

CERTIFICATION

Pursuant to Section 86, *Indian Act RSC 1985 C.I-5* and amendments thereto, I certify that the attached copy of the Deputy Minister's Approval Order, dated the 27th day of May, 1994, and the Tsawout Indian Band "Taxation Bylaw" dated the 30th day of March, 1994, are true copies of the said Order and Bylaw.



Richard Frizell, Director
Lands and Trust Services, B.C. Region;
a Superintendent as defined in
Indian Act, RSC 1985.



I, the Minister of Indian Affairs and Northern Development, HEREBY APPROVE, pursuant to section 83 of the *Indian Act*, the following by-laws made by the Tsawout Indian Band, in the Province of British Columbia, at a meeting held on the 30th day of March 1994.

- **Tsawout Indian Band Taxation By-law**
- **Tsawout Indian Band Assessment By-law**

Dated at Hull, Quebec

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a horizontal line extending to the right.

this 27th day of May, 1994.

Tsawout Indian Band

TAXATION BY-LAW

WHEREAS:

The Tsawout Indian Band deems it advisable and in the best interests of the members of the Tsawout Indian Band to establish, by by-law, a system on the reserve lands of the Tsawout Indian Band for the fair and equitable taxation for local purposes of land, or interests in land, including rights to occupy, possess or use land in the reserve;

NOW BE IT HEREBY RESOLVED

That the following by-law be and is hereby enacted for the purpose of taxation for local purposes of land, or interests in land, including rights to occupy, possess or use land in the reserve pursuant to the provisions of the Indian Act, R.S.C., and in particular pursuant to the provisions of section 83 (1) of the Indian Act, R.S.C.

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NOTE

There are no sections 25-29, 36-39, 56-59, or 68-79 at present.

Interpretation

1. In this by-law

"assessment"	"assessment" means a valuation of property for taxation purposes;
"assessment by-law"	"assessment by-law" means the assessment by-law passed by the chief and council of the band and approved by the minister as the same may be amended from time to time;
"assessment roll"	"assessment roll" includes a supplementary assessment roll and includes anything recorded as an addendum to the assessment roll under the Assessment By-Law and includes a revised assessment roll;
"assessor"	"assessor" means an assessor appointed under the Assessment By-Law;
"band"	"band" means the Tsawout Indian Band;
"band council resolution"	"band council resolution" means a motion, as recorded in the minutes of the meeting, passed and approved at a duly convened meeting of the council pursuant to the consent of a majority of the councillors of the band present at that meeting;
"band land"	"band land" means band land as defined in the Assessment By-Law;
"chief"	"chief" means the chief of the Tsawout Indian Band as elected by the members of the Tsawout Indian Band pursuant to the provisions of the Indian Act or as chosen according to the custom of the Band;
"chief and council"	"chief and council" means the chief and council of the Tsawout Indian Band as elected by the members of the Tsawout Indian Band pursuant to the provisions of the Indian Act or as chosen according to the custom of the Band;

"cp" means a Certificate of Possession as defined under subsections 20(1) and 20(2) of the Indian Act; and for the purposes of this By-law only, includes a Notice of Entitlement and a Certificate of Occupation as defined under subsections 20(4) and 20(5) of the Indian Act or any other permits, agreements or licenses issued from time to time by Band council Resolution authorizing the use of band land by a Band member;

"farm land" means a farm as defined in the Assessment By-Law;

"improvements" means improvements as defined in the Assessment By-Law;

"Indian Act" means the Indian Act, R.S.C. 1985 c.I-6 and any amendments thereto;

"interest holder" means a person who has an interest in land, including rights to occupy, possess or use land in the reserve, and improvements;

"interest in land" means interest in land as defined in the Assessment By-Law;

"land" means land as defined in the Assessment By-Law;

"land title office" means the land title office as defined in the Assessment By-Law;

"legal description" means a description sufficient to describe a property for the purpose of its registration in a land title office or the Reserve Land Register;

"minister" means the Minister of Indian Affairs and Northern Development;

"municipality" means, in accordance with the context, either any area incorporated as a city, district, township, town or village, under any Act of the Province of British Columbia, or the corporation into which the residents of the area have been incorporated as a municipality or regional district pursuant to the provisions of the Municipal Act of the Province of British Columbia;

"parcel" "parcel" means a parcel as defined in the Assessment By-Law;

"person" "person" means person as defined in the Assessment By-Law;

"property" "property" means property as defined in the Assessment By-Law;

"registered" "registered" and "registration", when used in respect of real property, refer to registration in the books of the land title office or the books of the Reserve Land Register;

"registered owner" "registered owner" means registered owner as defined in the Assessment By-Law;

"reserve" "reserve" means those lands, the legal title to which is vested in Her Majesty, that have been set apart by Her Majesty for the use and benefit of the band, whether they be designated lands or conditionally surrendered lands or otherwise;

"reserve land register" "reserve land register" means the register kept by the Department of Indian Affairs and Northern Development pursuant to section 21 of the Indian Act and the register kept by the Department of Indian Affairs and Northern Development pursuant to section 55 of the Indian Act;

"surveyor of taxes" "surveyor of taxes" means the surveyor of taxes appointed under this by-law;

"taxes" "taxes" includes all taxes on property or other basis of assessment imposed, levied, assessed or assessable under this by-law, and all percentage additions, penalties and interest added to taxes under this by-law;

"trustee" "trustee" means trustee as defined in the Assessment By-Law.

PART 1

General Taxation Provisions

Taxation

2. (1) As provided in this by-law, and for raising revenue for local purposes,
 - (a) land and interests in land are subject to taxation;
 - (b) subject to any exemption contained in this by-law, every interest holder of land shall be assessed and taxed on his interest in such land; and
 - (c) where two or more persons are interest holders in respect of the same parcel of land, those persons are jointly and severally liable to the extent of their respective interests in such land for the taxes levied under this by-law.
- (2) A person assessed may appeal as provided in the Assessment By-Law.
- (3) Taxes levied under this by-law relate to the calendar year in which the levy is first made and are based on the assessed values of land as provided under the Assessment By-Law.

