

FIRST NATION
QUARRY OPERATIONS TAX LAW, 20__
(BRITISH COLUMBIA)
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WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands and interests in reserve lands, including the taxation of business activities on reserve lands;

B. The Council of the _____ First Nation deems it to be in the best interests of the First Nation to levy a business activities tax on quarry operators undertaking quarry operations on the reserve; and

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

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

PART I
CITATION

Citation

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

PART II
DEFINITIONS AND REFERENCES

Definitions and References

- 2.(1) In this Law:

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

[Note to First Nation: If the First Nation is located in British Columbia, consider including references to the civil resolution tribunal in sections 20 and 22 as indicated. If the references are included, the following additional definition is required: “civil resolution tribunal” means the civil resolution tribunal established under the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25;”.]

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

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

“interest”, in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“Notice of Tax Reassessment” means a notice containing the information set out in Schedule II;

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

“quarry” means a mine from which quarry materials are removed;

“quarry material” means

- (a) limestone,
- (b) dolomite,
- (c) marble,
- (d) shale,
- (e) clay,
- (f) volcanic ash,
- (g) diatomaceous earth,
- (h) sandstone,
- (i) quartzite, or
- (j) dimension stone;

“quarry operations tax” or “tax” means a tax imposed, levied, assessed or assessable under this Law and all penalties, interest and costs added to taxes as provided in this Law;

“quarry operator” means a person who, either alone or with another person, is the owner, lessee, licensee, tenant or other holder of a right to win quarry materials from a quarry, but does not include a person who, under an arm’s length agreement, has a right to receive only royalties paid or payable in cash;

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

“reserve” means a reserve of the First Nation within the meaning of the *Indian Act*;

“Return” means a form containing the information set out in Schedule I;

“tax administrator” means the person appointed under subsection 3(1) for the purposes of this Law;

“tax rate” means the tax rate set out in subsection 7(2); and

“Taxation Law” means the _____ *First Nation Property Taxation Law*, 20__.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) Except where otherwise defined, words and expressions used in this Law have the meanings given

to them in the Taxation Law.

(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 6(1)(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

Tax Administrator

3.(1) Council must, by resolution, appoint a tax administrator to oversee the administration and enforcement of this Law. **[Note to First Nation: The following wording may be used for subsection (1): The person appointed as the tax administrator under the Taxation Law is appointed as the tax administrator under this Law.]**

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

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

Revenues and Expenditures

4. Quarry operations taxes collected by the First Nation must be placed in the local revenue account of the First Nation and expended only in accordance with an expenditure law enacted by the First Nation under paragraph 5(1)(b) of the Act or in accordance with section 13.1 of the Act.

PART IV TAX LIABILITY AND LEVY

Application of Law

5. This Law applies to all quarry operators and every quarry operator is subject to a quarry operations tax in accordance with this Law. **[Note to First Nation: If the First Nation has a quarry operation that it operates directly, or that is operated by a First Nation Corporation, an exemption from the tax may be included.]**

Tax Liability

6.(1) A person on whom a tax is levied under this Law is liable for the tax even if

- (a) that person is also liable to pay taxes under other property taxation laws of the First Nation; or
- (b) that person is exempt from taxes under other property taxation laws enacted by the First Nation.

(2) Where there is more than one person comprising a quarry operator, each person is jointly and severally liable to the First Nation for all quarry operations taxes levied under this Law in respect of that operator.

(3) Quarry operations taxes are due and payable under this Law notwithstanding a complaint or any proceeding initiated or remedy sought respecting a quarry operator's liability for taxes under this Law.

Tax Levy and Rate

7.(1) A quarry operations tax is levied and imposed on each quarry operator's use and occupation of the reserve for the operation of a quarry and must be paid by the quarry operator in accordance with this Law.

(2) Every quarry operator must pay to the First Nation, in respect of each calendar year, a quarry operations tax at a rate of fifteen cents (\$0.15) per tonne of quarry material extracted from the quarry. **[Note**

to First Nation: The First Nation may set a higher rate if the quarry operator provides written evidence of support for that rate.]

