

Minister of Indian Affairs  
and Northern Development



Ministre des Affaires  
indiennes et du Nord canadien

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 Kwaw-Kwaw Apilt Band of the Province of British Columbia, at a meeting held on the 13th day of August 1991.

- **Kwaw-Kwaw Apilt Assessment By-Law**
- **Kwaw-Kwaw Apilt Taxation By-Law**

dated at OTTAWA

this 27th day of SEPT. , 1991

A handwritten signature in black ink, appearing to read "Jan Sidh".

**KWAW KWAW APILT INDIAN BAND**

**PROPERTY TAXATION BY-LAW**

**WHEREAS:**

The Kwaw Kwaw Apilt Indian Band deems it advisable to establish a By-law for the purpose of taxation for local purposes of land, or interest in land, in the reserve, including rights to occupy, possess or use land in the reserve.

**BE IT HEREBY RESOLVED:**

That the Chief and Council of the Kwaw Kwaw Apilt Indian Band of Indians enacts the following By-law for the purposes of land and property taxation pursuant to the Indian Act and in particular to section 83(1) thereof:

**1. SHORT TITLE**

This By-law may be cited as the Taxation By-law.

**2. DEFINITIONS**

- |                           |   |
|---------------------------|---|
| "arrears in taxes"        | means taxes unpaid and outstanding after the expiry of the year in which they were imposed, and includes penalty for default in payment.                                    |
| "assessment area"         | means lands situated within the boundaries of Kwaw Kwaw Apilt Indian Reserves.  |
| "assessment roll"         | means a list prepared pursuant to the Assessment By-law, and amendments thereto.  |
| "actual value"            | means the actual value of land or improvements, or both, as determined pursuant to the Assessment By-law, and amendments thereto.   |
| "Band"                    | means the Kwaw Kwaw Apilt Indian Band.  |
| "Band Administrator"      | means the administrator of the Kwaw Kwaw Apilt Indian Band.   |
| "Band Council Resolution" | means a motion, 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. |

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- "collector" means the Band Administrator of the Kwaw Kwaw Apilt Indian Band or any person designated by the Band Council for such purposes.
- "Chief" means the Chief of the Kwaw Kwaw Apilt Indian Band as selected according to the custom of the Band.
- "Chief and Council" or "Band Council" means the Chief and Council of the Kwaw Kwaw Apilt Indian band as selected by the custom of the Band.
- "highway" includes a street, road, lane, bridge or viaduct open to the use of the public, including any real property used for such purposes under the authority of any section of the Indian Act, or under the authority of any other statutory instrument or executive order.
- "holder" means a person in lawful possession of real property in the assessment area or a person who, for the time being;
- (a) is entitled to the possession of that property; or
  - (b) is an occupant of that property; or
  - (c) has any right, title, estate or interest in property; or
  - (d) is a trustee of real property;
- in the assessment area.
- "improvement" means an addition to land, as defined in the Assessment By-law.
- "land" means physical land and includes land covered by water, but for the purposes of this By-law only, does not include coal, minerals, oil, gas, gravel or other substances occurring naturally in or under land.
- "local government services" includes local improvements, capital works, utility services, and the provision of any other services normally found in organized communities.

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- "local improvement" means any of the following works or any combination of them:
- (a) opening, widening, straightening, extending, grading, levelling, diverting, or paving a street;
  - (b) constructing a sidewalk, footcrossing, curbing, bridge, culvert or embankment forming part of a street, or constructing a system of storm drainage;
  - (c) making, deepening, enlarging, or lengthening a sewer or water system;
  - (d) making sewer or water service connections to the street line on land abutting the main;
  - (e) constructing a conduit for wires or pipes along or under a street;
  - (f) reconstructing, replacing or repairing any of the works mentioned or any other related works.
- "Minister" means the Minister of the Department of Indian Affairs and Northern Development.
- "manufactured home" means any structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and to provide
- (a) a dwelling house or premises;
  - (b) a business office or premises;
  - (c) accommodation for any purpose other than those referred to in subsections (a) and (b);
  - (d) shelter for machinery or other equipment; or
  - (e) storage, workshop, repair, construction or manufacturing facilities.
- "occupant" means a person who, for the time being, is in actual occupation of real property.
- "person" in addition to its ordinary meaning includes a partnership, association, company, society or body corporate.
- "specific local improvement" means a local improvement benefitting a specific area of the Reserve.

