

TESLIN TLINGIT COUNCIL

INCOME TAX ACT

Citation

1. This law may be cited as the Teslin Tlingit Council *Income Tax Act*.

Interpretation

2. In this Act,

"Chief Executive" means the Chief Executive officer of the Teslin Tlingit Council under the Constitution;

"Commissioner" means the Commissioner of the Yukon;

"Constitution" means the constitution of the Teslin Tlingit Council, as amended from time to time;

"Executive Council" means the Executive Council of the Teslin Tlingit Council under the Teslin Tlingit Council Constitution;

"federal Act" means the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1;

"individual" means a person other than a corporation and includes a trust or an estate as defined in section 104 (1) of the federal Act;

"Minister" means the Minister of National Revenue for Canada and any other person charged by federal legislation with responsibility for the federal Act, but in any provision of this Act which incorporates by reference the federal Act, means, in the absence of a tax collection agreement, the Executive Council;

"Settlement Land" means settlement land of the Teslin Tlingit Council under the Teslin Tlingit Council Final Agreement, the *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c. 34, and *An Act Approving Yukon Land Claims Final Agreements*, S.Y. 1993, c. 19;

"taxation year" has the same meaning as in subsection 249 (1) of the federal Act and, in the case of an estate or trust arising on death, has the same meaning as in subsection 104 (23) of the federal Act;

"tax payable under the federal Act" means the amount that, but for section 120 of the federal Act, would be the tax payable by an individual under Part I of that Act for the taxation year in respect of which the expression is being applied, computed as if the individual were not entitled to any deduction under sections 126, 127, 127.2, 127.4 or 127.41 of that Act or to a Yukon First Nation income tax credit under that Act;

"tax payable under the territorial Act" means the amount that would be the tax payable by an individual under the territorial Act for the taxation year in respect of which the expression is being applied, computed as if the individual were not entitled to a deduction under section 5 of that Act or to a Yukon First Nation income tax credit under that Act and, for greater certainty, includes the surtax exigible under that Act;

"territorial Act" means the *Income Tax Act*, R.S.Y. 1986, c. 90; and

"trust" means a trust referred to in subdivision k of Division B of Part I of the federal Act, and includes an *inter vivos* trust deemed under subsection 149 (5) of the federal Act to have been created and to have been in existence throughout a period that includes the last day of the taxation year.

Explanatory notes:

- (a) Section 2 states the meaning that the words in quotation marks shall be given wherever those words appear in the main text of the law. These definitions are largely technical in nature. They have been designed, where necessary, with reference to the First Nation Constitution or the federal Income Tax Act, or to make the law itself more workable.
- (b) The "individuals" to whom the Act applies are persons, their estates and any trust they may establish.
- (c) The "taxation year" under the federal Act ends on December 31. If a person passes away during a year, his or her estate is responsible for any tax payable on income received while he or she was still alive, and for any tax payable on income received by the estate between the date of death and the date the estate is passed on to the heirs.
- (d) The "tax payable under the federal Act" and the "tax payable under the territorial Act" are defined to make it clear that the share of income tax to be received by the First Nation is to be calculated by Canada or Yukon as if tax deductions provided by the named sections of their laws do not apply. This definition ensures that Canada and Yukon, respectively, will continue to bear financial responsibility for those items. The deductions remain available to the individual to determine the actual tax to be paid by that individual.

3. Except where they are at variance with the definitions contained in section 2 or in the *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35, the definitions and interpretations contained in the federal Act and in the territorial Act, as the case may be, shall apply for the purposes of this Act.
4. Where there is any inconsistency or conflict between the provisions of the federal Act and the provisions of the territorial Act, the provisions of the federal Act shall prevail for the purposes of this Act.
5. In the case of an individual who resided in Canada at any time in the taxation year but ceased to reside in Canada before the last day thereof, the expression "last day of the taxation year" shall be deemed to be a reference to the last day in the taxation year on which the individual resided in Canada.
6. The tax payable by an individual under this Act is based on the tax payable under the federal Act and the tax payable under the territorial Act as fixed by assessment subject to variation on objection or appeal, if any, in accordance with Part I of the federal Act.
7. This Act shall be interpreted in accordance with the *Interpretation Act*, R.S.C. 1985, c. 1-21, with such modifications as the circumstances require.