PART V RETURNS, PAYMENT AND REASSESSMENTS

Returns and Payment

- 8.(1)** Every quarry operator must, on or before March 31 of each year,
- (a) complete and deliver to the First Nation a Return for the previous calendar year; and
 - (b) pay to the First Nation all quarry operations taxes owing for that calendar year.
- (2) Taxes must be paid at the office of the First Nation during normal business hours, by cheque, money order or cash.
- (3) Payment of taxes made by cheque or money order must be made payable to the _____ First Nation.
- (4) A trustee in bankruptcy, assignee, liquidator, receiver, administrator, trustee or committee and an agent or other person administering, managing, winding up, controlling or otherwise dealing with the interest in reserve lands, business or income of a quarry operator must, if the quarry operator has not delivered a completed Return for a calendar year as required under this Law, complete and deliver a Return as required by subsection (1).

Return Requirements

- 9.(1)** A Return
- (a) must be dated and certified as complete and correct by the quarry operator, or where the quarry operator is a corporation, by an individual with personal knowledge of the matters certified and actual authority to certify the return on behalf of the quarry operator; and
 - (b) must be completed and delivered to the First Nation whether or not any tax is payable by the quarry operator in respect of that calendar year.

Tax Reassessment

- 10.(1)** The tax administrator must examine each Return delivered by a quarry operator.
- (2) If a Return is not delivered by a quarry operator for a calendar year as required by section 8, the tax administrator may estimate the amount of tax payable by that quarry operator for that calendar year.
- (3) If the tax administrator determines that
- (a) a quarry operator has failed to deliver a Return,
 - (b) a quarry operator delivered a Return with an error or omission, or
 - (c) for any reason a quarry operator has not paid the correct amount of tax,
- the tax administrator must make a tax assessment and deliver a Notice of Tax Reassessment to the quarry operator.
- (4) The Notice of Tax Reassessment must set out the amount of quarry operations tax payable in respect of the calendar year and either
- (a) set out the amount of tax due and owing by the quarry operator, including penalties and interest, if applicable; or
 - (b) set out the amount of an overpayment of tax by the quarry operator.
- (5) Where a Notice of Reassessment indicates that a quarry operator has made an overpayment of tax,

the tax administrator must refund the excess taxes paid, including interest on the amount overpaid, calculated in accordance with subsection (10).

(6) As an exception to subsection (5), if further taxes payable by the quarry operator are due or accruing due, the tax administrator may apply the amount of the overpayment to those taxes provided notice is given to the quarry operator.

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

(8) Where a Notice of Tax Reassessment provides that taxes are due and owing by a quarry operator, the taxes are due and payable immediately, and unpaid amounts must bear interest and penalties in accordance with this Law.

(9) Without limiting subsection (3), the tax administrator may assess or reassess tax, interest and penalties under this Law, or notify in writing a quarry operator or other person by whom a Return has been or ought to have been delivered that the First Nation requires further information, as follows:

(a) at any time, where a Return has not been delivered to the First Nation in respect of a calendar year, as required by section 8; and

(b) in any other case, within six (6) years after the end of the calendar year for which the Return was required, whether or not any tax has been paid under this Law.

(10) Where a quarry operator is entitled to be refunded an amount of taxes paid, the tax administrator must pay the person interest 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 day payment of the money owed is delivered or mailed to the person to whom it is owed, or is actually paid.

PART VI

RECORDS, RECEIPTS, INFORMATION AND INSPECTIONS

Record of Taxes Levied

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

(a) all taxes levied;

(b) all Returns received;

(c) all tax payments made and receipts issued;

(d) all Notices of Tax Reassessment issued;

(e) all refunds paid; and

(f) all enforcement proceedings taken.

