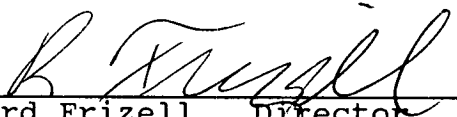


CERTIFICATION

Pursuant to Section 86, Indian Act RSC 1985 C.I-5 and amendments thereto, I certify that the attached copy of the Minister's approval Order dated 23rd day of June, 1993, and the Nanaimo Indian Band "Taxation By-Law" dated 23rd day of September 1992 is a true copy of the said Order and By-law.



Richard Frizell, Director,
Lands, Revenues and Trusts,
a Superintendent as defined in
Sec. 2 (1) 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 bylaws made by the Nanaimo Indian Band, in the Province of British Columbia, at a meeting held on the 23rd day of September 1992.

Nanaimo Indian Band Taxation Bylaw

Nanaimo Indian Band Assessment Bylaw

That part of the Taxation Bylaw that is not approved is section 41 which provides as follows:

41. (1) Taxes assessed or imposed and due for land and improvements under this bylaw, or any property subject to taxation under another bylaw, form a lien and charge in favour of the Nanaimo 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.
- (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.

.../2

and section 49 which provides as follows:

49. (1) Where tax are delinquent for land the surveyor of taxes may give the person liable for payment of the unpaid taxes notice by registered mail that he has three (3) months from the date of mailing of the notice to pay the taxes, with interest, and all subsequent taxes, and that on default of payment such land shall be offered for sale.
- (2) Failing payment in full within the (3) months, the surveyor of taxes may offer for sale such land.
- (3) The sale may be conducted:
- (a) by public auction; or,
 - (b) where the chief and council deem it appropriate, by public tender.
- (4) The sale may take place subject to the entering into of a lease, license, or permit by the purchaser.
- (5) Where a sale is said to be conducted by public tender, the conditions of sale, method of publication or circulation, and acceptance of any offer shall be in the discretion of the chief and council.
- (a) The chief and council may, in any sale, set an upset price equal to all taxes in arrears, interest, taxes for the current year and costs, and the upset price shall be the lowest amount for which the land may be sold.
 - (b) Where there is no bid equal to or above the upset price, the chief and council may, at their discretion of the chief and council, be deemed to be the purchaser.
 - (c) Upon a sale, monies received by the surveyor of taxes in excess of the taxes, interest, and costs, shall be paid without interest to the person liable for payment of the unpaid taxes.

- (d) If no upset price is set and the land is sold for less, the debt for any deficiency is extinguished.
- (6) Where the chief and council are deemed to be the purchaser of land hereunder, it may sell the land to any person for not less than the upset price within nine (9) months of the date of the deemed purchase. Thereafter, the chief and council may deal with the land as they see fit, and all other interests, including any right of redemption, are extinguished.
- (7) The Nanaimo Indian Band is entitled to the quiet and peaceable possession of land and improvements, on and from the expiry of the three (3) month period and for the purposes of obtaining such possession the surveyor of taxes and any persons authorized by him for the purpose are entitled to enter on the land and take possession thereof for and in the name of the Nanaimo Indian Band, and if in so doing resistance is encountered, an application may be made to a court of competent jurisdiction for an order for the possession of the land.

That part of the Assessment Bylaw that is not approved is section 54(3) which provides as follows:

- 54. (3) The Assessor, at the same time that he notifies a complainant of the decision of the Board of Review in respect of his complaint, shall also notify him that he may, subject to the provisions of the Federal Court Act and the "Rules of Procedure at the Federal Court of Canada", appeal the decision of the Board of Review to the Federal Court of Canada.

and section 60 which provides as follows:

- 60. (1) Where a person, including the assessor, is dissatisfied with the decision of a Board of Review, or with the omission or refusal of the Board of Review to hear or determine the complaint on the completed assessment roll, he may within 21 days after receiving the decision, subject to the provisions of the Federal Court Act and the rules of procedure of the Federal Court of Canada, appeal from the Board of Review to the Federal Court of Canada (Trial division).

- (2) The assessor, at the time that he notifies a complainant of the decision of the Board of Review in respect of his complaint, shall also notify him that he may, within 21 days after receiving the decision, subject to the provisions of the Federal Court Act and the rules of procedure of the Federal Court of Canada, appeal the decision of the Board of Review to the Federal Court of Canada (Trial division) by delivering to the Board of Review, within 21 days after his receipt of the decision, a written request to appeal the decision of the Board of Review to the Federal Court of Canada (Trial division).
- (3) The Board of Review shall, within 21 days after receiving a notice of appeal, submit the appeal in writing to the Federal Court of Canada (Trial division).