Explanatory Notes:

- (a) Sections 3 to 7 give direction as to how the First Nation law is to fit in with other taxation laws, when those laws have to be interpreted alongside each other.
- (b) Section 3 incorporates the definitions and interpretations contained in the federal and territorial Acts, if the First Nation law or federal Self-Government law does not speak to a matter. Section 4 makes it clear that, if the federal Act and the territorial Act both address any matter in a way that is inconsistent or in conflict, it is the federal Act which is to prevail.
- (c) Section 5 concerns individuals who leave Canada on a permanent basis during a year. It means that they still are liable to pay tax under the law up to the date they left the country.
- (d) Section 6 confirms that the First Nation tax revenue will be based of on the Notice of Assessment that is issued to each taxpayer by Revenue Canada. If the taxpayer appeals against their Assessment, the First Nation revenue will be based on the Assessment that is finally determined at the outcome of the appeal.
- (e) Section 7 incorporates the federal law for the interpretation of statutes, so as to provide a backstop for interpretation issues, such as how the number of days is to be calculated when required in a particular case, in a way that is consistent with interpretation rules which apply to the federal income tax law.

Part I

Tax on the Income of Individuals

8. An income tax shall be paid as required by this Act for each taxation year by every individual who was resident within Settlement Land on the last day of the taxation year.

Computation of Tax

9. For the purposes of this section and sections 10 and 11,

"income earned in the taxation year outside Yukon" means income for the year minus income earned in the taxation year on Settlement Land;

"income earned in the taxation year on Settlement Land" means the amount of income that would be determined to be earned in the Yukon for the purposes of determining the amount of income earned in the year in a province under section 120 of the federal Act; and

"income for the year" means

- (a) in the case of an individual resident in Canada during part only of the taxation year in respect of whom section 114 of the federal Act applies, the aggregate of that individual's income for the period or periods in the year referred to in paragraph 114 (a) of the federal Act as determined in accordance with the federal Act as though such portion of the year were the whole taxation year; or

- (b) in the case of any other individual, income for the year as determined in accordance with the federal Act.

- 10. The tax payable under this Act for a taxation year by an individual who was resident within Settlement Land on the last day of the taxation year and who had no income earned in the taxation year outside Yukon is the aggregate of:
 - (a)
 - (i) for taxation years ending after 1998 and before 2009, a prescribed percentage of the tax payable under the federal Act for that taxation year; and
 - (ii) for taxation years ending after 2008, 95% of the tax payable under the federal Act for that taxation year; and
 - (b) 95% of the tax payable under the territorial Act for that taxation year.

- 11. The tax payable under this Act for a taxation year by an individual who was resident within Settlement Land on the last day of the taxation year and who had income earned in the taxation year outside Yukon is the aggregate amount that bears the same relation to:
 - (a)
 - (i) for taxation years ending after 1998 and before 2009, a prescribed percentage of the tax payable under the federal Act for that taxation year; and

- (ii) for taxation years ending after 2008, 95% of the tax payable under the federal Act for that taxation year; and
- (b) 95% of the tax payable under the territorial Act for that taxation year;

that the individual's income earned in the taxation year within Settlement Land bears to that individual's income for that year.

12. For the purposes of section 13,

"Citizen" means a citizen of the Teslin Tlingit Council under the Constitution;

"eligible individual" means an individual who is a status Indian and who, at the valuation time, is a Citizen or holds an eligible interest;

"eligible interest" means any estate or interest in specified land or in personal property situate on specified land;

"reserve"* means a reserve within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5;

"specified land" means and includes Settlement Land and, if the individual is a status Indian who is a Citizen, a reserve;

"status Indian" means an individual who is a status Indian within the meaning of the *Indian Act*, R.S.C.1985, c. 1-5; and

"valuation time" means the beginning of January 1 of the first calendar year that begins after the third anniversary date of the effective date of the *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c.34, and *An Act Approving Yukon Land Claims Final Agreements*, S.Y. 1993, c. 19.

