

TŁICHQ GOVERNMENT

TŁICHQ GOODS AND SERVICES TAX LAW

The Tłichq Assembly enacted this law on October 26, 2005 by unanimous consent.

George Mackenzie, Grand Chief of the Tłichq Government, signed the Tłichq Goods and Services Tax Law on October 27, 2005.

Signature: Bertha Rabesca Zoe Date: Feb 28, 2006

Certified as a True Copy by Bertha Rabesca Zoe as of October 27, 2005.

Laws Guardian, Tłichq Government

DISPOSITION

DATE OF INTRODUCTION	CONSIDERATION	CONSENSUS	EFFECTIVE DATE
October 25, 2005	October 26, 2005	October 26, 2005	December 5, 2005

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THE TŁİCHŦ GOODS AND SERVICES TAX LAW

Title

1. This Law may be cited as the *TłichŦ Goods and Services Tax Law, 2005*.

Interpretation

2. (1) In this Law,

“administration agreement” means an agreement entered into between the Grand Chief on behalf of the TłichŦ Government and the Minister of Finance on behalf of the Government of Canada for, among other things, the administration, collection and enforcement of tax imposed under this Law;

“Constitution” means the constitution of the TłichŦ Government, as amended from time to time;

“*Excise Tax Act*” means the *Excise Tax Act*, R.S.C. 1985, c.E-15, as amended from time to time;

“Federal FNGST Act” means the *First Nations Goods and Services Tax Act*, S.C. 2003, c. 15, as amended from time to time;

“net tax” has the same meaning as in subsection 225(1) of the *Excise Tax Act*;

“Part IX of the *Excise Tax Act*” means Part IX of the *Excise Tax Act* and Schedules V to X to that Act;

“tax attributable to the TłichŦ Government” means tax attributable to the first nation within the meaning of subsection 5(1) of the Federal FNGST Act;

“TłichŦ Agreement” means the TłichŦ Land Claims and Self-Government Agreement, brought into effect by the *TłichŦ Land Claims and Self-Government Act* S.C. 2005, c. 1 and the *TłichŦ Land Claims and Self-Government Act* S.N.W.T. 2005, c. 28;

This Law was signed by Grand Chief George Mackenzie on October 27, 2005.

“Tłchq community” has the same meaning as in the Tłchq Agreement;

“Tłchq Government” means the government of the Tłchq First Nation established in accordance with Chapter 7 of the Tłchq Agreement; and

“Tłchq lands” has the same meaning as in the Tłchq Agreement.

(2) Unless a contrary intention appears, words and expressions used in this Law have the meanings assigned by subsection 123(1) of the *Excise Tax Act*.

(3) Division X of Part IX of the *Excise Tax Act* applies for the purposes of determining the application of this Law as if:

- (a) Tłchq lands and all of the Tłchq communities were a single participating province;
- (b) the announcement date, implementation date and specified pre-implementation date for that participating province were the day fixed by the Tłchq Government under section 16;
- (c) the tax imposed under paragraph 3(a) of this Law was imposed under subsection 165(2) of the *Excise Tax Act*;
- (d) the tax imposed under paragraph 3(1)(b) of this Law were imposed under subsection 220.05(1) of the *Excise Tax Act*; and
- (e) the tax imposed under paragraph 3(1)(c) of this Law were imposed under subsection 218.1(1) of the *Excise Tax Act*.

PART I
TAX ON SUPPLIES

Imposition of Tax

3. (1) Subject to this section,
- (a) every recipient of a taxable supply made on Tłıchǫ lands or in a Tłıchǫ community shall pay to the Tłıchǫ Government tax in respect of the supply calculated in accordance with subsection (10);
 - (b) every person who brings tangible personal property onto Tłıchǫ lands or into a Tłıchǫ community from a place in Canada shall pay to the Tłıchǫ Government tax in respect of the bringing of the property onto Tłıchǫ lands or into a Tłıchǫ community calculated in accordance with subsection (8); and
 - (c) every recipient of an imported taxable supply made on Tłıchǫ lands or in a Tłıchǫ community shall pay to the Tłıchǫ Government tax in respect of the supply calculated in accordance with subsection (10).

