.19
25	48.78	55.22
26	47.86	54.25
27	46.92	53.27
28	45.99	52.30
29	45.05	51.33
30	44.11	50.36

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Age of Transferee	Male Life Expectancy	Female Life Expectancy
31	43.17	49.39
32	42.22	48.42
33	41.28	47.45
34	40.34	46.48
35	39.39	45.51
36	38.45	44.55
37	37.52	43.59
38	36.58	42.63
39	35.65	41.68
40	34.72	40.73
41	33.80	39.78
42	32.88	38.84
43	31.97	37.90
44	31.06	36.97
45	30.16	36.04
46	29.27	35.11
47	28.39	34.19
48	27.52	33.28
49	26.66	32.37
50	25.81	31.47
51	24.97	30.57
52	24.14	29.68
53	23.33	28.80
54	22.52	27.93
55	21.73	27.06
56	20.95	26.20
57	20.18	25.35
58	19.43	24.51
59	18.69	23.68
60	17.96	22.85
61	17.25	22.03
62	16.56	21.22
63	15.88	20.42
64	15.21	19.63
65	14.57	18.85
66	13.93	18.09
67	13.32	17.33
68	12.72	16.59
69	12.14	15.86
70	11.58	15.14
71	11.03	14.44
72	10.49	13.75
73	9.98	13.08
74	9.48	12.42
75	9.00	11.78
76	8.53	11.15

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Age of Transferee	Male Life Expectancy	Female Life Expectancy
77	8.09	10.54
78	7.66	9.95
79	7.25	9.39
80	6.85	8.84
81	6.48	8.32
82	6.12	7.82
83	5.78	7.34
84	5.45	6.88
85	5.14	6.45
86	4.85	6.04
87	4.57	5.65
88	4.30	5.28
89	4.05	4.93
90	3.82	4.60
91	3.59	4.29
92	3.38	3.99
93	3.19	3.71
94	2.96	3.39
95	2.65	2.99
96	2.27	2.51
97	1.84	1.99
98	1.41	1.50
99	1.05	1.10
100	0.79	0.81
101	0.60	0.61
102	0.50	0.50

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SCHEDULE II

INFORMATION REQUIRED FOR PROPERTY TRANSFER TAX RETURNS

The Property Transfer Tax Return form or forms must require at least the following information:

(a) the name and address of the transferee;

(b) the street address and legal description of the interest in land to which the taxable transfer relates;

(c) the registration date of the taxable transfer;

(d) the name of the transferor;

(e) the term of the lease, determined in accordance with the Law;

(f) the fair market value of the taxable transfer, determined in accordance with the Law;

(g) for a pre-paid lease, the gross purchase price paid for the taxable transfer, including any non-monetary or other consideration paid or provided;

(h) where the gross purchase price differs from the fair market value, the reason for the difference;

(i) where a lease is not pre-paid, the rent payment, lump sum consideration payment and other information required to calculate the fair market value under the Law; and

(j) the calculation of the amount of property transfer tax payable on the taxable transfer.

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SCHEDULE III

NOTICE OF PROPERTY TRANSFER TAX ASSESSMENT

DATE OF NOTICE: _____, 20__

This Notice is given pursuant to section 31 of the *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017* to:

NAME: _____

ADDRESS: _____

_____

RESPECTING THE TRANSFER RELATING TO THE INTEREST IN LAND DESCRIBED AS: _____

_____

DATE OF TRANSFER: _____, 20__.

The administrator has undertaken an assessment of the tax payable on the taxable transfer relating to the above-referenced interest in land.

SUMMARY OF TAX ASSESSMENT:

EXEMPTION CLAIMED: _____

APPLICABILITY OF EXEMPTION: _____

PURCHASE PRICE PAID (WHERE APPLICABLE):	$ _____
FAIR MARKET VALUE OF TAXABLE TRANSFER:	$ _____
PROPERTY TRANSFER TAX OWING ON TAXABLE TRANSFER:	$ _____
PROPERTY TRANSFER TAX PAID BY TRANSFEREE:	$ _____
INTEREST ACCRUED AS OF DATE OF THIS NOTICE:	$ _____
PENALTY ASSESSED AS OF DATE OF THIS NOTICE:	$ _____
TOTAL TAXES DUE AND OWING:	$ _____

DUE DATE: _____, 20__

All taxes owing are due and payable in full on or before the due date.