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- "real property" means land and the improvements therein and without restricting the generality of the foregoing, includes any interest in land or improvements, the right to occupy, possess or use land or improvements in the reserve, including railway right-of-ways, but does not include a highway.
- "Registrar" means the Lands Administrator of the Kwaw Kwaw Apilt Indian Band as appointed by the Chief and Council.
- "Reserve" means Kwaw Kwaw Apilt Indian Reserve as such reserves are defined in the Indian Act, section 2(1).
- "taxable value" means actual value less any exemptions.
- "taxation authority" means the Chief and Council of the Kwaw Kwaw Apilt Indian Band.
- "taxation year" means the year in which taxes are levied and payable under this By-law.
- "taxable value" means actual value less any exemptions.
- "taxes" include:
- (a) taxes or charges levied under this By-law for local government services;
  - (b) taxes or charges levied under this By-law for specific local improvements;
  - (c) taxes or charges levied under this By-law for educational, hospital, cultural or other services;
  - (d) any interest or further taxes payable in respect of unpaid taxes;
  - (e) taxes placed on a tax roll for assessment and collection;
  - (f) all other fees and taxes recoverable under this By-law.

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- "trustee" means an executor, administrator, guardian, committee, receiver or any person having or taking upon himself the lawful possession, administration or control of property affected by an express trust, or having by law possession, management, and control of the property of a person under any legal disability.
- "utility services" means services provided by the taxation authority and, without restricting the generality of the foregoing, includes water, garbage collection and fire protection services.

### 3. TAXABLE PROPERTY

- (A) All real property assessed under the Assessment By-law, is taxable, except the following:
- (1) real property of which the Band is the holder, used by the Band for Band purposes;
  - (2) the interest of a Band member in that Band members' real property;
  - (3) the interests in real property of a corporation whose shares are held exclusively and beneficially by Band members. Without restricting the foregoing, and for greater certainty, if a corporation's shares are held, in whole or in part, by Band members in trust for any person who is not a Band member then such corporation's real property is not exempt pursuant to this part.
- (B) (1) Notwithstanding section (3)(A), the real property mentioned therein is taxable in respect of local improvements and the provision of utility services to the property.
- (2) In respect of taxable real property those liable to pay tax are the following:
- (i) the owner of land or of an interest therein;
  - (ii) where the owner is exempt, the holder or occupier, and
  - (iii) where held or occupied by two or more persons, those persons jointly.

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- (C) The taxation authority may enter into any contract or agreement with any municipality, regional district or other Provincial or Municipal or any other assessment authority for the allocation of costs or the supply of materials, equipment or services to the assessment area or any part thereof. Without restricting the generality of the foregoing, the taxation authority may contract with any provincial or municipal authority for the services of assessors appointed pursuant to the Assessment Authority Act, R.S.B.C., 1979, C.22, and amendments thereto.
- (D) Where a contract or agreement has been entered into pursuant to sub-section (C), the costs of the contract or agreement shall be paid for by the taxation authority out of the taxes collected pursuant to this Taxation By-law.

#### 4. TAXES ARE A DEBT

- (A) Taxes payable under this By-law are a debt due to the taxing authority by the person who is, for the time being, the holder of the property, and where there is more than one holder in respect of any real property, the taxes are a debt due by them to the taxing authority jointly and severally.
- (B) Notwithstanding sub-section (A), where a holder verifies on affidavit furnished to the assessor that land or improvements in the assessment area have been leased by the holder to another person, the other person shall be liable for the taxes as the holder of the real property.

#### 5. DEFERRED TAXES

- (A) The Chief and Council may by a By-law approved by the Minister exempt any person from the payment of taxes levied under this By-law where such exemption is in the best interest of the Band in order to provide economic incentives.
- (B) The Chief and Council shall review every By-law made under sub-section (A) each year before the anniversary date thereof.
- (C) Notwithstanding the provisions of section 5(A) and (B) hereof, no exemption of taxes shall be for a period longer than five consecutive taxation years.

