TOBIQUE

PROPERTY TAXATION LAW, 2016

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WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act,* the council of a first nation may make laws respecting taxation for local purposes of reserve lands, interests in reserve lands or rights to occupy, possess or use reserve lands;

B. The Council of Tobique deems it to be in the best interests of the First Nation to make a law for such purposes; and

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

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

PART I
CITATION

Citation

1. This Law may be cited as the *Tobique Property Taxation Law, 2016.*

PART II
DEFINITIONS AND REFERENCES

Definitions and References

2.(1) In this Law:

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

"assessed value" has the meaning given to that term in the Assessment Law;

"Assessment and Tax Notice" has the meaning given to that term in the Assessment Law;

"assessment and tax roll" has the meaning given to that term in the Assessment Law;

"Assessment Law" means the *Tobique Property Assessment Law, 2016*;

"Assessment Review Board" means the assessment review board established under the Assessment Law;

"assessor" means a person appointed to that position under the Assessment Law;

"Commission" means the First Nations Tax Commission established under the Act;

"Council" has the meaning given to that term in the Act;

"debtor" means a person liable for unpaid taxes imposed under this Law;

"expenditure law" means an expenditure law enacted under paragraph 5(1)(b) of the Act;

"First Nation" means the Tobique First Nation, being a band named in the schedule to the Act;

"First Nation Corporation" means a corporation in which at least a majority of the shares are held in trust for the benefit of the First Nation or all of the members of the First Nation;

"FMB" means the First Nations Financial Management Board established under the Act;

"holder" means a person in possession of an interest in land or a person who, for the time being

(a) is entitled through a lease, licence or other legal means to possess or occupy the interest in land,

(b) is in actual occupation of the interest in land,

(c) has any right, title, estate or interest in the interest in land, or

(d) is a trustee of the interest in land;

"improvement" means any building, fixture, structure or similar thing, other than land, that is included in the definition of "real property" in the *Assessment Act* (New Brunswick);

"interest in land" or "property" means land or improvements, or both, in the reserve and, without limitation, includes any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

"local revenue account" means the local revenue account referred to in section 13 of the Act;

"locatee" means a person who is in lawful possession of land in the reserve under subsections 20(1) and (2) of the *Indian Act*;

"Notice of Discontinuance of Services" means a notice containing the information set out in Schedule IX;

"Notice of Sale of a Right to Assignment of Taxable Property" means a notice containing the information set out in Schedule VIII;

"Notice of Sale of Seized Personal Property" means a notice containing the information set out in Schedule VI;

"Notice of Seizure and Assignment of Taxable Property" means a notice containing the information set out in Schedule VII;

"Notice of Seizure and Sale" means a notice containing the information set out in Schedule V;

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

"property class" has the meaning given to that term in the Assessment Law;

"Province" means the province of New Brunswick;

"registry" means any land registry in which interests in land are registered;

"reserve" means any land set apart for the use and benefit of the First Nation within the meaning of the *Indian Act*;

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

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

"Tax Arrears Certificate" means a certificate containing the information set out in Schedule IV;

"Tax Certificate" means a certificate containing the information set out in Schedule III;

"taxable property" means an interest in land that is subject to taxation under this Law;

"taxation year" means the calendar year to which an assessment and tax roll applies for the purposes of taxation;

"taxes" include

(a) all taxes imposed, levied, assessed or assessable under this Law, and all penalties, interest and costs added to taxes under this Law, and

(b) for the purposes of collection and enforcement, all taxes imposed, levied, assessed or assessable under any other local revenue law of the First Nation, and all penalties, interest and costs added to taxes under such a law; and

"taxpayer" means a person liable for taxes in respect of taxable property.

(2) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 3(4)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III
ADMINISTRATION

Tax Administrator

3.(1) Council must, by resolution, appoint a tax administrator to administer this Law on the terms and conditions set out in the resolution.

(2) The tax administrator must fulfill the responsibilities given to the tax administrator under this Law and the Assessment Law.

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

(4) The tax administrator's responsibilities include

(a) the collection of taxes and the enforcement of payment under this Law; and

(b) the day to day management of the First Nation's local revenue account.

Authorization of Financial Management Board

4. Notwithstanding any other provision of this Law, if the FMB gives notice to Council pursuant to the Act that third-party management of the revenues raised under this Law is required, Council authorizes the FMB to act as agent of the First Nation to fulfill any of the powers and obligations of the Council under this Law and the Act.

PART IV
LIABILITY FOR TAXATION

Application of Law

5. This Law applies to all interests in land.

Tax Liability

6.(1) Except as provided in Part V, all interests in land are subject to taxation under this Law.

(2) Taxes levied under this Law are a debt owed to the First Nation, recoverable by the First Nation in any manner provided for in this Law or in a court of competent jurisdiction.

(3) Where an interest in land is not subject to taxation, the liability for taxation of any other interest in the same property is not affected.

(4) Taxes are due and payable under this Law notwithstanding any proceeding initiated or remedy sought by a taxpayer respecting his or her liability to taxation under this Law.

(5) Any person who shares the same interest in taxable property is jointly and severally liable to the First Nation for all taxes imposed on that taxable property under this Law during the taxation year and for all unpaid taxes imposed in a previous taxation year, including for clarity, interest, penalties and costs as provided in this Law.

Tax Refunds

7.(1) Where a person is taxed in excess of the proper amount in a taxation year, the tax administrator must refund to that person any excess taxes paid by that person.