13. For the purposes of this Act, an eligible individual is deemed to have disposed of all of the individual's eligible interests at the time that is immediately prior to the valuation time for an amount equal to its fair market value at that time and to have reacquired the eligible interests at the valuation time at a cost equal to the fair market value.

Explanatory Notes:

- (a) Sections 8 to 13 are the key sections of the law. Section 8 is the "charging" provision. It requires every individual who is ordinarily resident within Settlement Land on December 31 of each year to pay the tax that the Act requires to be paid for that year,
- (b) Section 9 provides technical definitions to be used when determining how the tax to be received by the First Nation is to be calculated under Sections 10 and 11, as between the First Nation and Canada or Yukon.
- (c) Section 10 is the section which will apply to most individuals. It states that, for the first ten years, the First Nation tax will be a percentage of the tax payable under the federal Act. The percentage is to be stated by the Executive Council, and is to reflect the outcome of tax-sharing negotiations with Canada. It is expected that the percentage will be 75%. After 10 years, the First Nation tax will be 95% of the tax payable under the federal Act.

Section 10 also states, that in addition to an entitlement to a percentage of the tax payable under the federal Act, the First Nation tax also will include an entitlement to 95% of the tax payable under the territorial Act.

- (d) Section 11 applies to individuals who received net income from a unincorporated business operating outside Yukon. If the permanent establishment of that business is located in Yukon, the individual will pay tax on income earned from that business, at the same rates as are set out in Section 10. (If the business has a permanent establishment outside the Yukon, the individual's income from that permanent establishment outside Yukon will be taxed in that province or territory.)
- (e) Section 12 provides technical definitions to be used to determine how section 13 is to apply in a particular case.
- (f) Section 13 provides a transitional rule. It applies to individuals who are status Indians under federal law and who are Citizens of the First Nation. Section 13 solves a problem that such an individual would have, if, after January 1, 1999, the individual sold property that he or she acquired prior to that date. Without Section 13, the individual would have to pay income tax on the taxable portion of the capital gain that they make on the sale. With Section 13, the portion of the capital gain which accrued prior to January 1, 1999 should be protected from tax. This is accomplished by deeming that property, for tax purposes, to have been sold immediately prior to January 1, 1999. This establishes a new cost base for that property, for tax purposes, as of January 1. If the property is then sold after January 1, the new cost base applies, and the individual will be liable to pay tax on only that portion of the taxable capital gain which is attributable to the time after December 31, 1998.

Part II

Returns, Assessments, Administration, Collections, Enforcement and Appeals

14. Except as may be provided in this Part, and to the extent they are consistent otherwise with this Act, the provisions of Divisions I and J of Part I and Parts XV and XVI of the federal Act, and the provisions of Division 4 of Part 1 and Parts 2 and 3 of the territorial Act, are incorporated as provisions of this Act in relation to tax payable under Part I of this Act, with such modifications as the circumstances require.
15. For the purposes of this Act, the Executive Council shall have all the rights, powers and privileges of the Minister under the federal Act and of the Commissioner under the territorial Act and may delegate its powers and the exercise of its rights and privileges to the Minister, as the Executive Council may determine to be required for the better operation, administration and enforcement of this Act.
16. For greater certainty,
 - (a) all taxes, interest, penalties, costs and other amounts payable under this Act are debts due to the Teslin Tlingit Council and recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act; and
 - (b) if there is a tax collection agreement between the Teslin Tlingit Council and the Government of Canada:

- (i) any amount payable under this Act may be recovered by Her Majesty as a debt due to Her Majesty on behalf of the Teslin Tlingit Council and is recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act;
- (ii) this Act is to operate concurrently with, but not in duplication of, the federal Act and the territorial Act; and
- (iii) for the purposes of administration, enforcement and collection, an action or exercise of discretion by the Minister for the purposes of the federal Act shall be an action or exercise of discretion for the purposes of this Act, without need for further action or the exercise of discretion by the Executive Council for the purposes of enforcement under this Act.

