

Application to Status Indians and Indian Bands

Property Transfer Tax

This bulletin outlines the application of the *Property Transfer Tax Act* (Act), to transfers of property to Status Indians.

It is important to note that this bulletin DOES NOT apply to land transferred to and from the Nisga'a Nation.

Depending on the parties and the property involved in the transfer, the transaction may either be:

- fully taxable,
- exempt from tax,
- one for which a refund of tax paid is available, or
- one for which a property transfer tax return need not be completed.

This bulletin describes how different situations lead to different results for property transfer tax.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Property Transfer Tax Act* and Regulations can be found on the web at www.gov.bc.ca/sbr

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- ***When title is taken to land off reserve***
- ***When title is taken to land on reserve where the title already exists***
- ***When title is taken to land on reserve where title does not already exist***
- ***When land is transferred to an Indian Government District***

WHEN TITLE IS TAKEN TO LAND OFF RESERVE

Section 87 of the *Indian Act (Canada)* states that the interest of an Indian or Band in reserve or surrendered lands, is exempt from taxation. Therefore, where a Status Indian takes title to land that is not on a reserve, that transfer is a fully taxable transaction. Subject to any other exemptions provided by the Act, tax is payable. Similarly, where an Indian Band or companies owned by Status Indians or companies owned by Indian Bands, acquire title to land not on a reserve,

that transfer is a fully taxable transaction. Again, subject to any other exemptions provided in the Act, tax is payable.

WHEN TITLE IS TAKEN TO LAND ON RESERVE WHERE THE TITLE ALREADY EXISTS

Section 87 of the *Indian Act (Canada)* states that the interest of an Indian or Band in reserve or surrendered lands, is exempt from taxation. Therefore, where a Status Indian or an Indian Band takes title to land that is on the reserve, and where the title to that land already exists in the land title system, the tax must be paid. After the tax is paid, the Status Indian or the Indian Band may then apply for a refund. It is important to note that in this situation, the Act does not provide an exemption from tax, but rather a refund of the tax paid.

WHEN TITLE IS TAKEN TO LAND ON RESERVE WHERE TITLE DOES NOT ALREADY EXIST

If a Status Indian or an Indian Band is acquiring title to reserve land where title to that land does not

already exist in the land title system, a tax return does not have to be filed, and property transfer tax does not have to be paid. Similarly, where Federal Crown land is transferred to a Status Indian or Indian Band, a tax return does not need to be filed.

WHEN LAND IS TRANSFERRED TO AN INDIAN GOVERNMENT DISTRICT

Again, it should be noted that this does not apply to the Nisga'a Nation. Where land is transferred to an Indian Government District such as the Sechelt, an exemption is provided in section 14(3)(s) of the Act. Section 14(3)(s) states that a transfer to a "municipality" is exempt. The Sechelt Government District is seen as a municipality for the purposes of this Act. The exemption in section 14(3)(s) covers land that is transferred where a title to that land already exists in our land title system. If the title to the land that is transferred does not already exist in our land title system, a tax return does not have to be filed, and tax does not have to be paid.

NEED MORE INFO?

This bulletin is presented as an aid to understanding the *Property Transfer Tax Act*. It is not intended to replace the need to consult the legislation for possible application to a particular fact pattern. Where there is a conflict between this bulletin and the legislation, the legislation prevails.

For further information, please contact:

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Information is also on the web at www.gov.bc.ca/sbr While there, you can subscribe to our free electronic update service.

Property Transfer Tax Returns and Guides can be obtained through the forms reorder line at 250 387-2183. Your request can also be faxed to 250 356-2550.