(2) Where a person is entitled to a refund of taxes, Council may direct the tax administrator to refund the amount in whole or in part by applying it as a credit on account of taxes or other unpaid amounts that are due or accruing due to the First Nation in respect of taxable property held by that person.

(3) Where a person is entitled to be refunded an amount of taxes paid under this Law, the tax administrator must pay the person interest as follows:

(a) interest accrues from the date that the taxes were originally paid to the First Nation;

(b) the interest rate during each successive three (3) month period beginning on January 1, April 1, July 1 and October 1 in every year, is two percent (2%) below the prime lending rate of the principal banker to the First Nation on the 15th day of the month immediately preceding that three (3) month period;

(c) interest will not be compounded; and

(d) interest stops running on the day payment of the money owed is delivered or mailed to the person to whom it is owed, or is actually paid.

PART V
EXEMPTIONS FROM TAXATION

Exemptions

8.(1) The following interests in land are exempt from taxation under this Law to the extent indicated:

(a) subject to subsection (2), any interest in land held or occupied by a member of the First Nation;

(b) subject to subsection (2), any interest in land held or occupied by the First Nation or a First Nation Corporation;

(c) property held by a church for use as a residence for priests, ministers or rabbis;

(d) subject to subsection (3), property held by a church or religious order and used by that body solely for religious, educational or charitable purposes, including burying grounds and church halls from which only revenue for church purposes is derived;

(e) property held by a university, not operated for profit, and excluding any portion of the property used for commercial purposes; and

(f) subject to subsection (3), property used for a cemetery by a corporation not organized, incorporated or operated for profit.

(2) The exemptions in paragraphs (1)(a) and (1)(b) do not apply to interests in land that are held by a member of the First Nation, the First Nation, or a First Nation Corporation, as the case may be, where that interest in land is actually occupied by someone other than a member of the First Nation, the First Nation, or a First Nation Corporation.

(3) The exemptions in paragraph (1)(d) for burying grounds and in paragraph (1)(f) do not apply to property or any portion of property not actually in use for the interment of the dead.

(4) An exemption from taxation applies only to that portion of a building occupied or used for the purpose for which the exemption is granted, and a proportionate part of the land on which the building stands.

PART VI
GRANTS AND TAX CREDITS

Annual Grants

9.(1) Council may provide for a grant to a holder:

(a) where the holder is a charitable, philanthropic or other not-for-profit corporation, and Council considers that the property is used for a purpose that is directly related to the purposes of the corporation; and

(b) where the holder owns residential property and

(i) is aged sixty-five or older;

(ii) with a physical or mental disability; or

(iii) with financial need.

(2) Grants provided under subsection (1)

(a) must be applied for in writing by a holder each year;

(b) may be given only to a holder of property that is taxable in the current taxation year;

(c) must be in an amount equal to or less than the taxes payable on the property in the current taxation year, less any other grants or credits; and

(d) must be used only for the purposes of paying the taxes owing on the property in the current taxation year.

Residential Tax Credit

10.(1) Council may provide for a tax credit to holders of residential property who would be entitled to a credit under the provisions of the *Residential Property Tax Relief Act* (New Brunswick) if the holder's property were located off the reserve.

(2) A credit under subsection (1) must be in an amount that is not more than the amount to which a person would be entitled under the *Residential Property Tax Relief Act* (New Brunswick) if the holder's property was subject to property taxation by the Province.

Annual Authorization

11. Council will in each taxation year determine all grants and credits that will be given under this Part and will authorize those amounts in an expenditure law.

PART VII
LEVY OF TAX

Tax Levy

12.(1) On or before December 14 in the year prior to each taxation year, Council must adopt a law setting the rate of tax to be applied to each property class.

(2) A law setting the rate of tax may establish different tax rates for each property class.

(3) Taxes must be levied by applying the rate of tax against each one thousand dollars ($1,000) of

assessed value of the interest in land.

(4) Taxes levied under this Law are deemed to be imposed on January 1 of the taxation year in which the levy is first made.

(5) Notwithstanding subsection (3), Council may establish, in its annual law setting the rate of tax, a minimum tax payable in respect of a taxable interest in land.

(6) A minimum tax established under the authority of subsection (5) may be established in respect of one or more property classes.

Tax Payments

13.(1) Taxes are due and payable on or before May 31 of the taxation year in which they are levied.

(2) Taxes must be paid at the office of the First Nation during normal business hours, by cheque, money order or cash.

(3) Payment of taxes made by cheque or money order must be made payable to Tobique.

PART VIII

ASSESSMENT AND TAX ROLL AND ASSESSMENT AND TAX NOTICE

Assessment and Tax Roll

14.(1) On or before November 30 in the year before the taxation year, the tax administrator must provide to the assessor the taxation information required to create the assessment and tax roll for that taxation year.

(2) If at any time the tax administrator discovers that there is an error or omission in any part of the assessment and tax roll, the tax administrator must advise the assessor of the error or omission.

Assessment and Tax Notices

15.(1) The mailing of the Assessment and Tax Notice under the Assessment Law constitutes a statement of and demand for payment of the taxes by the First Nation.

(2) Where the tax administrator mails an amended Assessment and Tax Notice under the Assessment Law that indicates a reduction in the amount of taxes owing, the tax administrator must forthwith refund any excess taxes that have been paid, in accordance with section 7.