Explanatory Notes:

- (a) Sections 14 to 16 provide for the administration, collection and enforcement of the First Nation tax.
- (b) Section 14 incorporates, as part of the First Nation law, all of the provisions of the federal Act and the territorial Act, as the case may be, for administration, collection and enforcement of federal or territorial tax. This provides the First Nation with the legal mechanisms required to apply its tax, while also ensuring that all the same rules apply to, or for the benefit of, the taxpayer.
- (c) Section 15 grants the First Nation Executive Council any power that the federal or territorial Act provides to the Minister or the

Commissioner. This ensures that the executive branch of First Nation government has adequate and consistent authority for the purposes of the First Nation law. Section 15 also empowers the First Nation Executive Council to delegate any of its powers to the Minister (as is intended) for the better operation of the First Nation law,

- (d) Section 16 provides greater certainty as to how the First Nation and federal systems for tax collection are to fit together. Subsection (a) makes it clear that any amount payable to the First Nation under the First Nation law can be collected in Court as a debt due to the First Nation. Subsection (b) makes it clear that, if there is a tax collection agreement (as intended), the Minister can collect those monies in Court on the First Nation's behalf, and any action the Minister may take, or any decision the Minister may make, in accordance with the federal Act, for the purpose of administration, collection or enforcement, also is a lawful action or decision for the purposes of the First Nation law.

Part VI

Tax Collection Agreement

17. The Chief Executive of the Teslin Tlingit Council, with the approval of the Executive Council, may, on behalf of the Teslin Tlingit Council, enter into a tax collection agreement with the Government of Canada under which the Government of Canada, on behalf of the Teslin Tlingit Council, will collect amounts payable under this Act and will make payments to the Teslin Tlingit Council in respect of such tax in accordance with such terms and conditions, as to collection and payment, as the agreement may prescribe.
18. The Chief Executive of the Teslin Tlingit Council, with the approval of the Executive Council, may, on behalf of the Teslin Tlingit Council, enter into a tax collection agreement with the Government of Canada amending the terms and conditions of an agreement entered into pursuant to section 17.
19. A tax collection agreement with the Government of Canada which is consistent with this Act, approved by the Executive Council and entered into by the Chief Executive on behalf of the Teslin Tlingit Council prior to the coming into force of this Act is affirmed as if it were entered into under this Act.
20. For the purposes of a tax collection agreement, the Executive Council may:

- (a) appoint the Minister as agent of the Teslin THngit Council;
- (b) delegate to the Minister, in respect of tax payable under this Act, the authority to exercise any discretion, employ the powers and perform the duties of the Executive Council under this Act; and
- (c) delegate to the Deputy Minister of National Revenue, in respect of amounts payable under this Act, the authority to exercise any discretion, employ the powers and perform the duties of the Executive Council under this Act, and to designate officers of the Department of National Revenue to carry out such functions and duties, and to exercise such powers, as are similar to those that are exercised by them on the Minister's behalf under the federal Act.

Explanatory Notes:

- (a) Sections 17 to 20 deal with tax collection agreements. Section 17 authorizes the Chief Executive officer, with Executive Council approval, to enter into a tax collection agreement with the Government of Canada to provide for the administration, collection and enforcement of the First Nation tax by Canada on the First Nation's behalf. Section 18 authorizes the Chief Executive officer, with Executive Council approval, to agree to an amendment to such an agreement, if required. Section 19 affirms that, if a tax collection agreement is entered into prior to January 1, 1999 (as is intended), that agreement shall have force for the purposes of the First Nation law.

- (b) Section 20 makes it lawful for the Executive Council, by way of a tax collection agreement, to appoint the Minister as agent for the First Nation and to delegate to the Minister of National Revenue, or the Minister's officials, the authority to take such actions or make such decisions as are within Executive Council's power, as required for administration, collection and enforcement of the First Nation tax.