Supply made on Tłıchǫ lands or in a Tłıchǫ community

(2) A supply, other than an imported taxable supply, is made on Tłıchǫ lands or in a Tłıchǫ community only if at least one of the following conditions is met:

- (a) if Tłıchǫ lands and all of the Tłıchǫ communities were a single participating province, a provision of Part IX of the *Excise Tax Act* would deem the supply to be made in that participating province if
 - (i) the lands of every other first nation in respect of which a first nation law, as defined in subsection 11(1) or 12(1) of the Federal FNGST Act, is in force at the time the supply is made were each a separate participating province, and
 - (ii) the participating provinces listed in Schedule VIII to the *Excise Tax Act* were non-participating provinces; or
- (b) tax under Part IX of the *Excise Tax Act* is not payable in respect of the supply and such tax would, without section 13 of the Federal FNGST Act, be

payable but for the connection of the supply with Tłchq lands or a Tłchq community and the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

Supply of specified motor vehicle on Tłchq lands or in a Tłchq community

(3) Despite subsection (2), for the purposes of paragraph (1)(a), a supply of a specified motor vehicle by way of lease, licence or similar arrangement under an agreement under which continuous possession or use of the vehicle is provided for a period of more than three months is made on Tłchq lands or in a Tłchq community only if

- (a) in the case of a recipient who is an individual, the recipient ordinarily resides on Tłchq lands or in a Tłchq community at the time the supply is made; and
- (b) in the case of a recipient who is not an individual, the ordinary location of the vehicle, determined for the purposes of Schedule IX to the *Excise Tax Act* at the time the supply is made, is on Tłchq lands or in a Tłchq community.

Imported taxable supply made on Tłchq lands or in a Tłchq community

(4) An imported taxable supply is made on Tłchq lands or in a Tłchq community only if at least one of the following conditions is met:

- (a) tax would be payable in respect of the imported taxable supply under subsection 218.1(1) of the *Excise Tax Act* if
 - (i) the Tłchq lands and all of the Tłchq communities were the particular participating province referred to in that subsection,
 - (ii) the lands of every other first nation in respect of which a first nation law, as defined in subsection 11(1) or 12(1) of the Federal FNGST Act, is in force at the time the supply is made were each a separate participating province;
- (iii) the participating provinces listed in Schedule VIII to the *Excise Tax Act* were non-participating provinces; and

(iv) the recipient of the supply were not a selected listed financial institution;
or

(b) tax under Part IX of the *Excise Tax Act* is not payable in respect of the supply and such tax would, without section 13 of the Federal FNGST Act, be payable but for the connection of the supply with Tłıchq lands or the Tłıchq community and the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

Bringing of property onto Tłıchq lands or into a Tłıchq community

(5) Subject to subsection (6), a tax in respect of the bringing of property onto Tłıchq lands or into a Tłıchq community by a person shall be imposed under this Law only

(a) if the property was last supplied to the person by way of sale at a time when an administration agreement was in effect; and

(b) tax would have been payable under Part IX of the *Excise Tax Act* in respect of the supply otherwise than at the rate of zero but for the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section.

Exception

(6) A tax in respect of the bringing of property onto Tłıchq lands or into a Tłıchq community by a person shall not be imposed if

(a) tax became payable by the person in respect of the property under any first nation law, as defined in subsection 11(1) or 12(1) of the Federal FNGST Act, or section 212 of the *Excise Tax Act* before the property is brought onto Tłıchq lands or into the Tłıchq community; or

(b) tax would not be payable under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of the property onto Tłıchq lands or into the Tłıchq community if

(i) Tłıchq lands and all of the Tłıchq communities were the particular participating province referred to in that subsection,

- (ii) the lands of every other first nation in respect of which a first nation law, as defined in subsection 11(1) or 12(1) of the Federal FNGST Act, is in force at the time the property is brought onto Tłıchǵ lands or into the Tłıchǵ community were each a separate participating province;
- (iii) the participating provinces listed in Schedule VIII to the *Excise Tax Act* were non-participating provinces; and
- (iv) paragraphs 220.05(3)(a) and (b) of the *Excise Tax Act*, section 18 of Part I of Schedule X to that Act, the exemption under section 87 of the *Indian Act* and any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section did not apply in respect of the bringing of the property onto Tłıchǵ lands or into the Tłıchǵ community.

Carriers

(7) For the purposes of this Law, if a particular person brings property onto Tłıchǵ land or into a Tłıchǵ community on behalf of another person, the other person, and not the particular person, is deemed to have brought the property onto Tłıchǵ lands or into the Tłıchǵ community.

Amount of tax - bringing of property onto Tłıchǵ lands or into a Tłıchǵ community

(8) For the purposes of subsection (1), the amount of tax that is imposed under this Law in respect of the bringing of property onto Tłıchǵ lands or into a Tłıchǵ community by a person is equal to the amount determined by the formula

$A \times B$

where

A is the rate of tax set out in subsection 165 (1) of the *Excise Tax Act*, and

B is

- (a) if the person last acquired the property by way of a sale under which the property was delivered to the person within thirty days before the day on which it is brought onto Tłıchǵ lands or into the Tłıchǵ

community, the value of the consideration on which tax under Part IX of the *Excise Tax Act* in respect of the sale would have been calculated but for the application of the exemption under section 87 of the *Indian Act* or of any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section, and

- (b) in any other case, the lesser of
 - (i) the fair market value of the property at the time the property is brought onto Tł̓ch̓q lands or into the Tł̓ch̓q community, and
 - (ii) the value of the consideration referred to in paragraph (a).