Amended Assessment and Tax Notices

16. Where the tax administrator mails an amended Assessment and Tax Notice under the Assessment Law that indicates an increase in the amount of taxes owing, the taxes are due and payable on the date of mailing of the amended Assessment and Tax Notice; however, the taxpayer must be given thirty (30) days to pay those taxes and a penalty and interest must not be added in that period.

Requests for Information

17.(1) The tax administrator may, for any purpose related to the administration of this Law, deliver a Request for Information containing the information set out in Schedule I, to a holder or a person who has disposed of property, and that person must provide the requested information to the tax administrator within fourteen (14) days or a longer period as specified in the notice.

(2) The tax administrator is not bound by the information provided under subsection 17(1).

PART IX

PAYMENT RECEIPTS AND TAX CERTIFICATES

Receipts for Payments

18. On receipt of a payment of taxes, the tax administrator must issue a receipt to the taxpayer and must enter the receipt number on the assessment and tax roll opposite the interest in land for which the taxes are paid.

Tax Certificate

19.(1) On receipt of a written request and payment of the fee set out in subsection (2), the tax administrator must issue a Tax Certificate showing whether taxes have been paid in respect of an interest in land and if not, the amount of taxes outstanding.

(2) The fee for a Tax Certificate is twenty-five dollars ($25) for each assessment and tax roll folio searched.

PART X

PENALTIES AND INTEREST

Penalty

20. If all or any portion of the taxes remains unpaid after May 31 of the year in which they are levied, a penalty of ten percent (10%) of the portion that remains unpaid will be added to the amount of the unpaid taxes and the amount so added is, for all purposes, deemed to be part of the taxes.

Interest

21. If all or any portion of taxes remains unpaid after May 31 of the year in which they are levied, the unpaid portion accrues interest at twelve percent (12%) per year.

Application of Payments

22. Payments for taxes must be credited by the tax administrator first, to taxes, including interest, from previous taxation years, second, to a penalty added in the current taxation year, and third, to unpaid taxes for the current taxation year.

PART XI

REVENUES AND EXPENDITURES

Revenues and Expenditures

23.(1) All revenues raised under this Law must be placed into a local revenue account, separate from other moneys of the First Nation.

(2) Revenues raised include

(a) taxes, including for clarity, interest, penalties and costs, as set out in this Law; and

(b) payments-in-lieu of taxes.

(3) An expenditure of revenue raised under this Law must be made under the authority of an expenditure law.

Reserve Funds

24.(1) Reserve funds established by Council must

(a) be established in an expenditure law; and

(b) comply with this section.

(2) Except as provided in this section, moneys in a reserve fund must be deposited in a separate account and the moneys and interest earned on it must be used only for the purpose for which the reserve fund was established.

(3) Council may, by expenditure law,

(a) transfer moneys in a capital purpose reserve fund to another reserve fund or account, provided that all projects for which the reserve fund was established have been completed;

(b) transfer moneys in a non-capital purpose reserve fund to another reserve fund or account; and

(c) borrow moneys from a reserve fund where not immediately required, on condition that the First Nation repay the amount borrowed plus interest on that amount at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation, no later than the time when the moneys are needed for the purposes of that reserve fund.

(4) As an exception to paragraph (3)(c), where the FMB has

(a) assumed third-party management of the First Nation's local revenue account, and

(b) determined that moneys must be borrowed from a reserve fund to meet the financial obligations of the First Nation, the FMB may, acting in the place of Council, borrow moneys from a reserve fund by expenditure law.

(5) Council must authorize all payments into a reserve fund and all expenditures from a reserve fund in an expenditure law.

(6) Where moneys in a reserve fund are not immediately required, the tax administrator must invest those moneys in one or more of the following:

(a) securities of Canada or of a province;

(b) securities guaranteed for principal and interest by Canada or by a province;

(c) securities of a municipal finance authority or the First Nations Finance Authority;

(d) investments guaranteed by a bank, trust company or credit union; or

(e) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

PART XII
COLLECTION AND ENFORCEMENT

Recovery of Unpaid Taxes

25.(1) The liability referred to in subsection 6(2) is a debt recoverable by the First Nation in a court of competent jurisdiction and may be recovered by any other method authorized in this Law and, unless otherwise provided, the use of one method does not prevent seeking recovery by one or more other methods.

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

(3) Where the tax administrator has reasonable grounds to believe that a debtor intends to remove his or her personal property from the reserve, or intends to dismantle or remove his or her improvements on the reserve, or take any other actions that may prevent or impede the collection of unpaid taxes owing under this Law, the tax administrator may apply to a court of competent jurisdiction for a remedy, notwithstanding that the time for payment of taxes has not yet expired.

(4) Before commencing enforcement proceedings under Parts XIII, XIV and XV, the tax administrator must request authorization from Council by resolution.

Tax Arrears Certificate

26.(1) Before taking any enforcement measures or commencing any enforcement proceedings under Parts XIII, XIV or XV and subject to subsection (2), the tax administrator must issue a Tax Arrears Certificate and deliver it to every person named on the assessment and tax roll in respect of that property.

(2) A Tax Arrears Certificate must not be issued for at least six (6) months after the day on which the taxes became due.

Creation of Lien

27.(1) Unpaid taxes are a lien on the interest in land to which they pertain that attaches to the interest in land and binds subsequent holders of the interest in land.

(2) The tax administrator must maintain a list of all liens created under this Law.