Part IV

Confidentiality

- 21. No person shall provide access to information **obtained** in the administration of this Act that may directly or indirectly identify a person except:
 - (a) for the purposes of administering or enforcing this Act, the federal Act or the territorial Act;
 - (b) for the purpose for which taxpayer information may be provided under this Act, the federal Act or the territorial Act;
 - (c) for the purpose of any legal proceedings related to administration or enforcement of this Act, the federal Act or the territorial Act, the *Canada Pension Plan*, R.S.C. 1985, c. C-8, the *Employment Insurance Act*, S.C. 1996, c. 23 or any other law of the Teslin Tlingit Council or any other law of general application which provides for the imposition or collection of a tax or duty;
- ,
w"

- (d) to the person to whom the information relates;
- (e) to the Executive Council, and to any person engaged in the tax administration of the Teslin Tlingit Council who is authorized by the Executive Council to have access to the information, for the purposes of formulating or implementing the fiscal policy of the Teslin Tlingit Council;
- (f) to an official of the Department of Finance, Government of Canada, or an official of the Department of Finance, Government of Yukon, for the purposes of formulating or implementing the fiscal policy of the Government of Canada or of the Government of Yukon; and
- (g) to any person legally entitled under a law of the Teslin Tlingit Council or a law of general application to have access to it, solely for the purpose for which that person is entitled to have such access.

Explanatory Notes:

- (a) Section 21 protects the privacy of individuals. It prohibits anyone involved in the administration of the First Nation tax from disclosing information which will enable the individual to be identified, unless that disclosure is for a purpose or to a person identified in the circumstances listed.

Offences

22. Every person to whom information has been provided for a particular purpose under section 21 and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

23. Every person who contravenes this Act, except section 22, is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Explanatory Notes:

- (a) Section 22 makes it an offence for a person to violate the privacy provided by Section 21. If convicted, that person could face up to six months in jail, or a fine up to \$5,000, or both.

- (b) Section 23 makes it an offence for a person to violate the First Nation law in any other way. The same penalties as are provided in Section 22 apply if the person is convicted. (This provision is proposed to be amended, once an administration of justice agreement is in place, to provide the same penalties as would apply under the federal Act. The amendment would eliminate the possibility that a taxpayer might find it more advantageous to pay the penalty for violating the First Nation law than to pay the tax that is due.)

Part VI

Regulations

24. The Executive Council shall by regulation prescribe for the purposes of subsections 10 (a) (i) and 11 (a) (i) of this Act the percentage of tax payable under the federal Act for the taxation years ending after 1998 and before 2009 and may make such other regulations as it deems required for the purposes of this Act.

Explanatory Note:

- (a) Section 24 enables the Executive Council to make any regulations it may deem required for the purposes of the Act. This includes, in particular, a regulation which establishes the percentage of tax payable under the federal Act that will have to be paid as First Nation tax in the first ten years. It is expected that the percentage will be set at 75% for each of the first ten years (see draft regulation). The Act is designed in this way, to enable the Executive Council to set a higher percentage, if Canada so agrees, without requiring the Act to be brought forward for legislative amendment. An increase in the percentage would not affect the amount of tax that the individual is required to pay; it would only affect the share of that tax that is to be received by the First Nation.

Executive Council would establish the regulation by way of Executive Council decision made in the usual way, prior to January 1, 1999. Once approved by Executive Council, notice to residents that the regulation is in place would be given in the same way that notice of the First Nation law is given.

Coming into Force

25. This Act shall come into force as of January 1, 1999.

Explanatory Note:

- (a) The Act will come into force, as a First Nation law, at the same time as many First Nation Citizens become liable to pay tax on their incomes for the first time.

TESLIN TLINGIT COUNCIL

***INCOME TAX ACT* REGULATION**

Proposed text for Regulation to be made under section 24 of the Teslin Tlingit Council *Income Tax Act*:

For the purposes of subsections 10 (a) (i) and 11 (a) (i) of the Teslin Tlingit Council *Income Tax Act*, the prescribed percentage is 75%.