Reporting and payment of tax

(9) Tax that is imposed under this Law in respect of the bringing of property onto Tł̓ch̓q lands or into a Tł̓ch̓q community shall become payable by the person who brings it onto the Tł̓ch̓q lands or into the Tł̓ch̓q community at the time it is brought onto those lands or into that community and

- (a) if the person is a registrant who acquired the property for consumption, use or supply primarily in the course of commercial activities of the person, the person shall, on or before the day on or before which the person's return in respect of net tax is required to be filed under this Law for the reporting period in which the tax became payable, pay the tax to the Receiver General and report the tax in that return; and
- (b) in any other case, the person shall, on or before the last day of the month following the calendar month in which the tax became payable, pay the tax to the Receiver General and file with the Minister of National Revenue in the manner authorized by that Minister a return in respect of the tax in the form authorized by and containing information specified by that Minister.

Amount of tax - supply made on Tł̓ch̓q lands or in a Tł̓ch̓q community

(10) For the purposes of paragraphs (1)(a) and (c), the amount of tax imposed under this Law in respect of a supply is equal to the amount of tax that would be imposed under Part IX of the *Excise Tax Act* in respect of that supply if

(a) the *Excise Tax Act* applied and this Law, the exemption under section 87 of the *Indian Act* and any other exemption from taxation under any other Act of Parliament that is similar to the exemption under that section did not apply in respect of that supply;

(b) the amount were determined without reference to subparagraph (v) of the description of A or subparagraph (vi) of the description of J in the definition "basic tax content" in subsection 123(1) of the *Excise Tax Act*; and

(c) no amount of tax under subsection 165(2), 212.1(2) or 218.1(1) or Division IV.1 of Part IX of the *Excise Tax Act* were included in determining that amount.

4. The Tłıchǵ Government may:

(a) establish regulations;

(b) approve, and authorize the Grand Chief to enter into or to amend from time to time, an administration agreement; and

(c) do all such other acts and things as it may deem convenient for the better administration, collection and enforcement of the tax imposed under section 3.

5. If the Grand Chief, on behalf of the Tłıchǵ Government, and the Minister of Finance, on behalf of the Government of Canada, have entered into an administration agreement,

(a) every provision of Part IX of the *Excise Tax Act* (other than subsection 327(2) of that Act) applies, with such modifications as the circumstances require, for the purposes of this Law as if tax referred to in each of paragraphs 3(1)(a) and (c) were imposed under subsection 165(1) and section 218 of the *Excise Tax Act* respectively and, subject to subsection 3(9), as if tax referred to in paragraph 3(1)(b) were imposed under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of property into a participating province, but this Law shall not thereby be construed as imposing a tax except as provided in section 3;

(b) this Law applies as if tax imposed under Part IX of the *Excise Tax Act* were imposed under this Law and as if the provisions of that Part relating to that tax were included in this Law, but this Law shall not thereby be construed as imposing a tax except as provided in section 3; and

(c) for greater certainty,

- (i) a person who does anything to satisfy a requirement of this Law that would satisfy a corresponding requirement of Part IX of the *Excise Tax Act* if the tax imposed under this Law were imposed under that Part is deemed to have satisfied the requirement of this Law,
- (ii) a person who does anything to exercise an authority, right or privilege under this Law that would be a valid exercise of a corresponding authority, right or privilege under Part IX of the *Excise Tax Act* if the tax imposed under this Law were imposed under that Part is deemed to have validly exercised the authority, right or privilege under this Law,
- (iii) a person who does anything to satisfy a requirement or exercise an authority, right or privilege under Part IX of the *Excise Tax Act* is deemed to have done that thing for the purposes of both that Part and this Law, and
- (iv) a person who is a registrant for the purposes of Part IX of the *Excise Tax Act* is a registrant for the purposes of both that Part and this Law.