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**6. PERSON NAMED ON ROLL DEEMED TO BE HOLDER OF REAL PROPERTY**

- (A) Where a person is named on an assessment roll as the holder or occupant of land or improvements, he shall be deemed, in the absence of evidence to the contrary satisfactory to Chief and Council, to be the holder or occupant of the land or improvements for the purposes of this By-law.
- (B) The holder of real property shall be deemed for the purposes of this By-law to be the holder of improvements located on the property.
- (C) Where the name of the holder of real property is unknown, the occupant of the real property shall be deemed, in the absence of evidence to the contrary satisfactory to Chief and Council, to be the holder of the property.
- (D) Where a person is named in the records of the Band Office as the holder of real property, he shall be deemed in the absence of evidence to the contrary satisfactory to Chief and Council, to be the holder of the property for the purposes of this By-law.
- (E) In any proceedings under this By-law, the onus of proof that a person:
  - (1) is not a holder or occupant of land or improvements under sub-section (A);
  - (2) is not the holder or occupant of improvements under sub-section (B);
  - (3) is not the holder of real property under sub-section (C) or (D);

is on the person making the allegation.

**7. LEVY OF TAXES**

- (A) The taxation authority shall, on or before the 15th of February in each taxation year, adopt a By-law with the approval of the Minister, to impose tax rates on all real property which is subject to taxation under this By-law, according to the assessed value of that real property.

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- (B) For the purpose of sub-section (A) and section 8, the taxation authority may by By-law approved by the Minister:
- (1) vary tax rates from year to year;
  - (2) divide the reserves into regions, and vary the tax rate from region to region;
  - (3) vary the tax rate according to the class of real property to be taxed;
  - (4) establish different tax rates for different tax levies, including but not limited to levies for education taxes, hospital taxes, or such other categories of taxes as the taxation authority deems fit.
- (C) The resolution for levying taxes other than local improvement taxes shall express the tax rate as a percentage of assessed values.
- (D) The minimum tax payable in any year under this section is one hundred dollars in respect of the total assessed value of any real property.

#### 8. OTHER TAXES

- (A) The taxation authority may grant to the appropriate provincial authority all or part of the education taxes which are collected solely for residential purposes.
- (B) The taxation authority may grant to the appropriate provincial authority all or part of the hospital taxes which are collected pursuant to this By-law.
- (C) The taxation authority shall make the grants referred to in (A) and (B) prior to the end of the taxation year in which they are collected.

#### 9. AMOUNT OF TAXES

The amount of taxes payable in respect of taxes levied under section 7 or 8 shall be determined by applying the tax rate to the taxable value of the real property.

**10. SPECIFIC LOCAL IMPROVEMENTS TAXES**

- (A) No specific local improvement tax shall be levied by the taxation authority under this section except in accordance with the decision of a majority of the persons liable to pay the tax who are holders of real property having value of at least 1/2 of the value of all real property which is the subject of the specific local improvement tax.
- (B) The taxation authority or any person wishing to petition the taxation authority for a specific local improvement shall send to each person liable to pay the tax prescribed by sub-section (A) a form upon which that person is to register his decision in respect of the specific local improvement.
- (C) The taxation authority may make resolutions not inconsistent with this By-law respecting:
- (1) the manner in which the decision of persons are to be ascertained in accordance with sub-section (A);
  - (2) the manner in which assessable frontage of property that abuts upon or is deemed to abut upon an improvement shall be determined for the purpose of this section.
- (D) Where a specific local improvement has been approved pursuant to sub-section (A) and (B), the taxation authority may, by the By-law, approved by the Minister levy a specific local improvement tax upon real property that abuts or is deemed to abut on the local improvement.
- (E) Where in the opinion of the taxation authority, the construction of a local improvement benefits property that abuts upon the improvement, or property that the taxation authority deems to abut upon the improvement, the local improvement tax shall be levied in respect of the property benefitted in a simple parcel basis of a uniform rate per metre of assessable frontage or a combination of both.

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**11. AMOUNT OF TAX**

- (A) Where, in the opinion of the taxation authority, the construction of a local improvement benefits a region at large directly or indirectly:
- (1) the taxation authority may define the region, and it shall be deemed to be benefitted by construction of the local improvement; and
  - (2) the liability of a person to pay the local improvement tax shall not be greater in relationship to the total amount sought to be raised by the local improvement tax than the amount of tax that he is liable to pay under section 7 bears in relationship to the total amount payable under section 7 in respect of the region.

