



PROPERTY TAXATION ON RESERVE YES OR NO?

Frequently Asked Questions about Property Taxation on Reserve

(Note: questions originated from the public information sessions and a survey questionnaire; many questions were repeated. Questions and answers have been grouped according to topic. Answers to repeated questions and questions that were not related to property tax are not included.)

General

We voted on this issue back in 2008; why does property taxation keep coming up? Two reasons:

- Property taxes would provide a guaranteed annual revenue source that would enable OKIB to provide more than the minimal services that it currently can afford to provide.
- it is good governance; it would be unfair to prevent the current generation of the voting public an opportunity to reconsider past voter decisions.

Is anybody paying property taxes on OKIB reserves right now?

Yes, provincial property taxes are paid by non-status Indians and businesses who have been assessed by the BC Assessment Authority (e.g., registered lease holders and some buckshees who are registered in BC's mobile home registry).

Would there be any cost to the CP holder for having property assessments completed?

No.

How long have property taxes been leaving the reserve?
Since 1969.

Does OKIB get all or part of the provincial property tax revenue that is being paid now?

No.

How much provincial property tax was collected from OKIB Reserves last year?

\$3,374,132.00 was collected from IR#1, #6 and #7; HOWEVER, there are approximately 1500 or more Buckshee leases on OKIB reserve lands that are not paying property tax. If they did pay, the additional revenue is estimated to be \$3 million, for a total of approximately \$6.5 million.

Will OKIB's property tax legislation require Band members to pay?

No.

Are you going to 'go after' the CP holders for non-payment of tax?

On reserve property taxation is unique in that the obligation to pay property tax lies with the person who occupies land (i.e., a buckshee) or possesses the land (i.e., a legal lease holder a.k.a.: a tenant), not the owner (i.e., a CP holder). So, OKIB would never 'go after' Certificate of Possession holders.

Would taxes still be collected if the CP Holder were to pass?

Yes. The obligation to pay property taxes to OKIB lies with the occupier/possessor, not the owner.

If a member married a non member and the band member passed away, would the non member then need to pay taxes?

Yes. Under OKIB's tax laws, only band members are exempt from paying property tax.

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Do status non-band members need to pay?

Yes, only band members are exempt. For example, a PIB member would not pay property tax to the PIB when living on a PIB reserve but would pay OKIB if the PIB member lived on an OKIB reserve. The same principal would apply to an OKIB member (i.e., would not pay when living on an OKIB reserve, but would pay if they lived on a PIB reserve).

What happens when a member who lives on reserve has children that are no longer status will they need to pay taxes?

Only OKIB band members are exempt from paying property tax on OKIB reserves. If the children are not eligible to become OKIB band members, then they would have to pay property tax.

If I am a band member and have a cabin on another band members land, will I be taxed?

No, you as a band member will not be taxed; it doesn't matter whether the cabin is located on band land or CP land; all land and improvements on reserve are taxable, but band members do not pay property tax.

If OKIB collects property tax revenue, will Canada reduce its funding?

No. Tax Administrators from the Osoyoos Indian Band, Penticton Indian Band, and other Syilx nation Indian Act Bands confirm that their Bands still receive funding from Canada as they always have, despite having enacted property tax legislation.

Would property taxpayers have the right to vote in Band elections?

No. The Indian Act is clear: ONLY Band members have the right to vote in Band elections.

What happened when the Penticton Indian band first started collecting property tax?

Those paying property taxes to BC and Penticton were upset at first, but after being told that PIB's taxes would be a bit lower than what they were currently paying, were happy (PIB later raised taxes to equal what Penticton was charging; there was no taxpayer reaction). Some buckshees who learned that they would be paying

property taxes to PIB, decided to leave, but for everyone who left, there were 10 who wanted to come; Certificate of Possession holders had no trouble replacing those buckshees who left.

Will OKIB be taxing buckshees?

Under Indian band property taxation laws, all reserve land is subject to tax; therefore, it doesn't matter whether a property is being possessed under a registered lease or occupied under a buckshee agreement, if you are not a Band member, you must pay.

How can you tax a buckshee; they don't own the land.

Under an Indian band property tax law, the person who occupies the land pays the property tax, not the owner.

If OKIB membership decides to tax, can we change our mind and not collect tax?

Yes, to make that happen, OKIB would need to repeal its property tax laws; however, once done, it is likely that BC would start to collect taxes as they do now.