Confidentiality

3. (1) A person who has custody of or control over information or records under this by-law shall not disclose the information or records to any other person except
- (a) in the course of administering or enforcing this or another taxation by-law,
 - (b) in court proceedings relating to this or another taxation by-law,
 - (c) under an agreement that
 - (i) is between the band and another band within the meaning of "band" as used in the Indian Act or another government,
 - (ii) relates to the administration or enforcement of taxation By-Laws, and
 - (iii) provides for the disclosure of information and records to and the exchange of similar information and records with that other band or government, or
 - (d) for the purpose of the compilation of statistical information by the band or the government of Canada.
- (2) Subsection (1) does not apply in respect of a taxation roll.

Duty of person liable for payment of taxes to keep records

4. Every person shall keep books of account and records that are adequate for the purposes of this by-law and conform to generally accepted principles of accounting. Upon failure to comply with this section of the by-law the assessor for the Band shall assess the property on the basis of the information he finds appropriate at the time of assessment.

Liability of officers of corporations

9. A director, manager, secretary or other officer of a corporation or association, or a member of a partnership or syndicate, who knowingly and wilfully authorizes or permits a failure to comply with this by-law on the part of the corporation, association, partnership or syndicate also fails to comply with this by-law.

Date for payment of taxes

10. (1) Taxes levied under this by-law are due and payable on July 2 of the year they are first levied.
- (2) If a portion of the taxes remains unpaid on July 2 of the year they are first levied, there shall be added to them, as a penalty, 5% of the unpaid taxes; and if a portion of taxes remains unpaid on October 31 of the year they are first levied, there shall be added to them, as an additional penalty, a further 5% of the unpaid taxes and the amount so added in each case shall for all purposes be deemed part of the taxes.
- (3) If a portion of the taxes, including penalties, remains unpaid on December 31 in the year they are first levied, they are deemed delinquent on that day, and after that day shall bear interest at a rate prescribed by the chief and council by by-law until paid or recovered. Accrued interest shall for all purposes be deemed part of the delinquent taxes as if it had originally formed part of the taxes.

Interest on prepaid taxes

11. (1) The surveyor of taxes shall and is authorized to receive deposits of money on behalf of the Tsawout Indian Band to be applied to taxes levied under this by-law and to provide for the payment to the person liable for the taxes interest as follows;
1.5% above the prime lending rate of the principal banker to the Tsawout Indian Band on December 15, 1994, and
- (b) during each successive period beginning on July 1, October 1, January 1, and April 1 in every year, 1.5% above the prime lending rate of the principal banker to the Tsawout Indian Band on the 15th day of the month immediately preceding that period.

(2) Money required

- (a) to be paid under this by-law, or
- (b) as a refund of that part of a deposit in excess of tax payable,

may be paid out of the taxation fund established pursuant to this by-law.

Taxation Fund

12. The Band may accept payment of taxes by way of a grant-in-lieu of taxes from the Government of Canada, the Government of the Province of British Columbia, or from a corporation included in schedule III or IV of the Municipal Grants Act, 1980 R.S.C. 1985, Ch. M-13. All funds received pursuant to this by-law shall be deposited in a separate special account covered by deposit insurance in trust for the Tsawout Indian Band, and until required to be used, may be invested in:

- (a) securities of Canada or of a province;
- (b) securities guaranteed for principal and interest by Canada or by a province;
- (c) investments guaranteed by a chartered bank; or
- (d) deposits in, or shares or evidence of debt of, a credit union or trust company.

Place and mode of payment

- 13. (1) Taxes are payable to the Tsawout Indian Band at the office of the surveyor of taxes on the Tsawout Indian Band reserve, and may be paid by cash, cheque, post office money order, postal note or express orders.
- (2) Payment tendered by cheque or other order shall be made payable to the Tsawout Indian Band and the tax shall be deemed not paid, even if a receipt is given, until the amount of the cheque or order is received by the Tsawout Indian Band.

The next section is section 20

PART 2

Taxation of Land and Interests in Land

Taxation: exemption

20. (1) The following property is exempt from taxation:
- (a) land occupied or held by a member of the Tsawout Indian Band;
 - (b) land occupied or held by the Tsawout Indian Band;
 - (c) land occupied or held by a body corporate owned or controlled by the Tsawout Indian Band.

Year in which exemption change takes effect

21. (1) Where a property is acquired by a person entitled to tax exemption under section 20 (a), the exemption becomes effective in the taxation year succeeding the year property is acquired by the person.
- (2) Where a property is acquired by a body corporate entitled to an exemption under section 20 (c), the exemption from taxation shall be for a period of five years from the date of acquisition of the property or the date this by-law comes into force, whichever shall be later.
- (3) A body corporate owned or controlled by the Tsawout Indian Band may, upon expiry of an exemption pursuant to sections 20 (c) and 21 (2), apply to chief and council for a further exemption for a period not exceeding five years and the chief and council may grant such an extension provided that, in the opinion of chief and council, such an extension would be in the best interests of the Tsawout Indian Band.

Assessment in name of interest holder

22. (1) Subject to subsections (2) and (3), land and interests in land shall be assessed and taxed in the name of the interest holder.