Dated at Hull, Quebec

this 23rd day of June 1993.

A handwritten signature in black ink, appearing to read "Dan Siddon". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

Nanaimo Indian Band

TAXATION BY-LAW

WHEREAS:

The Nanaimo Indian Band deems it advisable and in the best interests of the members of the Nanaimo Indian Band to establish, by by-law, a system on the reserve lands of the Nanaimo 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.

Part Section

1. General Taxation Provisions 2 - 12
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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 Nanaimo 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 Nanaimo Indian Band as elected by the members of the Nanaimo 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 Nanaimo Indian Band as elected by the members of the Nanaimo Indian Band pursuant to the provisions of the Indian Act or as chosen according to the custom of the Band;

"cp"	"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"	"farm land" means a farm as defined in the Assessment By-Law;
"improvements"	"improvements" means improvements as defined in the Assessment By-Law;
"Indian Act"	"Indian Act" means the <u>Indian Act</u> , R.S. 1985 c.I-6 and any amendments thereto;
"interest holder"	"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"	"interest in land" means interest in land as defined in the Assessment By-Law;
"land"	"land" means land as defined in the Assessment By-Law;
"land title office"	"land title office" means the land title office as defined in the Assessment By-Law;
"legal description"	"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"	"minister" means the Minister of Indian Affairs and Northern Development;
"municipality"	"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.

Failure to comply with the by-law

5. A person fails to comply with this by-law, who, without reasonable excuse, in violation of this by-law;
- (a) refuses or fails to make a required return;
 - (b) in making a return, or otherwise, withholds information necessary to ascertain the true taxable amount of a property, or other basis of assessment;

- (c) refuses or fails to furnish an officer any access, facility or assistance required for an entry on or examination of property or accounts;
- (d) refuses or fails to attend or to submit himself to examination on oath or otherwise; or
- (e) fails to keep a book of account or record required to be kept by him.

False returns and records a failure to comply

- 6. A person who knowingly and wilfully makes a false or deceptive statement in a return required under this by-law, fraudulently omits to give in it a full and correct statement of the property, or other basis of assessment of the person liable for payment of the taxes, or makes or keeps a false entry or record in a book of account or record required to be kept under this by-law, fails to comply with this by-law.

Defacing posted advertisement

- 7. A person who without reasonable excuse tears down, injures or defaces an advertisement, notice or document which, under this by-law or the Assessment By-Law, is posted in a public place, fails to comply with this by-law.

Penalties For Failure to Comply

- 8. (1) A person who fails to comply with this by-law or with the duties imposed by this by-law may have any services provided by the Nanaimo Indian Band to the person or to the land cancelled by band council resolution passed by the chief and council.
- (2) Before services may be cancelled for failure to comply with this by-law;
 - i) the person who has allegedly failed to comply shall be given the opportunity to attend before the chief and council and present whatever evidence the person deems appropriate; and,
 - ii) the chief and council shall make a determination that the person has failed to comply with this by-law based upon the evidence presented at a meeting held to consider cancellation of services pursuant to this by-law.

- (3) Notice of a meeting of the chief and council to consider the cancellation of services shall be given to a person who is alleged to have failed to comply with this by-law by way of a registered letter directed to the person two weeks prior to the meeting of chief and council.

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 Nanaimo 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 of interest as prescribed in this by-law.

(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 apply to receive funds 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 R.S.C. 1985. All funds received pursuant to this by-law shall be deposited in a separate special account covered by deposit insurance in trust for the Nanaimo 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 Nanaimo Indian Band at the office of the surveyor of taxes on the Nanaimo 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 Nanaimo 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 Nanaimo Indian Band.

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 Nanaimo Indian Band;
 - (b) land occupied or held by the Nanaimo Indian Band;
 - (c) land occupied or held by a body corporate owned or controlled by the Nanaimo 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 Nanaimo 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 Nanaimo 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 Nanaimo Indian Band or the members of the Nanaimo Indian Band and held or occupied by a person who is not a member of the Nanaimo 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 Nanaimo Indian Band or the members of the Nanaimo Indian Band;
 - (b) who sold it to the Crown in right of Canada on behalf of the Nanaimo Indian Band or the members of the Nanaimo 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 Nanaimo Indian Band or the members of the Nanaimo 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 1993 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 Nanaimo 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 Nanaimo Indian Band

32. The taxation roll is the property of the Nanaimo 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 to the Federal Court is made, the giving of a notice of appeal or delay in hearing of the appeal 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 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 Nanaimo 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.
- (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 Nanaimo 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 first charge

43. Where property is sold or assigned the amount of the tax lien for unpaid taxes constitutes a first 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 notify the person liable for payment of the unpaid 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 Nanaimo Indian Band, and the court may order costs in favour of or against the Nanaimo Indian Band.