If we vote 'no' will Council listen to us?

Of course.

Who enforces when taxpayers do not pay property tax: by-law? RCMP?

Tax Administrators are responsible to ensure that all the requirements of Indian band property tax laws are being met, including enforcement. However, enforcement should not be an issue. According to the First Nations Tax Commission's records of the 160 bands who tax, about 97% of taxpayers pay each year.

How will OKIB collect taxes from non-members who refuse to pay?

If a taxpayer does not pay property taxes owing, there are enforcement steps OKIB's Tax Administrator could take. One option is seizing a taxpayer's personal asset (e.g., car, boat, or RV), selling it and using the sale proceeds to pay all of the taxes owing; any remaining money would be returned to the taxpayer.

For more information please contact
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Can the band remove a taxpayer who doesn't pay?

Yes, Indian Band tax laws enable a band to assign the taxpayer's interest in the land to someone else if the taxpayer refuses to pay the property taxes they owe; however, this drastic step will only be used when all other options have failed. Will the CP Holder have any involvement in this process? No, the decision is made solely by OKIB (this is no different than when a taxpayer decides to sell their improvement and move; the CP holder has no say on who the person can sell to).

Will OKIB be double taxing?

No. If OKIB enacts its own property tax law, BC will no longer be allowed to collect the property tax; taxpayers on reserve will only pay the property tax established by OKIB.

What are the 'cons' of property taxation?

The answers depend on who you are asking; we have provided the likely 'cons' for each of the various affected parties.

OKIB

Short term:

- must have all tax laws drafted and approved by FNTPC, then will have to hire and train employees to administer the property tax regime and may have recruitment difficulties.
- may receive push-back by lessees/buckshees and may have to take applicable enforcement action to collect property taxes owing.

Long-term:

- enforcing against those who do not pay their property payment from time to time; will have to oversee a Property Assessment Appeal Board that will hear taxpayer appeals of their property assessments.

CP holders

- some buckshees might move out because they will have to pay property tax (note: Jonathan Kruger said that is what happened when PIB enacted property tax, but for every buckshee who wanted to leave, there were 10 who wanted to come).
- may have to manage and educate unhappy tenants/occupiers.
- if a lessee/buckshee leaves, will have to go through the process of signing a new lease/buckshee agreement.

Band members

- may have to deal with/educate non-band members who feel entitled to band membership privileges due to being a taxpayer.

Buckshee/lessees

- For those not currently paying property tax: they will now have to pay tax to OKIB.
- For those who are currently paying property tax to BC: no difference; they would be paying OKIB instead of BC.

Can taxpayers sub-lease?

Property taxation and leasing are separate legal issues, and one does not affect the other. Whether a lessor is allowed sublease will be set out in the lease document itself.

Is there an option to only tax businesses?

Yes, but that is not practical; the cost to implement, operate and maintain a property tax regime, and provide services would be very expensive for businesses if only businesses were paying. In contrast, spreading property tax payments over the total population of property taxpayers mean lower taxes for each, but makes a big difference in the total amount collected each year.

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Sovereignty

Would OKIB's property taxation legislation impact Syilx Nation sovereignty?

Robert Janes: Aboriginal rights and Aboriginal Title rest with the "Nation" and not Indian Bands; there is nothing that an Indian Band can do to abrogate or derogate aboriginal rights or aboriginal title.

Bruce Mclvor: The Indian Act has designated reserves; therefore, property tax won't affect sovereignty.

Russ Diabo: Canada does not recognize first nation sovereignty; some have delegated authority under the Indian Act and some under treaty – always delegated. Many of those who tax also have land codes, and childcare; each is a step toward self-government; sovereignty must be pushed and backed by the nation using the legal tests established by the Supreme Court of Canada.

What can OKIB do to assert sovereignty?

Robert Janes: Courts are not the place to assert sovereignty, better to do it yourselves. To assert and protect 'sovereignty' OKIB should pass a property tax law that is based on Inherent right and the Indian Act (or the FMA). Courts will enforce Indian Act/FMA; and if the law is challenged, there is a history of OKIB passing its own (i.e., inherent right-based) property tax law. Taxes increase an Indian Band's authority. Property taxation is an approach to increase sovereignty; you are taking taxation power away from province.