- (2) Where a statement verified by affidavit is furnished to the assessor showing that a parcel of land and improvements have been assigned, sold or leased by the interest holder to another person, the other person's name shall be noted on the assessment roll, and like notice of the assessment shall be sent to him as to the interest holder. The taxes assessed in respect of that land and improvements may then be recovered either from the interest holder, or from the assignor, purchaser or tenant, or from a future interest holder, assignor, purchaser or tenant, saving his recourse against other persons; but in case of an assignment or sale, if the registered interest holder furnishes a statement to the assessor under this section showing that an assignment or other form of transfer of land has been executed and delivered to the purchaser, the registered interest holder is not personally liable to pay taxes assessed after that for the land and improvements.
- (3) Where
- (a) land, the title of which is in the name of Her Majesty, is held under a lease, licence, agreement for sale, accepted application for purchase, easement, right of way, or otherwise;
 - (b) land is held in trust for the Tsawout Indian Band or the members of the Tsawout Indian Band and held or occupied by a person who is not a member of the Tsawout Indian Band; or
 - (c) land is assessed under section 35 of the Assessment By-Law, the land or interest in land shall be assessed and the interest holder taxed; but the assessment or taxation shall in no way affect the rights of Her Majesty in the land.
- (4) Notwithstanding subsection (3) and section 2, where a person is an interest holder of reserve land and he is a person;
- (a) who donated it to the Crown in right of Canada for the use and benefit of the Tsawout Indian Band or the members of the Tsawout Indian Band;
 - (b) who sold it to the Crown in right of Canada on behalf of the Tsawout Indian Band or the members of the Tsawout Indian Band at a value that was, in the opinion of the chief and council, substantially less than its market value; or

- (c) designated by, and who does not pay rent or other valuable consideration for the property he occupies to, the person who donated or sold the property to the Crown in right of Canada on behalf of the Tsawout Indian Band or the members of the Tsawout Indian Band under paragraph (a) or (b),

he shall not be taxed as an interest holder under subsection (3) so long as the chief and council is satisfied he qualifies under this section and the regulations.

Assessed value

23. The assessed value of land and improvements shall be determined under the Assessment By-Law.

Variable tax rate system.

24. (1) In this by-law

"property class" "property class" means a class of property prescribed under the Assessment By-Law;

"variable tax rate system" "variable tax rate system" means a system under which individual tax rates are determined and imposed for each property class.

- (2) The chief and council shall make provisions for the taxation of land and improvements under this by-law including the prescribing of tax rates.
- (3) By prescribing tax rates under subsection (2), the chief and council shall be deemed to have adopted a variable tax rate system.
- (4) Where the tax imposed on a parcel of land under subsection (2) is less than \$100.00, the parcel shall be taxed \$100.00, and that sum shall be placed on the taxation roll.
- (5) The variable tax rates for 1994 and for each year thereafter prescribed by the chief and council pursuant to subsection (2) are those tax rates set out in Schedule "A" to this by-law, such tax rates to be applied against each one thousand dollars (\$1,000.00) of actual value of property in each respective class as set out in Schedule "A" of this by-law.

PART 3

Taxation Rolls

Taxation roll and notices

30. (1) Under the direction of the chief and council, the surveyor of taxes shall prepare a taxation roll which shall, for each parcel of land on which taxes are imposed or levied under this by-law, or under another by-law that provides for collection of taxes under this by-law, set out the information in the form that the chief and council may prescribe by by-law.
- (2) On completion of the taxation roll the surveyor of taxes shall mail to every person named in it, on or before May 31 in every year, a taxation notice in the form and containing the information that the chief and council may prescribe by by-law.
- (3) The taxation notice shall be directed to the last known assessed interest holder.
- (4) Taxes levied and collected under this by-law shall, except as otherwise provided, be calculated, levied and accounted for by the surveyor of taxes to the chief and council on the assessed values entered in the assessment roll as provided under the Assessment By- Law.
- (5) The duties imposed on the surveyor of taxes by the chief and council pursuant to this by-law and other by-laws of the Tsawout Indian Band as to the annual taxation roll, and all provisions of this by-law on taxation rolls apply, so far as applicable, to the supplementary taxation rolls and, notwithstanding this by-law, unless a supplementary assessment roll has been incorporated into the taxation roll under subsection (6) taxes on supplementary taxation rolls are due on the date that the supplementary taxation notice is mailed.
- (6) Where, before or after the taxation roll is completed and before a taxation notice is mailed under subsection (2), a supplementary assessment roll is prepared under the Assessment By-Law that results in a change in the tax payable for that taxation year, the surveyor of taxes, subject to the direction of the chief and council, may incorporate the supplementary assessment roll into the taxation roll to reflect the amended tax payable and may issue a single tax notice showing the amended tax payable.

Taxation roll open to public

31. The taxation roll shall be placed in the office of the surveyor of taxes, or such other place as the chief and council may direct, and the roll shall be open for inspection by the public during office hours.

Taxation roll property of the Tsawout Indian Band

32. The taxation roll is the property of the Tsawout Indian Band.

Refund of taxes wrongfully assessed

33. (1) Where, subsequent to completion, certification or deposit of a taxation roll under this Part, it is shown that a property recorded on the roll was not liable to taxation for the year for which it was taxed, or has been taxed for more than the proper amount, the surveyor of taxes shall, at the direction of the chief and council, remit or refund to the person liable for the unpaid taxes the amount of taxes shown to have been imposed in excess of liability.
- (2) Where taxes imposed under this by-law are due from a person liable for the unpaid taxes to whom an amount is to be refunded under this section, the amount may, in the discretion of the chief and council, be refunded in whole or in part by being applied as a credit on account of the taxes due or accruing due.

Power to remit or reduce taxes on ground of poverty

34. The chief and council may, at any time after the mailing of the taxation notices for that year, with or without notice, receive a petition from an interest holder of land who declares himself, from sickness or extreme poverty, unable to pay the taxes levied against him, and may remit or reduce the taxes due by the petitioner or reject the petition.

Collection pending appeals

35. Where an appeal from the decision of a Board of Review is made, any delay in hearing of the appeal or the rendering of a decision shall not affect the due date, the delinquency date, the interest or any liability for payment provided by this by-law in respect of tax levied on the assessed value that is the subject of the appeal; but if the assessment is set aside or the assessed value reduced on appeal, the person liable for the unpaid taxes on completion of the action, shall be entitled to a refund of the tax or excess tax paid by him, or any interest imposed or paid on the tax or arrears.