Recovery of taxes by distress

46. (1) The chief and council may, by themselves or by their agent levy taxes due by distress, of
- (a) the property for which the taxes were assessed or imposed, the personal property of the person liable to pay the taxes, or personal property in his possession, wherever they are found on the reserve; or
 - (b) personal property found on his premises which would be subject to distress for arrears of rent due to a landlord.
- (2) If distress is made for recovery of taxes, the chief and council shall, by advertisement posted in at least 3 conspicuous public places in the reserve or assessment area, give at least 21 days' public notice of the time and place of the sale and the name of the person liable for the unpaid taxes whose property is to be sold; and at the time named in the notice the chief and council or their agent shall sell at public auction the property distrained, or so much as is necessary.

- (3) If the property distrained is sold for more than the taxes and costs and no claim to the surplus is made by another person, on the ground that the property sold belonged to him or that he was entitled by lien or other right to the surplus, the surplus shall be paid to the person in whose possession the property was when the distress was made and his receipt taken.
- (4) If a claim is made by the person for whose taxes the property was distrained, and the claim is admitted, the surplus shall be paid to the claimant and his receipt taken.
- (5) If the claim is contested, the surplus shall be retained by the Nanaimo Indian Band until the rights of the parties have been determined by action at law or otherwise.
- (6) When personal property liable to distress under this section is under seizure or attachment or has been seized by a sheriff or bailiff or any court or is claimed by or is in the possession of any assignee for the benefit of creditors or any liquidators or any trustee or authorized trustee in bankruptcy, or when that property has been converted into cash and is undistributed, it is sufficient for the surveyor of taxes to, and he shall, give to the sheriff, bailiff, assignee or liquidator or trustee or authorized trustee in bankruptcy, notice of the amount due for taxes and in that case the person so notified shall pay the amount of the taxes, after deducting any costs properly incurred, to the surveyor of taxes in preference and prior to any other and all fees, charges, liens or claims whatsoever.
- (7) If at any time after notice has been given under this section and before the expiration of the time allowed before levy by distress can be made, the surveyor of taxes has reason to believe that a person in possession of land and improvements, liable to distress is about to move off the reserve, and if he makes an affidavit to that effect before a justice of the peace, the justice may issue a warrant to the surveyor of taxes authorizing the surveyor of taxes to levy by distress although the time for payment may not have expired.

Insurance Proceeds

47. (1) Taxes are a first charge upon any monies payable under a fire insurance policy for loss or damage to land and improvements.

- (2) This section does not create a charge on:
- (a) any monies payable under a fire insurance policy unless:
 - i) the amount payable under the fire insurance policy is for a sum of \$500.00 or more, or,
 - ii) notwithstanding subclause (i), it is for the total loss of the land and improvements insured,
- or on,
- (b) any money payable under a fire insurance policy which was effected and maintained by a mortgagee of the property insured.
- (3) Within two months after an insurer receives notice of loss or damage which may result in a charge arising under this section, the insurer shall, by registered mail, give notice of the loss or damage to the surveyor of taxes.
- (4) Within 21 days after the mailing of a notice in accordance with subsection (3), the surveyor of taxes shall, by registered mail, notify the insurer of the full amount of the taxes due in respect of the land and improvements.
- (5) When a charge arises under subsection (1) the insurer shall pay to the Nanaimo Indian Band:
- (a) the amount of the taxes stated in the notice to be due, or
 - (b) the amount the insurer is liable to pay under the policy,
- (6) On a payment being made under subsection (5), the amount for which the insurer paying the same is liable under the policy is reduced by the amount of the payment.

Right of tenant to deduct taxes from rent

48. (1) Where taxes are due on land occupied by a tenant whose landlord is liable for the taxes, the surveyor of taxes may give no less than 30 days notice to the landlord by registered mail that on default of payment of taxes the surveyor of taxes shall proceed with the collection of rent under this section.