**12. ASSESSABLE FRONTAGE**

- (A) The taxation authority may levy a local improvement tax partly under section 10 and partly under section 11 where it considers it appropriate to do so.
- (B) The amount payable in respect of a levy under sections 10 and 11 shall be determined:
- (1) in the case of a specific local improvement tax that benefits only property that abuts upon or is deemed to abut upon the improvement under section 10, by applying a lump-sum parcel tax or applying the tax rate to the assessable frontage of the property that abuts upon or is deemed to abut upon the improvement;
  - (2) in the case of a local improvement that benefits a region under section 11, by applying the tax rate to the taxable value of taxable real property in the region.
- (C) No local improvement tax shall be levied under this section on the basis of assessable frontage unless the assessable frontage of each parcel of real property upon which the tax is to be levied is shown in the most recently authenticated assessment roll that applies to the real property.

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### 13. TAXES FOR SERVICES

Taxes payable to the taxation authority for the provision of utility service may be recovered from a holder or occupant of real property in the same manner as other taxes payable under this By-law.

### 14. TAX ROLL

- (A) Where pursuant to the Assessment By-law, the assessment roll has been certified or authenticated, and the taxation authority has levied taxes upon real property dealt with in the roll, the collector shall forthwith prepare a tax roll in which shall be entered all real property described in the assessment roll.
- (B) The tax roll shall set forth in respect of all real property described in the assessment roll the following:
- (1) the description of the property;
  - (2) the name and address of the holder or occupant of the property;
  - (3) a statement that the property is or is not taxable;
  - (4) a statement, where applicable, that the holder or occupant has been exempted by the Chief and Council from his liability to pay taxes and the extent of the exemption;
  - (5) the assessed value of each parcel of land described under sub-section (B)(1);
  - (6) the assessed value of all improvements described under sub-section (B)(1);
  - (7) the total of the assessed values of each parcel of land described under sub-section (B)(1) and, the improvements located on the land;
  - (8) the tax rate applicable to the property, and if the rate varies within the assessment area, the region or class of the property;
  - (9) the total amount of taxes levied on the property for the current year;
  - (10) any amount set forth in a previous tax roll in respect of the property that remains unpaid, and any penalty or accrued interest on the amount and the penalty;
  - (11) the amount of any tax for the current year, other than taxes, placed on the tax roll for collection;
  - (12) the amount of the taxes for the current year that are school taxes;
  - (13) the amount of the taxes for the current year that are local improvement taxes;

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- (14) the total amount required to be paid in respect of the real property;
  - (15) such further or other information as may be prescribed by Chief and Council.
- (C) Information that is contained in an assessment roll that has been certified or authenticated under the Assessment By-law, shall be deemed to be conclusive for the purposes of the preparation of the tax roll, and the taxes levied upon the basis of that information are due and payable by the persons, in the amounts and at the times provided for by this By-law whether or not:
- (1) an appeal affecting the information has been decided but the assessment roll has not been amended to give effect to the decision;
  - (2) an appeal affecting the information is pending or has not been decided;
  - (3) the time for making any appeal has not expired.
- (D) Where the results of an appeal affect the information contained in an assessment roll, the tax roll shall be amended forthwith by the collector, after any appeal periods have expired, and,
- (1) any overpayment of taxes shall be refunded forthwith by the collector to the person who made the overpayment; and
  - (2) in the case of an underpayment of taxes or a failure to pay taxes, a revised tax notice under section 15 shall be mailed forthwith by the collector to the person liable to pay the taxes.

## 15. TAX NOTICE

- (A) The collector shall, on or before the fifteenth day of July in each year, deliver a tax notice to each person named on the tax roll as a holder or occupant of taxable real property in respect of which taxes are payable in the taxation year or any preceding year.
- (B) A tax notice shall set forth:
- (1) the description of the property;
  - (2) the name and address of the person to whom the tax notice is addressed;
  - (3) the total amount of taxes levied on the property for the current year;

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- (4) any amount set forth in a previous tax roll in respect of the property that remains unpaid, and any penalty or accrued interest on the amount and the penalty;
- (5) the amount of any tax for the current year, other than taxes, placed on the tax roll for collection;
- (6) the amount of the taxes for the current year that are school taxes;
- (7) the amount of the taxes for the current year that are local improvement taxes;
- (8) the total amount required to be paid in respect of the real property;
- (9) a statement of the date upon which penalty for non-payment will be added;
- (10) such further or other information as may be prescribed by Chief and Council.