Receipts for Payments

12. On receipt of a payment of taxes, the tax administrator must issue a receipt to the quarry operator.

Quarry Operator Records

13.(1) A quarry operator and every other person required by this Law to deliver a Return to the First Nation must maintain accurate and complete books of account and other records containing all the information necessary to enable the First Nation to determine the amount of quarry material removed from the quarry in each calendar year and any other information required to determine the taxes payable under this Law in a calendar year.

(2) A quarry operator must make the documents referred to in subsection (1) available to the First Nation on request, and allow the First Nation to take copies and extracts as necessary to determine whether a quarry operator is in compliance with this Law and to determine the amount of quarry operations tax payable by the quarry operator.

Requests for Information

14.(1) The tax administrator may deliver a Request for Information to any person, including a current or former quarry operator, or other person who may have information relevant to the administration of this Law, and that person must provide to the tax 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 or enforcement of this Law.

(2) The tax administrator is not bound by the documents or information provided under subsection 13(2) or subsection (1) and the tax administrator may, where a quarry operator

- (a) does not keep adequate records for the purposes of this Law,
- (b) fails or refuses to produce records on the request of the tax administrator, or
- (c) alleges that the quarry operator's records have been destroyed,

make his or her own determination of tax payable by the quarry operator.

Inspections

15.(1) A person authorized by the First Nation may during normal business hours enter onto an interest in reserve lands to

- (a) determine whether or not
 - (i) a person is a quarry operator,
 - (ii) this Law is being and has been complied with; and
- (b) inspect, audit and examine books of account and records related to the quarry operation on the reserve.

(2) As part of an inspection under this section, the quarry operator must give access to the books of accounts and other records required to be kept by this Law, and allow the First Nation to take copies and extracts as necessary, and the quarry operator must, on request, furnish every facility and assistance required for the entry and examination.

PART VII

PENALTIES, INTEREST AND ENFORCEMENT

Penalty

16. If all or part of the taxes are not paid when due as required under this Law, a penalty of ten percent (10%) of the portion that remains unpaid will be added to the amount of the unpaid taxes and the amount so added is, for all purposes, deemed to be part of the taxes.

Interest

17. If all or any portion of the taxes are not paid when due as required under this Law, the unpaid

portion accrues interest at fifteen percent (15%) per year until paid or recovered, and accrued interest is, for all purposes, deemed to be part of the taxes.

Penalty and Interest may be Waived

18.(1) Where a quarry operator has, within the required time,

(a) delivered a completed Return under section 8, and

(b) made payment of quarry operations taxes to the First Nation in accordance with the Return,

Council may in its sole discretion, where it determines that the quarry operator's failure to pay the full amount of taxes owing was due to an error made in good faith by the quarry operator, direct the tax administrator that a penalty under section 16 must not be added to unpaid taxes and interest under section 17 must not accrue, provided the outstanding taxes owing are paid in accordance with subsection (2).

(2) Where Council has determined under subsection (1) that penalties and interest will not be assessed against the quarry operator, the quarry operator must pay all amounts owing, as provided in the Notice of Tax Reassessment, within thirty (30) days of receipt, after which time a penalty and interest must be levied on amounts remaining unpaid in accordance with this Law.

Application of Taxes Paid

19. The tax administrator must credit payments for taxes, first, to unpaid taxes from previous years, with taxes imposed earlier being discharged before taxes imposed later, and, second, to unpaid taxes for the current year.

Tax Collection and Enforcement

[Note to First Nation: If the First Nation is located in British Columbia, consider including the following alternate wording for subsection (1) to enable the collection of unpaid taxes using the Civil Resolution Tribunal: (1) Taxes levied under this Law are a debt owed to the First Nation by the quarry operator that is recoverable by the First Nation in any court of competent jurisdiction, in a proceeding before the civil resolution tribunal, or in any manner permitted by law.]

20.(1) Taxes levied under this Law are a debt owed to the First Nation by the quarry operator, recoverable by the First Nation in a court of competent jurisdiction or in any manner permitted by law.

[Note to First Nation: If the First Nation has a property taxation law, the following subsection could be inserted instead of the above subsection (1), and subsection (4) and Schedule V should be deleted.]