(3) A lien listed under subsection (2) has priority over any unregistered or registered charge, claim, privilege, lien or security interest in respect of the interest in land.

(4) The tax administrator may apply to a court of competent jurisdiction to protect or enforce a lien under subsection (1) where the tax administrator determines such action is necessary or advisable.

(5) On receiving payment in full of the taxes owing in respect of which a lien was created, the tax administrator must register a discharge of the lien without delay.

(6) Discharge of a lien by the tax administrator is evidence of payment of the taxes with respect to the interest in land.

(7) A lien is not lost or impaired by reason of any technical error or omission in its creation or recording in the list of liens.

Delivery of Documents in Enforcement Proceedings

28.(1) This section applies to this Part and Parts XIII, XIV and XV.

(2) Delivery of a document may be made personally or by sending it by registered mail.

(3) Personal delivery of a document is made

(a) in the case of an individual, by leaving the document with that individual or with an individual at least eighteen (18) years of age residing at that individual's place of residence;

(b) in the case of a first nation, by leaving the document with the individual apparently in charge, at the time of delivery, of the main administrative office of the first nation, or with the first nation's legal counsel; and

(c) in the case of a corporation, by leaving the document with the individual apparently in charge, at the time of delivery, of the head office or one of its branch offices, or with an officer or director of the corporation or the corporation's legal counsel.

(4) A document is considered to have been delivered

(a) if delivered personally, on the day that personal delivery is made; and

(b) if sent by registered mail, on the fifth day after it is mailed.

(5) Copies of notices must be delivered

(a) where the notice is in respect of taxable property, to all persons named on the assessment and tax roll in respect of that taxable property; and

(b) where the notice is in respect of personal property, to all holders of security interests in the personal property registered under the laws of the Province.

PART XIII

SEIZURE AND SALE OF PERSONAL PROPERTY

Seizure and Sale of Personal Property

29.(1) Where taxes remain unpaid more than thirty (30) days after a Tax Arrears Certificate is issued to a debtor, the tax administrator may recover the amount of unpaid taxes, with costs, by seizure and sale of personal property of the debtor that is located on the reserve.

(2) As a limitation on subsection (1), personal property of a debtor that would be exempt from seizure under a writ of execution issued by a superior court in the Province is exempt from seizure under this Law.

(3) The costs payable by the debtor under subsection (1) are set out in Schedule II.

Notice of Seizure and Sale

30.(1) Before proceeding under subsection 29(1), the tax administrator must deliver to the debtor a Notice of Seizure and Sale.

(2) If the taxes remain unpaid more than seven (7) days after delivery of a Notice of Seizure and Sale, the tax administrator may request a sheriff, bailiff or by-law enforcement officer to seize any personal property described in the Notice of Seizure and Sale that is in the possession of the debtor and is located on the reserve.

(3) The person who seizes personal property must deliver to the debtor a receipt for the personal property seized.

Notice of Sale of Seized Personal Property

31.(1) The tax administrator must publish a Notice of Sale of Seized Personal Property in two (2) consecutive issues of the local newspaper with the largest circulation.

(2) The first publication of the Notice of Sale of Seized Personal Property must not occur until at least sixty (60) days after the personal property was seized.

Conduct of Sale

32.(1) A sale of personal property must be conducted by public auction.

(2) Subject to subsection (4), at any time after the second publication of the Notice of Sale of Seized Personal Property, the seized property may be sold by auction.

(3) The tax administrator must conduct the public auction at the time and place set out in the Notice of Sale of Seized Personal Property, unless it is necessary to adjourn the public auction, in which case a further notice must be published in the manner set out in subsection 31(1).

(4) If at any time before the seized property is sold a challenge to the seizure is made to a court of competent jurisdiction, the sale must be postponed until after the court rules on the challenge.

Registered Security Interests

33. The application of this Part to the seizure and sale of personal property subject to a registered

security interest is subject to any laws of the Province regarding the seizure and sale of such property.

Proceeds of Sale

34.(1) The proceeds from the sale of seized personal property must be paid to any holders of registered security interests in the property and to the First Nation in order of their priority under the laws applicable in the Province, and any remaining proceeds must be paid to the debtor.

(2) If claim to the surplus is made by another person and such claim is contested, or if the tax administrator is uncertain who is entitled to such surplus, the tax administrator must retain such money until the rights of the parties have been determined.

PART XIV
SEIZURE AND ASSIGNMENT OF TAXABLE PROPERTY

Seizure and Assignment of Taxable Property

35.(1) Where taxes remain unpaid more than nine (9) months after a Tax Arrears Certificate is issued, the tax administrator may levy the amount of unpaid taxes by way of the seizure and assignment of the taxable property.

(2) Before proceeding under subsection (1), the tax administrator must serve a Notice of Seizure and Assignment of Taxable Property on the debtor and deliver a copy to any locatee with an interest in the taxable property.

(3) Not less than six (6) months after a Notice of Seizure and Assignment of Taxable Property is delivered to the debtor, the tax administrator may sell the right to an assignment of the taxable property by public tender or auction.

(4) Council must, by resolution, prescribe the method of public tender or auction, including the conditions that are attached to the acceptance of an offer.

Upset Price

36.(1) The tax administrator must set an upset price for the sale of the right to an assignment of the taxable property that is not less than the total amount of the taxes payable on the taxable property, calculated to the end of the redemption period set out in subsection 40(1), plus five percent (5%) of that total.