Payments by cheque, money order, cash must be made at the offices of Tk'emlúps te Secwépemc, located at 200-330 Chief Alex Thomas Way, Kamloops BC, V2H 1H1, during normal business hours. Electronic payment may only be made as directed by the administrator.

A penalty has been assessed on the unpaid taxes and interest has accrued from the registration date because transferee provided information that is false or misleading (check applicable box)

__ in support of an exemption from tax under this Law,

__ in support of an application for a refund under section 17,

__ in support of an application for a refund under section 22,

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__ in support of an application for a refund under section 23,

__ in support of an application for a refund under section 30, or

__ relating to the fair market value of a taxable transfer.

Where interest on unpaid amounts is shown above, interest continues to accrue each day that the taxes remain unpaid.

Taxes that are not paid by the due date indicated on this Notice will incur penalties and interest in accordance with the *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017.*

You are entitled to file a Request for Reconsideration of this tax assessment. Requests for reconsideration must be delivered to the First Nation within sixty (60) days of this Notice of Property Transfer Tax Assessment.

Please contact our office if you have any questions about this Notice or how to file a Request for Reconsideration.

_____

Administrator for Tk'emlúps te Secwépemc

406-345 Chief Alex Thomas Way

Kamloops, BC V2H 1H1

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SCHEDULE IV

PROPERTY TRANSFER TAX CERTIFICATE

In respect of the interest in land described as: _____ and pursuant to the *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017*, I hereby certify as follows:

That all property transfer taxes due and payable in respect of the transfer relating to the above-referenced interest in land on _____, 20__, have been paid as of the date of this Certificate.

OR

That unpaid taxes, including interest, penalties and costs in the amount of _____ dollars ($_____) are due and owing on the above-referenced interest in land as of the date of this Certificate.

The following persons are jointly and severally liable for all unpaid taxes:

_____

_____

_____

Administrator for Tk'emlúps te Secwépemc

Dated: _____ , 20___ .

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SCHEDULE V

REQUEST FOR INFORMATION BY ADMINISTRATOR
FOR TK'EMLÚPS TE SECWÉPEMC

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN LAND: _____

_____

DATE OF REQUEST: _____

PURSUANT to section 27 of the *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017*, I request that you provide to me, in writing, no later than _____ **[Note: must be a date that is at least fourteen (14) days from the date of request]**, the following information respecting a transfer relating to the above-noted interest in land:

(1)

(2)

(3)

_____
Administrator for Tk'emlúps te Secwépemc

Dated: _____, 20___.

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SCHEDULE VI

REQUEST FOR RECONSIDERATION

TO: Administrator for Tk'emlúps te Secwépemc
[address]

PURSUANT to the provisions of the *Tk'emlúps te Secwépemc Property Transfer Tax Law, 2017,* I hereby request a reconsideration of

1. The tax assessment of a transfer relating to the interest in land described as: [description of the interest in land as described in the Notice of Property Transfer Tax Assessment]

OR

2. The refusal to provide a refund respecting a transfer relating to the interest in land described as:

[description of the interest in land as described in the notice received from the administrator]

This request for a reconsideration of the tax assessment or refusal to provide a refund is based on the following reasons:

(1)

(2)

(3)

(describe the reasons in support of the request in as much detail as possible)

I am the transferee of the above-referenced transfer or an authorized agent of the transferee.

Address and telephone number at which the transferee/agent can be contacted:

_____

_____

_____ _____

Name of Transferee or Agent (please print) Signature

Dated: _____, 20__ .

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SCHEDULE VII

COSTS PAYABLE BY DEBTOR ARISING FROM
THE COLLECTION AND ENFORCEMENT OF UNPAID TAXES

For costs arising from the collection and enforcement of unpaid taxes:

1.	For preparation of a notice	$75
2.	For service of notice on each person or place by the First Nation	$50 for the first hour and the first 20 km; $50 for each additional hour and $0.52 for each additional km
3.	For service of notice on each person or place by a process server, bailiff or delivery service	actual cost
4.	For advertising in newspaper	actual cost
5.	Actual costs not listed above that are incurred by the First Nation for carrying out the enforcement measures under this Law will be charged based on receipts.	

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