PART 4

Recovery of Taxes

Recovery: personal liability

40. (1) An interest holder of land named in the taxation roll in any year is liable for all taxes imposed during the year and all unpaid taxes imposed in previous years.
- (2) The liability for taxes is a debt recoverable with interest as provided in this by-law or by action in a court of competent jurisdiction.
- (3) A copy of that part of the taxation roll that refers to the taxes payable by an interest holder of land certified by the assessor as a true copy, is evidence of the debt.

Lien for taxes

41. (1) Taxes assessed or imposed and due for land and improvements under this by-law, or any property subject to taxation under another by-law, form a lien and charge in favour of the Tsawout Indian Band on the entire property taxed; and every lien or charge created by this subsection has priority over every other lien, charge or encumbrance on the property, from the time of registration.
- (2) The lien or charge created by this section and its priority is not lost or impaired by any neglect, omission or error of the chief and council, the surveyor of taxes or of any other agent or officer, or by taking or failing to take proceedings to recover the taxes due, or by tender or acceptance of partial payment of the taxes or by want of registration.

Effect of sale of property subject to lien

42. No sale or transfer of possession of any property subject to a lien or charge in favour of the Tsawout Indian Band shall affect the right of distress or sale of the property under this by-law for the recovery of the taxes.

Unpaid taxes constitute charge

43. Where property is sold or assigned the amount of the tax lien for unpaid taxes constitutes a charge on the proceeds of sale or assignment.

Notice before taking proceedings

44. (1) Before taking proceedings for the recovery of taxes under this by-law, the chief and council shall give 30 days notice to the person liable for payment of the delinquent taxes of their intention to enforce payment.
- (2) The notice may be given by letter mailed to the address of the person liable for payment of the unpaid taxes as last known to the chief and council, or by a general or special advertisement in a newspaper of general circulation published in the Province of British Columbia.

Recovery of taxes by action in court

45. Taxes which are due may be recovered by action in any court of competent jurisdiction as a debt due to the Tsawout Indian Band, and the court may order costs in favour of or against the Tsawout Indian Band.

Distress: Seizure of goods

46. (1) With the authorization of the Chief and council, if the taxes or any portion of the thereof remain unpaid after the 30 day period provided by section 44, proceedings by way of distress, as set out herein, may be taken by the Band.
- (2) The Band shall serve a Notice of Distress on the tax debtor and provide a copy of same to the locatee, where applicable, in the form set out in Schedule "B".
- (3) If the taxes, or any portion thereof, remain outstanding following the time provided by the Notice of Distress, then the Band shall effect a seizure by distress of such property, and post a notice of the property which is seized pursuant to this section on the land. The seized property shall then be in the possession of the Band, as represented by the surveyor of taxes.
- (4) So long as the taxes, or any portion thereof, remain outstanding, no goods seized pursuant to section 46(3) which are located on reserve shall be removed therefrom, and any such removal shall be considered a trespass. Without restricting the generality of the foregoing, no such property shall be seized by a bailiff, sheriff, assignee or liquidator or trustee, or authorized trustee in bankruptcy, except under the authority of the Chief and council.

Distress: Sale of goods seized by distress

47. (1) If the Band seizes by distress the tax debtor's goods pursuant to section 46(3), and the tax debtor does not commence legal proceedings in a court of competent jurisdiction within 60 days after the date of seizure challenging such, the property may be sold in accordance with this Part and the tax debtor is estopped from denying the validity of the seizure and sale of such property.
- (2) Upon expiration of 60 days after seizure by distress pursuant to section 46(3), if the outstanding taxes have not been paid in full, the goods seized will be deemed to have been abandoned by the tax debtor and, may be sold by public auction, the proceeds of which will be used for payment of taxes.
- (3) A Notice of Sale of Goods Seized by Distress in the form set out in Schedule "C" to this By-law shall be published in at least one newspaper of general local circulation for 7 days prior to the sale, and shall be posted on the tax debtor's premises located on reserve.
- (4) The sale of goods seized by distress shall be conducted at the time and place advertised pursuant to subsection (3), unless it is necessary to adjourn such sale, in which case an additional notice shall be published in the manner provided in subsection (3).
- (5) Any surplus resulting from the sale conducted pursuant to subsection (4), after deducting all liabilities of the tax debtor, including all costs and charges arising from the sale, shall be paid to the owner of the property seized. In the event that the surveyor of taxes is uncertain as to the person entitled to such surplus the surveyor of taxes shall pay such money into court by way of interpleader action.
- (6) Any goods of any tax debtor that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made are exempt from seizure under this section.

Sale of Improvements or Proprietary Interest

48. (1) With the authorization of the Chief and council, if the taxes or any part thereof remain unpaid after expiration of the 30 day period provided in section 46, proceedings by way of sale of improvements or proprietary interests, may be taken by the Band. The Band shall serve the tax debtor and locatee, where applicable, a Notice of Sale of Improvements and Disposition of Interests on Reserve, in the form set out in Schedule "D" to this By-law.
- (2) On June 30 following the year in which the taxes are imposed, and upon the failure of the tax debtor to pay the outstanding taxes or to commence legal proceedings in a court of competent jurisdiction challenging the sale or disposition, the Band through its surveyor shall sell the improvements or dispose the interest of the tax debtor in the Reserve by public auction, or pursuant to subsection (3) by public tender.
- (3) The Chief and council shall prescribe the method of public tender, including the conditions of sale, method of publication or circulation, and conditions attached to the acceptance of any offer.
- (4) A Notice of Sale of Improvements Disposition of Interest in the Reserve in the form in Schedule "D" to this By-law shall be published in at least one newspaper of general local circulation for 7 days prior to the sale, and shall be posted on the tax debtor's premises located on reserve.
- (5) The sale of the improvements and disposition of interest in the Reserve shall be conducted at the time and place advertised pursuant to subsection (3), unless it is necessary to adjourn such disposition. If an adjournment is necessary an additional notice shall be published in the same manner provided by subsection (3).
- (6) The surveyor of taxes, upon receiving the prior approval of the Chief and council, may at any sale and disposition conducted pursuant to subsection (2) or (4), set an upset price equal to the outstanding taxes with respect to that property, and that upset price shall be the lowest price for which the improvements may be sold and the interest in the Reserve disposed.
- (7) Where the surveyor of taxes sets an upset price pursuant to subsection (6), and there is no bid at the sale and disposition conducted pursuant to subsection (2) or (4) that is equal to or greater than the upset price, the Band shall be deemed to be the purchaser and shall acquire the interest in the land free and clear of all encumbrances or charges.