(2) The upset price is the lowest price for which the taxable property may be sold.

Notice of Sale of a Right to Assignment of Taxable Property

37.(1) A Notice of Sale of a Right to Assignment of Taxable Property must be

(a) published in the local newspaper with the largest circulation at least once in each of the four (4) weeks preceding the date of the public tender or auction; and

(b) posted in a prominent place on the reserve not less than ten (10) days before the date of the public tender or auction.

(2) The tax administrator must conduct a public auction or tender at the time and place set out in the Notice of Sale of a Right to Assignment of Taxable Property, unless it is necessary to adjourn the public tender or auction, in which case a further notice must be published in the manner set out in subsection (1).

(3) If no bid is equal to or greater than the upset price, the First Nation is deemed to have purchased the right to an assignment of the taxable property for the amount of the upset price.

Notice to Minister

38. The tax administrator must, without delay, notify the Minister of Indian Affairs and Northern Development in writing of the sale of a right to an assignment of taxable property made under this Law.

Subsisting Rights

39. When taxable property is sold by public tender or auction, all rights in it held by the holder of the taxable property or a holder of a charge immediately cease to exist, except as follows:

(a) the taxable property is subject to redemption as provided in subsection 40(1);

(b) the right to possession of the taxable property is not affected during the time allowed for redemption, subject, however, to

(i) impeachment for waste, and

(ii) the right of the highest bidder to enter on the taxable property to maintain it in a proper condition and to prevent waste;

(c) an easement, restrictive covenant, building scheme or right-of-way registered against the interest in land subsists; and

(d) during the period allowed for redemption, an action may be brought in a court of competent jurisdiction to have the sale of the right to an assignment of the taxable property set aside and declared invalid.

Redemption Period

40.(1) At any time within three (3) months after the holding of a public tender or auction in respect of taxable property, the debtor may redeem the taxable property by paying to the First Nation the amount of the upset price plus three percent (3%).

(2) On redemption of the taxable property under subsection (1),

(a) if the right to an assignment was sold to a bidder, the First Nation must, without delay, repay to that bidder the amount of the bid; and

(b) the tax administrator must notify the Minister of Indian Affairs and Northern Development in writing of the redemption.

(3) No assignment of taxable property must be made until the end of the redemption period provided for in subsection (1).

(4) Subject to a redemption under subsection (2), at the end of the redemption period, the First Nation must assign the taxable property to the highest bidder in the public tender or auction, or to itself as the deemed purchaser in accordance with subsection 37(3).

Assignment of Taxable Property

41.(1) Taxable property must not be assigned to any person or entity who would not have been entitled under the *Indian Act* or the *First Nations Land Management Act*, as the case may be, to obtain the interest or right constituting the taxable property.

(2) The tax administrator must register an assignment of any taxable property assigned in accordance with this Law in every registry in which the taxable property is registered at the time of the assignment.

(3) An assignment under subsection 40(4) operates

(a) as a transfer of the taxable property to the bidder from the debtor, without an attestation or proof of execution; and

(b) to extinguish all the right, title and interest of every previous holder of the taxable property, or those claiming under a previous holder, and all claims, demands, payments, charges, liens, judgments,

mortgages and encumbrances of every type, and whether or not registered, subsisting at the time the assignment is registered under subsection (2), except an easement, restrictive covenant, building scheme or right-of-way registered against the interest in land.

(4) Upon assignment under subsection 40(4), any remaining debt of the debtor with respect to the taxable property is extinguished.

Proceeds of Sale

42.(1) At the end of the redemption period, the proceeds from the sale of a right to assignment of taxable property must be paid

(a) first, to the First Nation, and

(b) second, to any other holders of registered interests in the property in order of their priority at law,

and any remaining proceeds must be paid to the debtor.

(2) If claim to the surplus is made by another person and such claim is contested, or if the tax administrator is uncertain who is entitled to such surplus, the tax administrator must retain such money until the rights of the parties have been determined.

Resale by First Nation

43.(1) If the right to assignment of taxable property is purchased by the First Nation under subsection 37(3), the tax administrator may, during the redemption period, sell the assignment of the taxable property to any person for not less than the upset price and the purchaser is thereafter considered the bidder under this Part.

(2) A sale under subsection (1) does not affect the period for or the right of redemption by the debtor as provided in this Law.

PART XV
DISCONTINUANCE OF SERVICES

Discontinuance of Services

44.(1) Subject to this section, the First Nation may discontinue any service it provides to the taxable property of a debtor if

(a) revenues from this Law or any property taxation law enacted by the First Nation are used to provide that service to taxpayers; and

(b) taxes remain unpaid by a debtor more than thirty (30) days after a Tax Arrears Certificate was delivered to the debtor.

(2) At least thirty (30) days before discontinuing any service, the tax administrator must deliver to the debtor and to any locatee with an interest in the taxable property a Notice of Discontinuance of Services.

(3) The First Nation must not discontinue

(a) fire protection or police services to the taxable property of a debtor;

(b) water or garbage collection services to taxable property that is a residential dwelling; or

(c) electrical or natural gas services to taxable property that is a residential dwelling during the period from November 1 in any year to March 31 in the following year.

PART XVI
GENERAL PROVISIONS

Disclosure of Information

45.(1) The tax administrator or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

(a) in the course of administering this Law or performing functions under it;

(b) in proceedings before the Assessment Review Board, a court of law or pursuant to a court order; or

(c) in accordance with subsection (2).