(1) Taxes levied under this Law are a debt owed to the First Nation by the quarry operator, recoverable by the First Nation in a court of competent jurisdiction **[Note to First Nation: If the First Nation is located in British Columbia, consider adding "or in a proceeding before the civil resolution tribunal,".]**, and may also be recovered by any other method authorized under the Taxation Law, and for this purpose Parts XIII, XIV, XV and XVI **[Note to First Nation: Confirm these Parts accurately refer to the collection and enforcement provisions in the First Nation's Taxation Law]** of that law apply to the collection and enforcement of unpaid quarry operations taxes, including with respect to the recovery of the costs of enforcement incurred by the First Nation.

(2) The use of one method of collection and enforcement does not prevent seeking recovery by one or more other methods.

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

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

(a) recoverable by the First Nation as set out in Schedule V; and

- (b) payable by the business operator as unpaid taxes.

PART VIII

COMPLAINTS TO TAX ADMINISTRATOR

Complaints to Tax Administrator

21.(1) A quarry operator may deliver a complaint to the tax administrator respecting an alleged error or omission in a Notice of Tax Reassessment.

(2) A complaint under this section must

(a) be in the form set out in Schedule IV;

(b) be delivered to the tax administrator within thirty (30) days after taxes are due, or within thirty (30) days after receipt of a Notice of Tax Reassessment, as applicable; and

(c) include any reasons in support of the complaint.

(3) Within twenty-one (21) days after receipt of a complaint, the tax administrator must review the matter and attempt to resolve the complaint.

(4) If the tax administrator concludes that there was an error or omission in the Notice of Tax Reassessment, the tax administrator must mail an amended Notice of Tax Reassessment correcting the error or omission, and subsections 10(4) to (8) and (10) apply to that Notice.

(5) The tax administrator must advise Council of each complaint received under this section, including the nature of the complaint and the resolution of the complaint, if any.

PART IX

GENERAL PROVISIONS

Disclosure of Information

22.(1) The tax 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 proceedings before [Note to First Nation: Add “the civil resolution tribunal or,” if this change was made above.] a court of law; or

(c) in accordance with subsection (2).

(2) The tax administrator may disclose to the agent of a quarry operator confidential information relating to the business or interest in reserve lands if the disclosure has been authorized in writing by the quarry operator.

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

Disclosure for Research Purposes

23. Notwithstanding section 22,

(a) the tax 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; and

(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.

Validity

24. 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 First Nation or the tax administrator;
- (b) an incorrect or incomplete assessment of tax by the First Nation or the tax administrator;
- (c) an error or omission in a Notice of Tax Reassessment or other notice given under this Law; or
- (d) a failure of the First Nation or the tax administrator to do something within the required time.

Limitation on Proceedings

25.(1) 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 described in this section, then money paid to the First Nation is deemed to have been voluntarily paid.

Notices

26.(1) Where in this Law a notice is required to be given, it must be given

- (a) by mail to the recipient's ordinary mailing address or the address for the business premises;
- (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 the business premises; or
- (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address or the address for the business premises.

(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

27.(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.