- (8) At any time within six months after the sale and disposition held pursuant to subsection (2) or (4), the tax debtor may redeem his/her improvements and interest in the Reserve by paying to the Band in the full amount of all taxes for which the improvements were sold and the interest disposed, together with all taxes which have subsequently fallen due.
- (9) If upon the expiration of the redemption period provided by subsection (8), any amount of the taxes remains outstanding, the sale of the improvements or disposition of the interests shall be considered final and with Ministerial consent, the purchaser shall obtain title to the improvements and to the tax debtor's interest in the Reserve. The surveyor of taxes shall certify the sale in the form provided in Schedule "D 1" to this By-law. A certificate issued under this section shall be registered in the Surrendered and Designated Lands Register or the Reserve Land Registry and shall be served on the tax debtor.
- (10) Upon the filing of the certificate provided by subsection (9), the Purchaser shall be substituted for the tax debtor as the holder of the interest in the Reserve, and in addition to any other obligations, shall be liable for all future taxes assessed against that interest.
- (11) Upon the filing of the certificate provided by subsection (9), any surplus resulting from the sale and disposition conducted pursuant to subsection (2) or (4), after deducting all outstanding taxes of the tax debtor, including all costs and charges arising from the sale and disposition, shall be paid or returned to the tax debtor. In the event that the surveyor of taxes is uncertain as to the person entitled to such surplus the surveyor of taxes shall pay such money into court by way of interpleader action.
- (12) Upon the filing of the certificate provided by subsection (9), any remaining debt of the tax debtor with respect to that property, including all costs and charges arising from the sale and disposition, shall be extinguished.
- (13) If, pursuant to subsections (7) and (8) the Band has become the owner of the improvements and interest in the Reserve, the surveyor of taxes may sell such within 90 days for not less than the upset price pursuant to subsection (6).

Cancellation of Proprietary Interest Held by Taxpayer

- 49.(1) With the authorization of the Chief and council, if the taxes or any part thereof remain unpaid, after the 30 day period provided by section 46 has expired proceedings by way of cancellation of proprietary interest, as set out herein, may be taken by the Band. The Band shall serve a Notice of Cancellation of the tax debtor's interest in the Reserve in the form set out in Schedule "E" to this By-law.
- (2) The Band shall mail a copy of the notice referred to in subsection (1) to every place where the interest is registered and to the locatee, where applicable.
- (3) Where taxes with interest are not paid before June 30 of the year following the taxation year in which they were imposed, the lease, licence or permit to occupy the property which is the subject of the unpaid taxes may be cancelled. The surveyor of taxes shall certify the cancellation in the form provided in Schedule "F" to this By-law. A certificate issued under this section shall be registered in the Surrendered and Designated Lands Register and the Reserve Land Register.
- (4) Upon cancellation of the tax debtor's interest and with the consent of the Minister the Band shall acquire the interest in the land free and clear of all encumbrances or charges.

Forfeiture of Property

- 49.(5)(1) Notwithstanding any other action for the recovery of taxes set out in this By-law, if any taxes remain unpaid 24 months after the mailing of the notice as set out in section 44 to this By-law, the tax debtor's interest in the reserve in respect of which the taxes remain unpaid shall, subject to subsection (2),(3),(4) and (5) herein, be absolutely forfeited.
- (2) The tax debtor's interest in the reserve shall not be forfeited under subsection (1) until the Band serves a Notice of Forfeiture pursuant to subsection (4) and in the form set out in Schedule "G" to this By-law, on the debtor and on anyone else who may be in lawful possession of the lands and the date on which the tax debtor's interest in the reserve forfeits shall be the fortieth day after the date on which the notice was served.
- (3) Prior to serving the Notice of Forfeiture pursuant to subsection (4), the surveyor of taxes shall obtain authorization from the Chief and council to proceed by forfeiture.

- (4) The Notice of Forfeiture shall state:
- (a) that the interest held by the tax debtor in the reserve is subject to forfeiture under this section,
 - (b) the amount of all taxes, costs and fees that are due and payable to the date of the notice,
 - (c) the date on which the interest in the reserve held by the tax debtor will forfeit,
 - (d) the right to prevent forfeiture by payment under this section, and
 - (e) that on forfeiture under this section, the interest held by the tax debtor in the reserve will be forfeited clear of all charges except those rights of way, easements or other such third party interests which otherwise attach to the land or interest in land.
- (5) The Notice of Forfeiture shall be given by mail or by delivering it to the person entitled to it at that person's last known address or to the address of that person which is specified in the records of the Band.
- (6) Where any taxes remain unpaid on December 31 of the second year after the calendar year in which they were imposed, the payment of those taxes does not prevent forfeiture unless the payment:
- (a) includes all taxes then due and payable, and
 - (b) is made before forfeiture occurs under this section.
- (7) With the consent of the Minister, the surveyor of taxes shall certify, in the form set out in Schedule "H" to this By-law that the interest in the reserve held by the tax debtor has been forfeited and the Registrar shall record the document cancelling the tax debtor's interest in the Reserve in the Register of Surrendered and Designated Lands and the Reserve Land Registry.
- (8) Upon forfeiture of the tax debtor's interest the Band shall acquire the interest in the land free and clear of all encumbrances or charges.