(2) The tax administrator may disclose to the agent of a holder confidential information relating to the property if the disclosure has been authorized in writing by the holder.

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

Disclosure for Research Purposes

46. Notwithstanding section 45, Council may disclose information and records to a third party for research purposes, including statistical research, provided

(a) the information and records do not contain information in an individually identifiable form or business information in an identifiable form; or

(b) where the research cannot reasonably be accomplished unless the information is provided in an identifiable form, the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

Validity

47. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay tax or any other amount under this Law be affected by

(a) an error or omission in a valuation or a valuation based solely on information in the hands of an assessor or the tax administrator;

(b) an error or omission in an assessment and tax roll, Assessment and Tax Notice, or any notice given under this Law; or

(c) a failure of the First Nation, tax administrator or the assessor to do something within the required time.

Limitation on Proceedings

48.(1) No person may commence an action or proceeding for the return of money paid to the First Nation, whether under protest or otherwise, on account of a demand, whether valid or invalid, for taxes or any other amount paid under this Law, after the expiration of six (6) months from the date the cause of action first arose.

(2) If a person fails to start an action or proceeding within the time limit prescribed in this section, then money paid to the First Nation must be deemed to have been voluntarily paid.

Notices

49.(1) Where in this Law a notice is required to be given by mail, or where the method of giving the notice is not otherwise specified, it must be given

(a) by mail to the recipient's ordinary mailing address or the address for the recipient shown on the

assessment and tax roll;

(b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or

(c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address or the address for the recipient shown on the assessment and tax roll.

(2) Except where otherwise provided in this Law

(a) a notice given by mail is deemed received on the fifth day after it is posted;

(b) a notice posted on property is deemed received on the second day after it is posted; and

(c) a notice given by personal delivery is deemed received upon delivery.

Interpretation

50.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of the enactment and must be construed as being inserted for convenience of reference only.

Force and Effect

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

THIS LAW IS HEREBY DULY ENACTED by Council on the 24 day of August, 2016, at Tobique, in the Province of New Brunswick.

A quorum of Council consists of Five (5) members of Council.

Chief Ross Perley

Councillor Edwin Bernard

Councillor Tina Martin-Perley

Councillor Richard Moulton

Councillor Leonard Nicholas

Councillor Vaughn Nicholas

Councillor Lindsay Paul

Councillor Brad Perley

Councillor Kim Perley

Councillor Melanie Perley

Councillor Gary Sappier

Councillor Laura Sappier

Councillor Lyndon Sappier

SCHEDULE I

REQUEST FOR INFORMATION BY TAX ADMINISTRATOR
FOR TOBIQUE

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN LAND: _____

_____

DATE OF REQUEST: _____

PURSUANT to section __of the *Tobique Property Taxation Law, 2016* , I request that you provide to me, in writing, no later than _____ **[Note: must be a date that is at least fourteen (14) days from the date of request]**, the following information relating to the above-noted interest in land:

(1)

(2)

(3)

_____
Tax Administrator for Tobique

Dated: _____ , 20__ .

SCHEDULE II

COSTS PAYABLE BY DEBTOR ARISING FROM
SEIZURE AND SALE OF PERSONAL PROPERTY

For costs arising from the seizure and sale of personal property:

1.	For preparation of a notice	$ 100.00
2.	For service of notice on each person or place by the First Nation	$ 125.00
3.	For service of notice on each person or place by a process server, bailiff or delivery service	actual cost
4.	For advertising in newspaper	actual cost
5.	For staff time spent in conducting a seizure and sale of personal property, not including costs otherwise recovered under this Schedule	$ 50.00/hr

6. Actual costs incurred by the First Nation for the seizure, storage and sale of personal property will be charged based on receipts.

SCHEDULE III

TAX CERTIFICATE

In respect of the interest in land described as: _____ and pursuant to the *Tobique Property Taxation Law, 2016* , I hereby certify as follows:

That all taxes due and payable in respect of the above-referenced interest in land have been paid as of the date of this certificate.

OR

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

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

_____

_____

_____

Tax Administrator for Tobique

Dated: _____ , 20___ .

SCHEDULE IV

TAX ARREARS CERTIFICATE

In respect of the interest in land described as: _____ and pursuant to the *Tobique Property Taxation Law, 2016* , I hereby certify as follows:

That taxes, interest and penalties are unpaid in respect of the above-referenced interest in land, as follows:

Taxes: $_____

Penalties: $_____

Interest: $_____

Total unpaid tax debt: $_____

The total unpaid tax debt is due and payable immediately.

If the total unpaid tax debt is paid on or before _____ , no further penalties and interest will be assessed on this amount.

If all or any portion of the tax debt is not paid on or before _____ , a further penalty of _____ dollars ($_____) will be assessed on that date.

The unpaid tax debt accrues interest each day that it remains unpaid, at a rate of _____ percent (__%) per year.

Payments must be made at the offices of Tobique, located at [address] during normal business hours. Payment must be by cheque, money order or cash.

The following persons are jointly and severally liable for the total unpaid tax debt:

_____

_____

_____

Tax Administrator for Tobique

Dated: _____ , 20__ .

SCHEDULE V

NOTICE OF SEIZURE AND SALE OF PERSONAL PROPERTY

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN LAND: _____

_____

TAKE NOTICE that taxes, penalties and interest in the amount of _____ dollars ($_____) remain unpaid and are due and owing in respect of the above-referenced interest in land.