Bruce Mclvor: You need to use the courts to enforce your laws; therefore, suggests that OKIB make a 'hybrid' law; a law based on 'Inherent right' and the Indian Act. Such a law would be an expression of sovereignty.

Russ Diabo: Indian Act Bands need to plan their own path to sovereignty. Russ has developed a presentation on how to develop a strategic self-determination (i.e., exercising inherent rights) plan; the plan could be used for litigation or education.

Do we have a self determination Plan? No.

If OKIB passes a property tax law does that mean OKIB must become self-governing?

(**Bruce Mclvor** had left meeting by the time this question was asked)

Russ Diabo: There is a sliding scale towards self-government; property tax, then Land Codes, Membership Codes, privatized land on reserves. Canada hopes that Nations will eventually move towards self-government (i.e., negotiate a treaty and be endowed with the 'powers of a natural person').

Robert Janes: Nothing forces OKIB beyond property taxation; it doesn't need to go down the self-government route; it's a sliding scale, but OKIB should have a plan; he doesn't recommend adopting a Land Code.

If aboriginal rights and title are based on Nation's collective consent and OKIB is the only community that doesn't have taxation, then would that put us and the Nation at risk?

No. According to Robert James and Bruce Mclvor nothing an Indian band does on reserve can impact aboriginal rights and title.

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Tax Administration

Can a taxpayer association members tell Council where to spend revenues?

No, taxpayer association members may meet with Council each year and provide their input and recommendations; Council is then free to decide whether to accept or reject any or all of the member's recommendations.

Do taxpayers have any issues with the band administering and collecting property tax?

Carlene George: Penticton Indian band had a lot of taxpayer negativity at first, but the more you educate taxpayers; the more you show them your law; the more you read it to them, the more they have to listen to you. When educating taxpayers, its important to quote the sections; the band is the tax authority and its important to let taxpayers know that.

Veronica: "No". Right now, we don't tax non-natives living on reserve; we could tax buckshee leases, but we don't right now. Member statement: When Robert Janes gave his presentation, he said we couldn't do, what (LSIB) is doing...Robert Janes said if you tax you must tax everyone, not just legal leases...Michael Fotheringham, we will investigate and report back.

Investigation results: under LSIB's Property Taxation Law: all land and improvements on reserve are taxable, but the Band, Band corporations and band members are exempted from paying property tax; the obligation to pay property tax lies with the person who possess or occupies land; property tax is based on assessed value of land and improvements located on reserve and the tax rate; and each year, the Band must set tax rates for each class of property and the tax rate must be uniformly applied throughout each class. LSIB's "Annual Tax Rates Law, 2022" sets out tax rates for land classed as residential; Utilities; business and Other; and Farm.

Conclusion: it is irrelevant for property taxation purposes to distinguish between registered leases and buckshee leases. If the property falls within one of the property classes, LSIB must calculate the taxes owing and then collect the tax from anyone who is not exempt.

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Spending Tax Revenues

Can OKIB use property tax revenues anywhere it wants?

No. The Indian Act and the First Nations Fiscal Management Act each limit where property tax revenues can be spent; revenues must be spent on providing infrastructure and services to the community.

What is the group of Companies (GOC) doing and can we rely on their financial support, rather than jumping into taxation?

Currently, the GOC only reaps about \$2m in profit each year; it must reinvest most of this and thus cannot provide OKIB with sufficient revenues that would enable OKIB to provide services that the community needs. Come the day that the GOC's profits are in the \$200m per year range, it may be able to provide OKIB with sufficient funding; that day is likely many years away.

Can OKIB find another way to fund government operations other than by property tax?

Not realistically. OKIB obtains federal funding that supports providing a minimal level of essential services (e.g., Health, Education); OKIB relies on own source funding to provide additional services. Currently OKIB received \$6m in own source revenues \$3.9 m of which is currently being used to pay for such things as salaries, legal expenses, building upkeep, leaving approximately \$2m to be spent on services that the community wants and needs. In addition, own source revenues fluctuate and, in some years, may not be sufficient to pay costs. In contrast, Property tax revenue would be consistent.

Will the tax revenue collected be able to provide adequate services?

The property tax system is designed to permit an Indian Band to collect property tax revenue they will need each year and to decide how much to spend on each service that it wants to provide for that year. OKIB estimates that it may collect between \$5m and \$6m annually and this revenue will not only enable OKIB to increase the current level of services but to provide new services as well.

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