Absconding Taxpayer

- 49(6)(1) Where the surveyor of taxes has reasonable grounds to believe that the taxpayer intends to remove his/her goods from the reserve, or intends to dismantle or remove his/her improvements on reserve, or take any other actions which may preclude or impede the collection of outstanding taxes owing pursuant to this By-law, the surveyor of taxes shall apply to the Chief and council for authorization to immediately commence any of the collection proceedings set out in the By-law and abridge or dispense with the time periods required therein.
- (2) In the alternative to subsection 49(6)(1), or upon the request of the Chief and council, the surveyor of taxes may initiate proceedings in a court of competent jurisdiction, notwithstanding the fact that the time for payment of taxes has not yet expired.
- 49(7) With the authorization of the Chief and Council, if the taxes or any part thereof remain unpaid, after the 30 day period provided by section 44 has expired, any services provided by the Band or pursuant to any contract with the Band, to the tax debtor or to the lands or interests located on the reserve which have been assessed pursuant to this By-law may be discontinued. A Notice of Discontinuance of Services in the form of Schedule "I" to this By-law, shall be delivered upon the tax debtor and to the locatee where appropriate, 30 days prior to such discontinuance, and shall include the date, time and place within that 30 days, upon which the tax debtor or the locatee can appear before the Chief and Council to show cause as to why the services should not be discontinued. Following the appearance before Chief and Council, the Chief and council shall determine whether or not it will discontinue such services, and if so advise the person providing such services, to discontinue such services.

Definition of Taxes

51. For the purposes of this Part, "taxes" shall mean, include and be construed to include:
- (a) interest chargeable under this by-law;
 - (b) costs incurred in collection proceedings; and
 - (c) taxes imposed during the year in which collection proceedings are commenced and in subsequent years while they proceed;

- (d) taxes imposed and unpaid for years prior to the year in which collection proceedings are commenced.

Powers for recovery of taxes

- 52. The powers conferred by this Part for recovery of taxes by court proceedings, distress, cancellation of tenure and forfeiture may be exercised separately, concurrently or cumulatively.

Apportionment of taxes

- 53. (1) On satisfactory evidence being produced to the assessor that a parcel of land for which taxes are due has been subdivided by plan of subdivision, or part of another parcel of land on which taxes are due has been sold or assigned and documentation executed and delivered to the purchaser or assignor, the assessor may, by certificate signed by him, deposit with the surveyor of taxes on behalf of the Tsawout Indian Band, an apportionment of the assessed values as approved by the Board of Review for the land and improvements , between
 - (a) the separate parts of the subdivided parcel shown on the plan; or
 - (b) the part of the other parcel sold and conveyed and the remainder of the parcel.
- (2) The chief and council may apportion the taxes to the separate parcels, receive payment of the taxes so apportioned for part of the subdivided parcel or for the part of the other parcel sold and conveyed, and leave the remainder of the subdivided parcel or other parcel chargeable with the remainder of the taxes due.

Statement of taxes paid or in arrears

- 54. (1) The chief and council shall give on demand, to a person making application, a written statement of the taxes, penalty and interest outstanding or a statement that no taxes are outstanding, as the case may be, at that date and may charge for a search and written statement
 - (a) where 3 or less tax rolls folios are searched and for which a written statement is prepared as a result of a request, \$10.00 for each tax roll folio searched, and

- (b) Where more than 3 tax roll folios are searched and for which a written statement is prepared as a result of a request, the amount resulting by multiplying \$45.00 per hour by the number of hours taken to perform the search and prepare the written statement, but not less than \$30.00 in respect of any request.
- (2) The chief and council shall not charge a person for a search where taxes found to be owing are paid promptly.

PART 5

Administration of by-law

Creation of collection districts

60. For the purposes of this by-law, the chief and council may divide the reserve and assessment area into collection districts, define their boundaries, group or subdivide them for their better administration, alter their boundaries and create new districts.

Staff appointments

61. The chief and council may appoint a surveyor of taxes, and appoint such staff as are considered necessary for the proper administration of this by-law.

Duty of surveyor of taxes

62. If appointed by the chief and council pursuant to this by-law, the surveyor of taxes, under the direction of the chief and council, shall be charged with the administration and enforcement of this by-law.

Rules and directions

63. The surveyor of taxes shall obey the rules, orders, and directions of the Tsawout Indian Band which are issued by the chief and council pursuant to this by-law or any other by-law of the Tsawout Indian Band for the purposes of this or any other by-law of the Tsawout Indian Band.

Cancellation of uncollectible taxes

64. If taxes become delinquent and there is no property on which they may be levied, or there are no goods and chattels which can be distrained for them, or in default of sufficient distress, the surveyor of taxes shall forward to the chief and council a statement giving a detailed list of all taxes on the books which the surveyor of taxes considers uncollectible, showing the efforts that have been made to recover the taxes, and that there are no property or effects, that the property or effects are insufficient for the recovery of the taxes or that the person assessed has left the country, and the surveyor of taxes, if instructed by the chief and council, shall cause the taxes to be cancelled on the books.

Rules and directions

65. The chief and council may, by band council resolution, establish such administrative procedures, subject to the provisions of this by-law and the Indian Act, as may be required to carry out the provisions of this by-law and other by-laws of the Tsawout Indian Band effectively.

Procedural Irregularities

66. Provided that there has been substantial compliance with the provisions of this by-law by the person or persons concerned, a procedural irregularity, technical failure to carry out a provision of this by-law, or an insubstantial failure to comply with a requirement of this by-law, by the chief and council, by the surveyor of taxes, by any other person appointed to carry out this by-law, or by a person required to pay taxes under this by-law, shall not, of itself, provide sufficient grounds to invalidate any matter or thing required to be made, performed or done by the chief and council, by the surveyor of taxes, by any other person appointed to carry out this by-law, or by a person required to pay taxes under this by-law.

Tax proceeds

67. (1) On or before April 15 in each year, the chief and council shall certify a copy of the by-law of the Tsawout Indian Band imposing the taxes.
- (2) On receipt of a copy of the by-law, the Surveyor of Taxes shall have the taxes levied placed on the tax roll.
- (3) The taxes levied and collected shall be paid to the Tsawout Indian Band.