AND TAKE NOTICE that a Tax Arrears Certificate dated _____ was delivered to you in respect of these unpaid taxes.

AND TAKE NOTICE that:

1. Failure to pay the full amount of the unpaid tax debt within SEVEN (7) days after delivery of this notice may result in the tax administrator, pursuant to section __ of the *Tobique Property Taxation Law, 2016* , seizing the personal property described as follows:

[general description of the personal property to be seized]

2. The tax administrator may retain a sheriff, bailiff or bylaw enforcement officer to seize the property and the seized property will be held in the possession of the tax administrator, at your cost, such cost being added to the amount of the unpaid taxes.

3. If the unpaid taxes, penalties, interest and costs of seizure are not paid in full within sixty (60) days following the seizure of the property, the tax administrator may

(a) publish a Notice of Sale of Seized Personal Property in two (2) consecutive issues of the _____ newspaper; and

(b) at any time after the second publication of the notice, sell the seized property by public auction.

AND TAKE NOTICE that the tax administrator will conduct the public auction at the time and place set out in the Notice of Sale of Seized Personal Property, unless it is necessary to adjourn the public auction, in which case a further notice will be published.

_____

Tax Administrator for Tobique

Dated: _____ , 20__ .

SCHEDULE VI

NOTICE OF SALE OF SEIZED PERSONAL PROPERTY

TAKE NOTICE that a sale by public auction for unpaid taxes, penalties, interest and costs owed to Tobique will take place on _____ , 20_____ at _____ o'clock at _____ [location].

The following personal property, seized pursuant to section ___ of the *Tobique Property Taxation Law, 2016* , will be sold at the public auction:

[general description of the goods]

The proceeds of sale of the seized property shall be paid to any holders of registered security interests in the property and to the First Nation in order of their priority under the laws applicable in the Province of New Brunswick and any remaining proceeds shall be paid to the debtor.

_____

Tax Administrator for Tobique

Dated: _____ , 20__ .

SCHEDULE VII

NOTICE OF SEIZURE AND ASSIGNMENT OF TAXABLE PROPERTY

TO: _____
(the "debtor")

ADDRESS: _____

DESCRIPTION OF INTEREST IN LAND: _____
(the "taxable property")

_____

TAKE NOTICE that taxes, penalties, and interest in the amount of _____ dollars ($_____) remain unpaid and are due and owing in respect of the taxable property.

AND TAKE NOTICE that a Tax Arrears Certificate dated _____was delivered to you in respect of these unpaid taxes.

AND TAKE NOTICE that failure to pay the full amount of the unpaid tax debt within six (6) months after service of this Notice may result in the tax administrator, pursuant to section __ of the *Tobique Property Taxation Law, 2016* , seizing and selling a right to an assignment of the taxable property by public tender [auction] as follows:

1. The public tender [auction], including the conditions that are attached to the acceptance of an offer, shall be conducted in accordance with the procedures prescribed by the Council of Tobique, a copy of which may be obtained from the tax administrator.

2. The tax administrator will

   (a) publish a Notice of Sale of a Right to Assignment of Taxable Property in the _____ newspaper at least once in each of the four (4) weeks preceding the date of the sale; and

   (b) post the Notice of Sale of a Right to Assignment of Taxable Property in a prominent place on the reserve not less than ten (10) days preceding the date of the sale.

3. The Notice of Sale of a Right to Assignment of Taxable Property will set out the upset price for the right to assignment of the taxable property and any conditions attached to the acceptance of a bid.

4. The upset price will be not less than the total amount of the taxes, interest and penalties payable, calculated to the end of the redemption period, plus five percent (5%) of that total. The upset price is the lowest price for which the right to assignment of the taxable property will be sold.

5. The tax administrator will conduct the public tender [auction] at the time and place set out in the Notice of Sale of a Right to Assignment of Taxable Property, unless it is necessary to adjourn in which case a further notice will be published.

6. If at the public tender [auction] there is no bid that is equal to or greater than the upset price, the First Nation will be deemed to have purchased the right to an assignment of the taxable property for the amount of the upset price.

7. The debtor may redeem the right to an assignment of the taxable property after the sale by paying to the First Nation the amount of the upset price plus three percent (3%), any time within three (3) months after the holding of the public tender [auction] in respect of the taxable property (hereinafter referred to as the "redemption period"). Where the right to an assignment is redeemed, the First Nation will, without delay, repay to the bidder the amount of the bid.

8. A sale of a right to an assignment of taxable property by public tender [auction] is not complete, and

no assignment of the taxable property will be made, until the expiration of the redemption period. If the right to an assignment of the taxable property is not redeemed within the redemption period, then on the expiration of the redemption period, the First Nation will assign the taxable property to the highest bidder or to itself as the deemed purchaser, as applicable. The taxable property will not be assigned to any person or entity who would not have been capable under the *Indian Act* or the *First Nations Land Management Act* of obtaining the interest or right constituting the taxable property.

9. Council of Tobique will, without delay, notify the Minister of Indian Affairs and Northern Development in writing of the sale of a right to an assignment of the taxable property and of any redemption of the right to an assignment of the taxable property.

10. The tax administrator will register the assignment of the taxable property in every registry in which the taxable property is registered at the time of the assignment.