TESLIN TLINGIT COUNCIL *INCOME TAX*

ACT AMENDMENTS

Amendments to the TTC Income Tax Act, as adopted July 17, 1998:

1. **Replace "pursuant to", wherever those words appear, with "under".**

Explanation: this amendment makes the language of the Act more plain.

2. **Delete "hereby" and "hereinafter", wherever those words appear.**

Explanation: this amendment makes the language of the Act more plain.

3. **In section 2, change the location of the definition of "territorial Act" so that it is to appear immediately before the definition of "trust".**

Explanation: this is an editorial amendment to ensure that the definitions appear in alphabetical order.

4. **In section 2, in the definition of "tax payable under the federal Act", add "127.2," after "127,".**

Explanation: this amendment, for greater certainty, would make the definition also refer to a tax deduction available under the federal Act which was previously not mentioned because it is thought to have no practical importance.

5. **In section 2, in the definition of "tax payable under the territorial Act", change "subsection 3 (7)" to "section 5".**

**Teslin Tlingit Council *Income Tax Act* November,
1998 Amendments
Page Two**

Explanation: this amendment corrects the original definition so as to make it clear that the First Nation share of territorial tax is to be calculated as if the deduction for Yukon political contributions which is provided by section 5 of the territorial Act is not claimed by the taxpayer. Financial responsibility for that deduction remains with Yukon. The tax position of the individual is not affected.

6. In section 6, change "means" to "is based on".

Explanation: this amendment makes it clear that section 6 is not a definition section, and affirms the basis on which the amount of First Nation tax is to be identified.

7. In sections 9, in the first line, add "this section and" after "For the purposes of".

Explanation: this amendment makes it clear that some of the definitions which appear in section 9 are to be used in understanding what is meant by other definitions contained in the section.

8. In sections 9,10 and 11, change "in other parts of Canada", wherever those words appear, to "outside Yukon".

Explanation: this amendment is to make sections 9, 10 and 11 easier to understand.

9. In section 14, line 2, change "Part 1" to "Part I".

Explanation: this amendment is to correct a typographical error.

10. In section 14, in line 3, add "Division 4 of Part 1 and" after "the provisions of and change "under the federal Act, and tax payable under the territorial Act, respectively," to "under Part I of this Act".

Explanation: these amendments add an express reference to provisions of the territorial Act which were previously omitted, make section 14 easier to understand, and clarify that the section refers to the First Nation tax as a whole.

11. Replace section 16 with the following; "16. For

greater certainty,

- (a) all taxes, interest, penalties, costs and other amounts payable under this Act are debts due to the Teslin Tlingit Council and recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act; and
- (b) if there is a tax collection agreement between the Teslin Tlingit Council and the Government of Canada:
 - (i) any amount payable under this Act may be recovered by Her Majesty as a debt due to Her Majesty on behalf of the Teslin Tlingit Council and is recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act;
 - (ii) this Act is to operate concurrently with, but not in duplication of, the federal Act and the territorial Act; and

TTC-9.11.98

v, **Teslin Tlingit Council *Income Tax Act***
November, 1998 Amendments Page Four

- (iii) for the purposes of administration, enforcement and collection, an action or exercise of discretion by the Minister for the purposes of the federal Act shall be an action or exercise of discretion for the purposes of this Act, without need for further action or the exercise of discretion by the Executive Council for the purposes of

enforcement under this Act."

Explanation: This amendment provides a new section 16. Subsections (a) and (b)(i) address the same matters as were addressed by subsections (a) and (b) of section 16, as adopted in July, 1998, but now do so in a way that is more clear as to how they apply if there is a tax collection agreement. Subsections (b)(ii) and (b)(iii) are new provisions that provide greater certainty for both the First Nation and the Minister in the operation of First Nation and federal law, at the same time, for the purposes of administration, enforcement and collection of the First Nation tax.