- (2) Failing payment in full within 30 days, the surveyor of taxes shall give the tenant notice in writing requiring him to pay to the Nanaimo Indian Band the rent of the land as it become due from time to the amount of the taxes due and unpaid.
- (3) The chief and council shall have and may exercise the same authority to collect the rent due and owing by distress or otherwise.
- (4) Any tenant may deduct from his rent taxes paid by him that, between him and the landlord, the landlord ought to pay or have paid.

Forfeiture

49. (1) Where tax are delinquent for land the surveyor of taxes may give the person liable for payment of the unpaid taxes notice by registered mail that he has three (3) months from the date of mailing of the notice to pay the taxes, with interest, and all subsequent taxes, and that on default of payment such land shall be offered for sale.
- (2) Failing payment in full within the three (3) months, the surveyor of taxes may offer for sale such land.
 - (3) The sale may be conducted:
 - a) by public auction; or,
 - b) where the chief and council deem it appropriate, by public tender.
 - (4) The sale may take place subject to the entering into of a lease, license or permit by the purchaser.
 - (5) Where a sale is to be conducted by public tender, the conditions of sale, method of publication or circulation, and acceptance of any offer shall be in the discretion of the chief and council.
 - a) The chief and council may, in any sale, set an upset price equal to all taxes in arrears, interest, taxes for the current year and costs, and the upset price shall be the lowest amount for which the land may be sold.
 - b) Where there is no bid equal to or above the upset price, the chief and council may, at their discretion of the chief and council, be deemed to be the purchaser.

- c) Upon a sale, monies received by the surveyor of taxes in excess of the taxes, interest, and costs, shall be paid without interest to the person liable for payment of the unpaid taxes.
 - d) If no upset price is set and the land is sold for less, the debt for any deficiency is extinguished.
- (6) Where the chief and council are deemed to be the purchaser of land hereunder, it may sell the land to any person for not less than the upset price within nine (9) months of the date of the deemed purchase. Thereafter, the chief and council may deal with the land as they see fit, and all other interests, including any right of redemption, are extinguished.
- (7) The Nanaimo Indian Band is entitled to the quiet and peaceable possession of land and improvements, on and from the expiry of the three (3) month period and for the purposes of obtaining such possession the surveyor of taxes and any persons authorized by him for the purpose are entitled to enter on the land and take possession thereof for and in the name of the Nanaimo Indian Band, and if in so doing resistance is encountered, and application may be made to a court of competent jurisdiction for an order for the possession of the land.

Removal of Structures and Improvements

50. (1) As long as any taxes are in arrears with respect to any land no structures or any other improvements over, on, or in the land shall be removed without the consent of the chief and council.
- (2) No person shall acquire any property or right in a structure or other improvement removed in contravention of this section.

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 Nanaimo 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.

Power to prohibit timber cutting on tax delinquent land

- 55. (1) Where taxes on land with timber in commercial quantities on it, from which the timber is being cut or removed, have become delinquent, the chief and council may make an order in writing, one copy of which shall be served on the person liable for the unpaid taxes or on the person by whom the timber is being cut or removed, and another copy of which shall be posted in a conspicuous position on the land prohibiting the cutting and removal of timber from that land until the delinquent taxes have been paid in full.
- (2) Where an order has been made under this section, a person who, while the delinquent taxes or a part of them remain unpaid, cuts or removes timber from the land for which the order is made fails to comply with this by-law.

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 Nanaimo Indian Band which are issued by the chief and council pursuant to this by-law or any other by-law of the Nanaimo Indian Band for the purposes of this or any other by-law of the Nanaimo 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 Nanaimo 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 Nanaimo 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 Nanaimo Indian Band.

- (4) The Nanaimo Indian Band shall be entitled to receive funds by way of grant in lieu of taxes from the Government of Canada or from a corporation included in Schedule III or IV of the Municipal Grants Act, 1980 (Canada).
- (5) 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:

Nanaimo Indian Band
1145 Totem Road
Nanaimo, British Columbia
V9R 1H1

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, 1993 until March 31, 1993, 1.5% above the prime lending rate of the principal banker to the Nanaimo Indian Band on December 15, 1992, 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 Nanaimo 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 Nanaimo 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 on January 1st, 1993, upon approval by the Minister.

SCHEDULE "A"

**Prescribed Tax Rates
1993**

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	

APPROVED AND PASSED at a duly convened meeting of the Council of the Nanaimo Indian Band held at the Nanaimo Indian Band Administration Office, Nanaimo, British Columbia, this 23 day of September, 1992.


CHIEF


COUNCILLOR

COUNCILLOR


COUNCILLOR


COUNCILLOR


COUNCILLOR


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