- (C) More than one parcel of land that is, or that is treated as, one parcel for assessment purposes, shall be dealt with in one tax notice, and any such notice shall be deemed to be sufficient if it identifies a parcel as a block, or parts of a block, or as a series of lots, without giving the full description of the parcel as it appears on the tax roll.
- (D) Parcels of land to which differing tax rates apply shall be dealt with separately in a tax notice.
- (E) Where a tax notice is mailed under this section, the collector shall enter the date of mailing on the tax roll, and the entry on the tax roll is prima facie proof of the mailing of the tax notice on the date specified.

#### 16. PAYMENT OF TAXES

- (A) Taxes levied under this By-law shall be deemed to have been imposed on and from the first day of January of the taxation year.
- (B) Taxes levied under this By-law for the taxation year and any taxes placed on the tax roll for collection, are due and payable at the office of the Taxation Authority on the last working day in August in the taxation year, notwithstanding that an appeal is or may be pending in respect of the assessment or taxation.

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- (C) Further taxes imposed in respect of a failure to pay taxes by the date specified in sub-section (B) are due and payable on the day on which they were imposed under this By-law.
- (D) Where taxes are not paid by the date specified in sub-section (16)(B), an interest tax shall be levied on the unpaid amount after the day it is imposed at a rate equivalent to two percent (2%) per month.

#### 17. MANNER OF PAYMENT

- (A) Any amount required to be paid under this By-law is payable at the office of the taxation authority.
- (B) The taxation authority may prescribe the manner and form in which amounts due to it under this By-law may be paid.
- (C) Notwithstanding sub-section 17(A) and section 20, the Chief and Council may by Band Council Resolution:
  - (1) provide for the payment of taxes under this By-law before they are due and payable;
  - (2) establish the terms and conditions upon which amounts paid under sub-section (C)(1) are to be held, including the payment of interest; and
  - (3) provide for the payment of taxes under this By-law by regular instalments, including the imposition of interest on instalment payments not received by the time they are required to be paid.

#### 18. PAYMENTS RECEIVED

- (A) Payments received by a collector in respect of any amount payable under this By-law shall be applied and credited in the following order:
  - (1) first, against any amount in respect of a previous tax roll that remains unpaid, and any accrued interest on the amount;
  - (2) second, against any interest payable in respect of taxes levied under this By-law for the current year, or any taxes for the current year, other than taxes, placed on the tax roll for collection;
  - (3) third, against any school taxes levied in respect of the current year;
  - (4) fourth, against any local improvement taxes levied in respect of the current year;

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- (5) fifth, against any taxes for the current year, other than taxes, placed on the tax roll for collection; and
  - (6) sixth, against any other taxes levied in respect of the current year.
- (B) A collector shall not:
- (1) waive the liability of any person under this By-law to pay in full any amount due and payable to the taxing authority;
  - (2) extend the time within which the payment is to be made; or
  - (3) postpone proceedings that may be taken by the taxation authority to collect any amount due and payable to the taxation authority.

#### 19. TAX LIEN

- (A) Notwithstanding any remedy in this By-Law, taxes which are due may be recovered by action in a court of competent jurisdiction brought in the name of the Chief of the Band, on behalf of the taxation authority.
- (B) A copy of the part of the taxation roll which relates to the taxes sought to be recovered, purporting to be certified by the collector as a true copy, shall be admissible in court as evidence of the debt.

#### 20. GENERAL PROVISIONS

- (A) The Chief and Council may by By-law extend the time which anything is required to be done under this By-law and anything done within this period of time is as valid as if it had been done within the time otherwise provided for by this By-law.
- (B) Where a provision in this By-law is expressed in the present tense, the provision applies to the circumstances as they arise.
- (C) 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.

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- (D) Head notes, marginal notes and headings form no part of the enactment, but shall be construed as being inserted for convenience of reference only.
- (E) A finding by a court that a provision of this By-law is void or invalid shall not affect the validity of the rest of the By-law.

**21. AMENDMENTS**

Any section of this By-law may be amended by By-law and approved by the Minister.

**22. DELIVERY OF NOTICES**

(A) Where any notice, notification, demand, statement or direction is required or permitted to be delivered or given under this By-law, it shall be sufficient if mailed by registered mail, postage pre-paid, or delivered personally to:

- (1) the address of the person set forth in the assessment roll; or
- (2) such other address of which the assessor has received notice.

**23. COMING INTO FORCE**

This By-law comes into force on the 1st day of January, 1992, subject to the approval of the Minister.

Approved by Chief this 13 day of August, 1991.

Harold Henry  
Chief