(4) The following expenditures of funds raised under this by-law are hereby authorized:

- i) refunds of overpayment and interest,
- ii) all expenses of preparation and administration of this by-law,
- iii) the remuneration of the surveyor of taxes,
- iv) all expenses of enforcement of this by-law, including legal costs,
- v) all expenses incurred in defending any challenge to this by-law or any of its provisions, including legal costs, and
- vi) any refund of taxes due under this by-law.

PART 6

General

80. Any section of this by-law or schedule to this by-law may be amended by a by-law adopted by the chief and council and sent to the Minister in accordance with appropriate section or sections of the Indian Act as amended from time to time.
81. Where a provision in this by-law or schedule to this by-law is expressed in the present tense, future tense or in the past tense, the provision applies to the circumstances as they may from time to time arise without reference to the present tense, future tense or the past tense.
82. This by-law, including the schedules to this by-law, shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.
83. Where any notice, notification, demand, statement or direction is required or permitted to be delivered or given under this by-law, such notice, notification, demand, statement or direction shall be sufficient if mailed by registered mail, postage pre-paid, or delivered personally to:

Tsawout Indian Band
P.O. Box 121
Saanichton, British Columbia
V0S 1M0

Attention: Chief and Council

84. A finding by a court of competent jurisdiction that a section or provision of this by-law is void or invalid shall not affect or bear upon the validity or invalidity of any other section or part of this by-law or this by-law as a whole.

85. The rate of interest under section 10 (3) of this by-law shall be
- (a) during the period January 1, 1995 until March 31, 1995, 1.5% above the prime lending rate of the principal banker to the Tsawout Indian Band on December 15, 1994, and
 - (b) during each successive period beginning on July 1, October 1, January 1, and April 1 in every year, 1.5% above the prime lending rate of the principal banker to the Tsawout Indian Band on the 15th day of the month immediately preceding that period.

Nomenclature

86. When in this by-law the singular is used, the singular shall also imply the plural and the plural shall imply the singular and the masculine shall imply the feminine and the feminine shall imply the masculine. When the conjunctive is used, the conjunctive shall imply the disjunctive and the disjunctive shall imply the conjunctive.

Cancellation of taxes

87. Where, pursuant to section 49 of this by-law, property has been forfeited to, and vested in, the Tsawout Indian Band, the chief and council shall direct the surveyor of taxes to cancel all taxes, penalties and interest due and carried on the taxation roll in respect of the property.
88. This by-law shall come into force and effect upon approval by the Minister.

SCHEDULE A

Prescribed Tax Rates 1994

Class of Property	Tax Rate
1. Residential	
2. Utilities	
3. Unmanaged Forest Land	
4. Major Industry	
5. Light Industry	
6. Business/Other	
7. Managed Forest Land	
8. Recreational Property/ Non Profit Organization	
9. Farm	

SCHEDULE B

NOTICE OF DISTRESS

TO:
ADDRESS:

RE:
(Description of Property)

TAKE NOTICE THAT failure to pay the outstanding tax debt due and owing with respect to the above-noted property, being \$ _____, on or before the expiration of 7 (seven) days after the date of this notice will result in the Surveyor of Taxes, pursuant to section 43(2) of the Tsawout Indian Band Taxation By-law, seizing by distress the property described as follows:

(a general description of the property which has been assessed)

AND FURTHER TAKE NOTICE THAT failure to pay the outstanding tax debt upon the expiration of the 7 (seven) days set out above, will result in a copy of this notice being posted at the locations on reserve where the property is located and will result in the seizure of such property, which will be held in the possession of the Surveyor of Taxes, at your cost, such cost being added to the amount of the taxes outstanding, until the tax debt is paid.

AND FURTHER TAKE NOTICE that pursuant to section 47(1) of the Tsawout Indian Band Taxation By-law, you must commence legal proceedings in a court of competent jurisdiction to challenge such seizure within 60 (sixty) days from the date of such seizure, or you will be estopped from denying the validity of both the seizure and the sale of such property.

AND FURTHER TAKE NOTICE THAT upon the expiration of 60 (sixty) days after the property has been seized and the failure to pay the outstanding tax debt or commence court proceedings as set out above, you will be deemed to have abandoned the property seized and the Surveyor of Taxes may authorize that the property will be sold by public auction. A copy of the Notice of Sale of Property seized by Distress will be posted on your property located on reserve, and will be published for at least 7 (seven) days in the _____ Newspaper, (one or more newspapers of general local circulation) before the date of sale.

DATED AT _____ this _____ day of _____, 19____.

Surveyor of Taxes

SCHEDULE C

A NOTICE OF SALE OF GOODS SEIZED BY DISTRESS

TAKE NOTICE THAT a sale by public auction for outstanding taxes owed to the Tsawout Indian Band (Taxation Authority) will occur on _____, 19__ at ___ o'clock at _____ (Location) on the _____ Reserve.

At the above-noted sale, the following goods, seized by Distress pursuant to sections 47 and 48 of the Tsawout Indian Band Taxation By-law, will be sold, with the proceeds of such sale being used to pay the outstanding tax debt:

GENERAL DESCRIPTION OF THE GOODS

DATED AT _____ this ___ day of _____, 19__.

Surveyor of Taxes

SCHEDULE D

**NOTICE OF SALE OF IMPROVEMENTS AND
DISPOSITION OF INTEREST IN THE RESERVE**

TO:

ADDRESS:

RE:

(Description of Property)

(Interest on Reserve)

(Description of Improvements)

TAKE NOTICE THAT failure to pay all outstanding taxes with respect to the above-mentioned property, being \$ _____, on or before the expiration to 60 (sixty) days after the date of this notice will result in the Surveyor of Taxes for the Tsawout Indian Band holding a sale by public auction (or tender) of the improvements located on the above-mentioned property and a disposition by public auction (or tender) of the above-noted interest on the Reserve. The Sale of Improvements and Disposition of Interest in the _____ Reserve shall be published in the _____ Newspaper for 7 (seven) days prior to such sale and disposition, and shall be posted on the above-noted property located on the Reserve.