Force and Effect

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

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

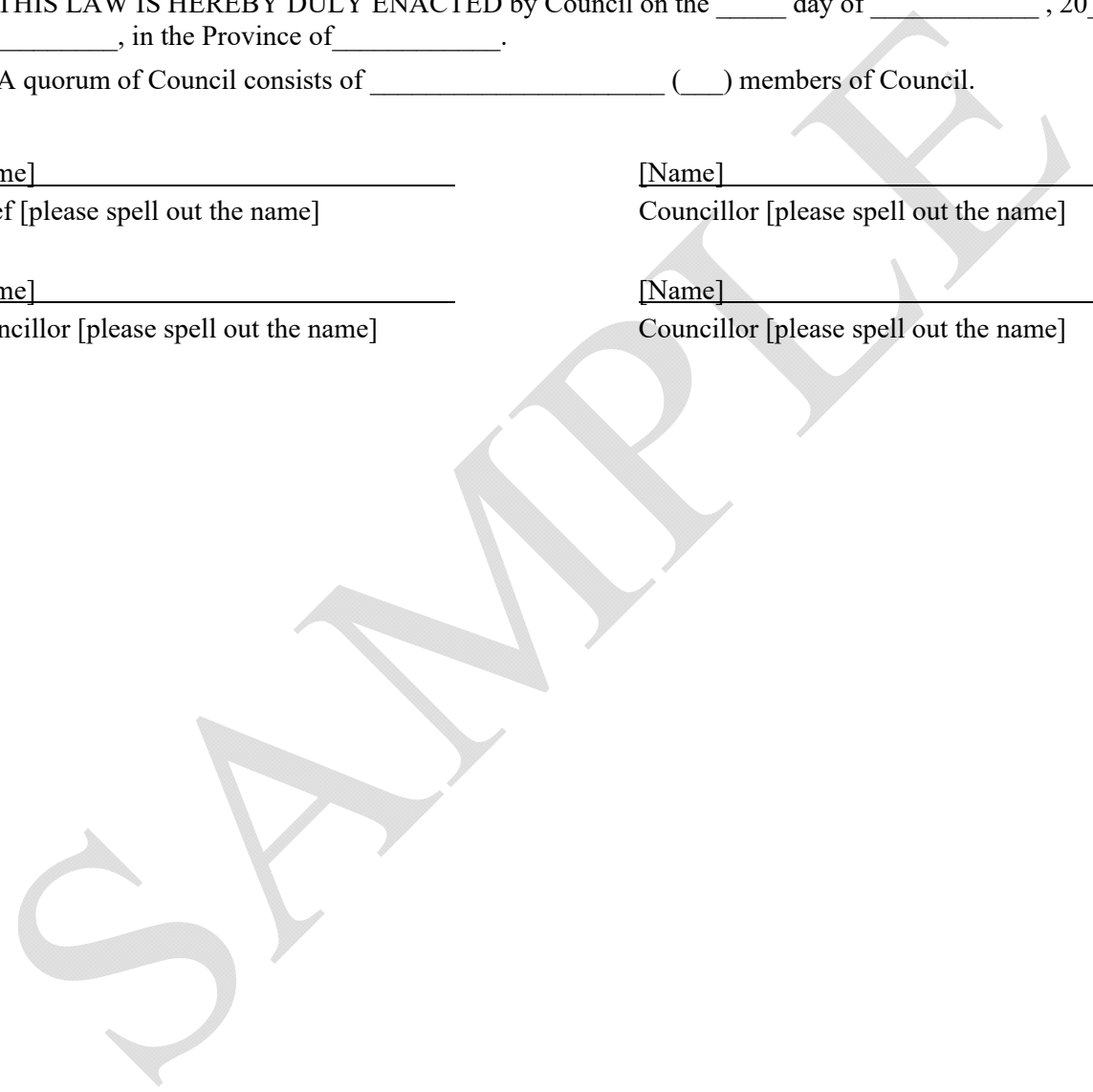
A quorum of Council consists of _____ (____) members of Council.

[Name] _____
Chief [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]



SCHEDULE I
QUARRY OPERATIONS TAX RETURN

NOTE:

1. Every quarry operator must complete and deliver a Return for each calendar year even if no tax is payable.
2. Every quarry operator must complete and deliver a Return and pay all tax payable on or before March 31 in the following year in order to avoid penalties and interest. For late payments, a penalty of ten percent (10%) may be assessed. Interest accrues on unpaid amounts at a rate of fifteen percent (15%) per year.
3. All taxes are due and payable no later than March 31 of the following year.
4. Payments must be made at the offices of the _____ First Nation, at **[insert address]**, by cash, cheque or money order.
5. Cheques and money orders must be made payable to the _____ First Nation.
6. Payments for unpaid taxes and interest are past due and must be paid immediately.
7. All Returns are subject to review and reassessment in accordance with the _____ *First Nation Quarry Operations Tax Law, 20__*.