PART II

COLLECTION, ADMINISTRATION, ENFORCEMENT AND REVENUE SHARING

6. For the purposes of this Law,
- (a) the Tłıchǵ Government shall have all the authorities, rights and privileges of the Minister of National Revenue under Part IX of the *Excise Tax Act* that are also within the jurisdiction of the Tłıchǵ Government and, as the Tłıchǵ Government may determine for the better operation, administration and enforcement of this Law, the Tłıchǵ Government may delegate its authorities, rights and privileges including the authority to exercise any discretion or to perform the duties of Tłıchǵ Government under this Law; and
 - (b) a person who does anything to exercise an authority, right or privilege of Tłıchǵ Government under paragraph (a) that would be a valid exercise of a corresponding authority, right or privilege of the Minister of National Revenue under Part IX of the *Excise Tax Act* if the tax imposed under this Law were imposed under that Part is authorized to do that thing without need for further action, exercise of discretion or delegation by Tłıchǵ Government if the doing of the thing is in respect of the administration or enforcement of this Law, or collection of amounts payable under this Law, by the Government of Canada on behalf of the Tłıchǵ Government pursuant to an administration agreement.
7. All amounts payable under this Law
- (a) are debts due to the Tłıchǵ Government and are recoverable as such in any court of competent jurisdiction or in any other manner provided by this Law; and
 - (b) may be recovered by Her Majesty in Right of Canada as a debt due to Her Majesty acting on behalf of the Tłıchǵ Government if they become payable while an administration agreement is in effect or become payable after an administration agreement has ceased to be in effect but relate to taxes, interest, penalties, costs or other amounts that became payable, or to the doing of anything or the failure to do anything, while such an administration agreement was in effect.
8. The Grand Chief, with the approval of the Tłıchǵ Government, may enter into, and may amend from time to time, an administration agreement with the Government of Canada under which the Government of Canada, on behalf of the Tłıchǵ Government, will administer and enforce this Law, collect amounts payable under this Law and retain or make payments to the

Tłchq Government in respect of amounts payable under this Law, in accordance with such terms and conditions, as to administration, enforcement, collection, retention and payment, as the administration agreement may prescribe. The Grand Chief is designated as the authorized body for the purposes of a tax administration agreement with Canada.

9. An administration agreement that is consistent with this Law, approved by the Tłchq Government and entered into on behalf of the Tłchq Government prior to the coming into force of this Law is affirmed as if it were entered into under this Law.

10. An administration agreement shall, among other things, provide for:

- (a) an enabling provision for a revenue sharing mechanism; and
- (b) payments, and the eligibility of the Tłchq Government for payments, by the Government of Canada to the Tłchq Government in respect of, and the method for estimating, tax attributable to the Tłchq Government.

Revenue Sharing

11. The Tłchq Government is authorized to share in accordance with the terms of an administration agreement

- (a) the tax attributable to the Tłchq Government, and
- (b) tax and other amounts payable under this Law that are not included in the tax attributable to the Tłchq Government.

PART III

REMISSION

12. (1) The Tłı̨chǝ Government hereby delegates to Canada the authority to remit any amount payable under this Law where Canada considers that the collection or the enforcement of the payment of the amount is:

- (a) unreasonable;
- (b) unjust; or
- (c) otherwise not in the public interest.

(2) Subsection (1) shall apply where the amount became payable while an administration agreement is in effect or become payable after an administration agreement has ceased to be in effect but is an amount that became payable while such an administration agreement was in effect.

(3) Where subsection (1) applies, an amount payable under this Law shall, for the purposes of subsection (1), be deemed to be “tax” as defined in the *Financial Administration Act* (Canada).

13. (1) Where section 12 does not apply, the Tłı̨chǝ Government, in its discretion, may remit any amount payable under this Law where the Tłı̨chǝ Government considers that the collection or the enforcement of the payment of the amount is:

- (a) unreasonable;
- (b) unjust; or
- (c) otherwise not in the interest of the Tłı̨chǝ Government; or
- (d) would cause great public inconvenience or great hardship.

(2) A remission granted pursuant to this section may be total or partial, conditional or unconditional.

(3) A remission granted pursuant to this section may be granted before, during or after any proceeding for the recovery of the amount, and either before or after payment of it has been made or has been enforced by process or execution.

(4) Where a remission is granted pursuant to this section subject to a condition and the condition is not fulfilled, the amount be enforced, or all proceedings may be had, as if there had been no remission.

(5) No tax on any goods shall be remitted by reason only that after the payment of the tax the goods were lost or destroyed.

(6) A conditional remission, on fulfillment of the condition, and an unconditional remission have effect as if the remission were made after the amount in respect of which it was granted had been sued for and recovered.

(7) Where a penalty imposed by this Law has been wholly and unconditionally remitted pursuant to this section, the remission has the effect of a pardon for the offence for which the penalty was incurred, and thereafter the offence has no legal effect prejudicial to the person to whom the remission was granted.

PART IV

MISCELLANEOUS

Offences

14. Where a person commits an act or omission in respect of this Law that would be an offence under a provision of Part IX of the *Excise Tax Act* or regulations made under that Act if the act or omission were committed in relation to that Part or those regulations, the person is guilty of an offence under this Law punishable on summary conviction and is liable on conviction to the punishment provided for in that provision upon summary conviction.

Proof of law

15. A copy hereof, if certified by the Laws Guardian of the Tłchq Government to be a true copy, is evidence that this law was duly made by the Tłchq Government, without proof of the signature or the authorization of that person.

Coming into Force

16. This Law shall come into force on the effective date of the administration agreement.