AND TAKE NOTICE THAT on or before the expiration of 6 (six) months after the above-mentioned sale and disposition, you may redeem your improvements and interest in the Reserve by paying to the Surveyor of Taxes the full amount of all taxes for which the improvements were sold and the interest disposed, together with all taxes which have subsequently fallen due, including without restricting, the cost of the above-mentioned sale and disposition. If upon the expiration of those 6 (six) months any amount of the taxes remain outstanding, the sale of the improvements and disposition of the interest will be declared final, and the purchaser shall obtain both your title in the improvements sold and your interest in the Reserve.

AND TAKE NOTICE THAT upon the sale and disposition being declared final, you will be required to immediately vacate the property, and any rights or interests which you held in the improvements and to the Reserve land will be transferred in full to the purchaser.

DATED AT _____ this _____ day of _____, 19__.

Surveyor of Taxes

SCHEDULE D1
CERTIFICATION OF SALE AND
DISPOSITION OF INTEREST ON RESERVE

RE:

(Description of Interest on Reserve)

(Description of Improvements)

I, _____, Surveyor of Taxes of the Tsawout Indian Band, hereby certify that resulting from the failure of _____ (Tax Debtor) to pay the outstanding tax debt on the above-mentioned interest on Reserve, that interest has been disposed of by Public Auction (or Tender) and the above-mentioned improvements have been sold by Public Auction or Tender pursuant to the Tsawout Indian Band Taxation By-law. The following person shall, pursuant to section 48(9) of that By-law, be substituted for the Tax Debtor as the holder/owner of the above-noted interest in the Reserve, including the improvements:

NAME AND ADDRESS OF PURCHASER AT SALE

DATED AT _____ this _____ day of _____, 19__.

Surveyor of Taxes

SCHEDULE E

NOTICE OF CANCELLATION OF INTEREST IN THE RESERVE

TO:

ADDRESS:

RE:

(Description of Property)

(Interest on Reserve)

TAKE NOTICE THAT failure to pay in full the outstanding tax debt of \$ _____ with respect to the above-noted property will result, upon the expiration of 6 (six) months from the date of this notice, in the cancellation of your interest in such property on the Reserve, pursuant to section 49(1) of the Tsawout Indian Band Taxation By-Law. The failure to pay such taxes is a breach of a term of the _____ (lease, license, permit or agreement) which can result in the cancellation of such interest.

Upon the cancellation of such interest you will be required to immediately vacate the reserve, and any rights or interests which you acquired through such _____ (lease, licence, permit or agreement) will cease to exist.

DATED AT _____ **this** _____ **day of** _____, **19** _____.

Surveyor of Taxes

SCHEDULE F

CERTIFICATION OF CANCELLATION OF INTEREST IN THE RESERVE

RE: _____
(Description of Property)

(Interest on Reserve)

I, _____, Surveyor of Taxes for the Tsawout Indian Band, hereby certify that the above-mentioned interest on the _____ Reserve has been cancelled or terminated pursuant to the Tsawout Indian Band Taxation By-law as a result of the failure of _____ (Tax Debtor) to pay the outstanding tax debt which was due and payable.

DATED AT _____ this _____ day of _____, 19__.

Surveyor of Taxes

SCHEDULE G

NOTICE OF FORFEITURE

TO:

ADDRESS:

RE:

(Description of Property)

(Interest in the Reserve)

TAKE NOTICE THAT taxes imposed by the Tsawout Indian Band's Taxation By-law for the above-noted property in the year(s) _____, _____, have been outstanding for two (2) years and pursuant to Section 49 (5), the above-noted interest on the Reserve is now subject to forfeiture.

The amount of all taxes which are due and payable to the date of this notice is as follows:

ITEMIZED STATEMENT OF ALL TAXES, INCLUDING INTEREST, PENALTIES, COSTS ETC.

AND FURTHER TAKE NOTICE that unless the above-noted outstanding taxes are paid in full on or before the fortieth day after the date of this notice, the interest you hold in this property will be absolutely and unconditionally forfeited to the Tsawout Indian Band. Upon such forfeiture, your interest in the Reserve will vest in the Band clear of all charges except those rights of way, easements or other such third party interests which attach to that Reserve land.

AND FURTHER TAKE NOTICE THAT where any taxes remain unpaid on December 1 of the second year after the calendar year in which they were imposed, the payment of those taxes does not prevent forfeiture unless the payment:

- (i) includes all taxes then due and payable, and
- (ii) is made before forfeiture occurs under this section.

DATED AT _____ this _____ day of _____, 19__.

Surveyor of Taxes

SCHEDULE H

CERTIFICATION OF FORFEITURE

RE:

(Description of Property)

(Interest on Reserve)

I, _____, Surveyor of Taxes for the Tsawout Indian Band, hereby certify that resulting from the failure of _____ (Tax Debtor) to pay the outstanding tax debt owing on the above-mentioned interest in the _____ Reserve, such interest has been forfeited to the Tsawout Indian Band pursuant to Sections 49(7) and (8) of the Tsawout Indian Band Taxation By-law.

DATED AT _____ this _____ day of _____, 19__.

Surveyor of Taxes

SCHEDULE I

NOTICE OF DISCONTINUANCE OF SERVICES

TO:

ADDRESS:

RE:

(Description of Property)

TAKE NOTICE THAT the taxes for the above-noted property have been due and outstanding for ___ months, and that unless payment in full for this tax debt is received on or before 30 (thirty) days after the date of this Notice, or you have appeared before the Band Council and shown cause as set out below, the following services provided to this property will be discontinued:

LIST SERVICES TO BE DISCONTINUED

AND FURTHER TAKE NOTICE THAT you may attend a meeting of the Band Council scheduled for _____, 19__ at ___ o'clock, at _____ (place), (within the 30 days set out above) and show cause as to why the services should not be discontinued.

DATED AT _____ this ___ day of _____, 19__.

Surveyor of Taxes