QUARRY OPERATOR NAME: _____

ADDRESS: _____

Calendar Year: From _____, 20__ to _____, 20__

Tonnes of Quarry Materials Extracted: _____ (a)

Total taxes payable during year: (a) x 0.15 = \$ _____

Total amount paid (enclose payment): \$ _____

CERTIFICATION:

For an individual quarry operator:

I hereby certify that the information given in this Return is complete and correct in all respects.

Name:

Signature:

Date signed:

OR

For a corporate quarry operator:

I hereby certify that the information given in this Return is complete and correct in all respects, and that I am an authorized signatory of the quarry operator.

Name and Title:

Signature:

Date signed:

SCHEDULE II
NOTICE OF TAX REASSESSMENT

DATE OF NOTICE: _____, 20__

NAME OF QUARRY OPERATOR: _____

ADDRESS: _____

Pursuant to section __ of the _____ *First Nation Quarry Operations Tax Law, 20__*, the tax administrator for the _____ First Nation has conducted a reassessment of the taxes owing by the above-referenced Quarry Operator with respect to the quarry located at:

Calendar Year to Which This Notice Applies: _____, 20__ to _____, 20__.

Reason for this Reassessment:

- The quarry operator failed to deliver a Return for the calendar year.
- The Return delivered by the quarry operator contained an error or omission.
- The quarry operator did not pay the correct amount of tax for the calendar year.

Indicate any additional details relating to the reason indicated above: _____

SUMMARY OF REASSESSMENT:

Tonnes of quarry material removed during calendar year:	_____ (a)
Total taxes payable during calendar year:	(a) x \$0.15 = \$ _____
Total amount paid by quarry operator:	\$ _____
Amount owing by quarry operator as of the date of this Notice:	\$ _____
Penalty assessed as of the date of this Notice:	\$ _____
Interest assessed as of the date of this Notice:	\$ _____
TOTAL DUE AND OWING:	\$ _____
REFUND OWING:	\$ _____

All taxes owing are overdue and payable in full immediately and continue to bear interest in accordance with the _____ *First Nation Quarry Operations Tax Law, 20__*.

Please contact our office if you have any questions about this Notice.

Tax Administrator for the _____ First Nation
[insert contact information]

SCHEDULE III
REQUEST FOR INFORMATION BY TAX ADMINISTRATOR
FOR THE _____ FIRST NATION

TO: _____

ADDRESS: _____

PURSUANT to section ____ of the _____ *First Nation Quarry Operations Tax Law, 20__*, 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 relating to the above-noted business:

- (1)
- (2)
- (3)

Tax Administrator for the _____ First Nation

Dated: _____, 20__.

SAMPLE

SCHEDULE IV
COMPLAINT TO TAX ADMINISTRATOR RESPECTING
QUARRY OPERATIONS TAX

TO: Tax Administrator for the _____ First Nation
[address]

NAME & ADDRESS OF QUARRY OPERATOR: _____

PURSUANT to the provisions of the _____ *First Nation Quarry Operations Tax Law*,
20__, I hereby make a complaint that there is an error or omission in a Notice of Tax Reassessment.

The details of my complaint are as follows:

- (1)
- (2)
- (3)

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

Mailing address to which a reply to the complaint is to be sent:

Name of Complainant (please print)

Signature of Complainant (or representative)

Dated: _____, 20__.

A copy of the Notice of Tax Reassessment is enclosed with this Form.

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

The First Nation's costs arising from the collection and enforcement of unpaid taxes are payable by the debtor as follows:

1. For preparation of a notice by the First Nation \$
2. For service of notice on each person or place by the First Nation \$
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. For staff time spent in undertaking collection and enforcement procedures, not including costs otherwise recovered under this Schedule: \$ ___ per person per hour
6. Actual costs incurred by the First Nation for carrying out enforcement measures not otherwise recovered under this Schedule will be charged based on receipts.