11. An assignment of the taxable property operates

(a) as a transfer to the bidder or the First Nation, as the case may be, from the debtor of the taxable property, without an attestation or proof of execution, and

(b) to extinguish all the right, title and interest of every previous holder of the taxable property, or those claiming under a previous holder, and all claims, demands, payments, charges, liens, judgments, mortgages and encumbrances of every type, and whether or not registered, subsisting at the time the assignment is registered, except an easement, restrictive covenant, building scheme or right-of-way registered against the interest in land.

12. Upon assignment of the taxable property, the debtor will be required to immediately vacate the taxable property, and any rights or interests held by the debtor in the taxable property, including the improvements, will be transferred in full to the purchaser.

13. The proceeds of sale of the taxable property will be paid first to the First Nation, then to any other holders of registered interests in the taxable property in order of their priority at law. Any moneys in excess of these amounts will be paid to the debtor in accordance with the *Tobique Property Taxation Law, 2016* .

_____

Tax Administrator for Tobique

Dated: _____ , 20__ .

SCHEDULE VIII

NOTICE OF SALE OF A RIGHT TO ASSIGNMENT OF TAXABLE PROPERTY

TO: _____
(the "debtor")

ADDRESS: _____

DESCRIPTION OF INTEREST IN LAND: _____
(the "taxable property")

_____

TAKE NOTICE that a Notice of Seizure and Assignment of Taxable Property was given in respect of the taxable property on _____ , 20__ .

AND TAKE NOTICE that unpaid taxes, including penalties and interest, in the amount of _____ dollars ($_____), remain unpaid and are due and owing in respect of the taxable property.

AND TAKE NOTICE that a sale of the right to assignment of the taxable property will be conducted by public tender [auction] for unpaid taxes, penalties and interest owed to Tobique.

The public tender [auction] will take place on:

_____ , 20__ at _____ o'clock at

_____ [location].

The tax administrator will conduct the public tender [auction] at the above time and place unless it is necessary to adjourn in which case a further notice will be published.

AND TAKE NOTICE that:

1. The upset price for the taxable property is: _____ dollars ($_____). The upset price is the lowest price for which the taxable property will be sold.

2. The public tender [auction], including the conditions that are attached to the acceptance of an offer, shall be conducted in accordance with the procedures prescribed by the Council of Tobique as set out in this notice.

3. If at the public tender [auction] there is no bid that is equal to or greater than the upset price, the First Nation will be deemed to have purchased the right to an assignment of the taxable property for the amount of the upset price.

4. The debtor may redeem the right to an assignment of the taxable property by paying to the First Nation the amount of the upset price plus three percent (3%), any time within three (3) months after the holding of the public tender [auction] in respect of the taxable property (referred to as the "redemption period"). Where the right to an assignment is redeemed, the First Nation will, without delay, repay to the bidder the amount of the bid.

5. A sale of a right to an assignment of taxable property by public tender [auction] is not complete, and no assignment of the taxable property will be made, until the expiration of the redemption period. If the right to an assignment of the taxable property is not redeemed within the redemption period, then on the expiration of the redemption period, the First Nation will assign the taxable property to the highest bidder or to itself as the deemed purchaser, as applicable. The taxable property will not be assigned to any person or entity who would not have been capable under the *Indian Act* or the *First Nations Land Management Act*, as the case may be, of obtaining the interest or right constituting the taxable property.

6. Council of Tobique will, without delay, notify the Minister of Indian Affairs and Northern Development in writing of the sale of a right to an assignment of the taxable property and of any redemption of the right to assignment of the taxable property.

7. The tax administrator will register an assignment of the taxable property in every registry in which the taxable property is registered at the time of the assignment.

8. An assignment of the taxable property operates

(a) as a transfer to the bidder from the debtor of the taxable property, without an attestation or proof of execution, and

(b) to extinguish all the right, title and interest of every previous holder of the taxable property, or those claiming under a previous holder, and all claims, demands, payments, charges, liens, judgments, mortgages and encumbrances of every type, and whether or not registered, subsisting at the time the assignment is registered, except an easement, restrictive covenant, building scheme or right-of-way registered against the interest in land.

9. Upon assignment of the taxable property, the debtor will be required to immediately vacate the taxable property, and any rights or interests held by the debtor in the taxable property, including the improvements, will be transferred in full to the purchaser.

10. The proceeds of sale of the taxable property will be paid first to the First Nation, then to any other holders of registered interests in the taxable property in order of their priority at law. Any moneys in excess of these amounts will be paid to the debtor in accordance with the *Tobique Property Taxation Law, 2016* .

_____

Tax Administrator for Tobique

Dated: _____ , 20__ .

SCHEDULE IX

NOTICE OF DISCONTINUANCE OF SERVICES

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN LAND: _____

_____

TAKE NOTICE that taxes, penalties, and interest in the amount of _____ dollars ($_____) remain unpaid and are due and owing in respect of the taxable property.

AND TAKE NOTICE that a Tax Arrears Certificate dated _____was delivered to you in respect of these unpaid taxes.

AND TAKE NOTICE that where a debtor fails to pay all unpaid taxes within thirty (30) days of the issuance of a Tax Arrears Certificate, the tax administrator may discontinue services that it provides to the taxable property of a debtor, pursuant to the *Tobique Property Taxation Law, 2016.*

AND TAKE NOTICE that if the taxes are not paid in full on or before _____ , being thirty (30) days from the date of issuance of this notice, the following services will be discontinued:

[list services to be discontinued]

_____

Tax Administrator for Tobique

Dated: _____ , 20__ .