

Deborah Smith

To: James Edwards
Subject: RE: Execution of Consumption Tax Payment Agreement with BC

From: Dan Legg [<mailto:dlegg.inc@shaw.ca>]
Sent: Monday, January 07, 2013 3:00 PM
To: Deborah Smith
Subject: FW: Execution of Consumption Tax Payment Agreement with BC

From: Dan Legg [<mailto:dlegg.inc@shaw.ca>]
Sent: December-03-12 10:17 AM
To: 'Iris Frank'; 'Connie Waddell'; 'Gary Ardron'; Scott Coulson (Scott.Coulson@uchucklesaht.ca); Gary Johnsen (garyj@toquaht.ca)
Cc: 'administrator@maanulth.ca'
Subject: Execution of Consumption Tax Payment Agreement with BC

Iris, Connie, Gary, Scott and Gary:

Attached is the final copy of the Consumption Tax Payment Agreement for execution by the Maa-nulth Nations. The purpose of the agreement is to establish the details of the process for BC to refund to the Nations the provincial portion of HST from April 1, 2011 to March 31, 2013.

The background on this agreement is as follows:

1. The Tax Treatment Agreement (TTA) makes provision for BC to refund 100% of PST paid by a Nation for government services.
2. When BC changed from PST to HST there was no authority for the province to refund the provincial portion of HST.
3. BC and Maa-nulth agreed to enter into an agreement to cover the refunds from Effective Date until the new PST takes effect on April 1, 2013.
4. BC made interim refund payments to each Nation which are listed in Schedule 1 of the agreement.
5. The Maa-nulth Board directed me, with Brent Lehmann's assistance, to negotiate an agreement with BC.
6. Applications for refunds may be submitted at any time and do not have to wait for execution of the agreement. I will be advising your directors of finance of the refund application process in a separate email.

I am forwarding this document to you with my recommendation that you request your Executive to approve and authorize execution by the person noted on the signature page. Authorization to approve and execute would require a resolution of your Executive documented in accordance with your usual process to record decisions of the Executive. You do not need to provide a copy of the authorizing resolution.

There is a Maa-nulth Board meeting and AGM scheduled for Dec 10th. We can obtain signatures at that meeting from any Nation's authorized signatory.

If you have any questions about the agreement please contact me.

Dan
250.594.8999
250.720.7069 cell

Huu-ay-aht First Nations – Written Motion

(Government Act, s. 52)

For ease of reference, this motion may be referred to as:

Motion Regarding Consumption Tax Payment Agreement with BC

Motion

Whereas:

1. The Tax Treatment Agreement (TTA) makes provision for BC to refund 100% of PST paid by a Nation for government services;
2. When BC changed from PST to HST there was no authority for the province to refund the provincial portion of HST;
3. BC and Maa-nulth agreed to enter into an agreement to cover the refunds from Effective Date until the new PST takes effect on April 1, 2013;
4. BC made interim refund payments to each Nation which are listed in Schedule 1 of the agreement; and
5. The Maa-nulth Board directed Dan Legge, with Brent Lehmann's assistance, to negotiate an agreement with BC.

THEREFORE BE IT RESOLVED that Executive Council approves the Consumption Tax Payment Agreement (the "Agreement") as submitted and further directs Jeff Cook, Chief Councillor to sign the Agreement on behalf of Huu-ay-aht First Nations.

Follow-up action to be taken:

Jeff Cook to sign the Agreement.

Date for completion of follow up action: ____ n/a ____

Appendices attached to Motion:

Written report prepared by Connie Waddell

Note: Section 56 of the *Government Act* requires that the report on any substantive matter to be considered by Executive Council must be provided to Executive Council at least 4 working days in advance of its consideration.

The following documents:

Note: Any documents or records referred to in the motion MUST be attached (*Government Act*, s. 52(5)).

Introduced by: _____

Date: January 23, 2013

Huu-ay-aht First Nations – Written Motion

(Government Act, s. 52)

EXECUTIVE COUNCIL MEMBER	DATE OF EXECUTIVE COUNCIL MEETING
--------------------------	-----------------------------------

**MAA-NULTH FIRST NATIONS
CONSUMPTION TAXES
PAYMENT AGREEMENT**

**British Columbia
Maa-nulth First Nations**

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

THIS AGREEMENT made the ____ day of _____, 2012 (the “Agreement Date”)

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Finance

(“British Columbia”)

OF THE FIRST PART

AND

**HUU-AY-AHT FIRST NATIONS
KA:’YU:’K’T’T’/CHE:K’TLES7ET’H’ FIRST NATIONS
TOQUAHT NATION
UCHUCKLESAHT TRIBE
UCLUELET FIRST NATION (also known as the Yuułu?iłʔaḥ First Nation)**

(“Maa-nulth First Nations”)

OF THE SECOND PART

WHEREAS:

- A. The Maa-nulth First Nations Tax Treatment Agreement provides in part that, on certain specified conditions, the Maa-nulth First Nations and other claimants, as defined under that Agreement, are entitled to a refund of tax paid by them under the *Social Service Tax Act*;
- B. On July 1, 2010:
 - (a) British Columbia brought into force numerous amendments to the *Social Service Tax Act*, effectively ending further taxation under that Act;
 - (b) in substantial replacement of taxation under the *Social Service Tax Act*:
 - i. British Columbia became a participating province under the *Excise Tax Act* and Canada commenced levying tax under sections 165(2), 212.1 and 218.1 of that Act in respect of British Columbia as a participating province;
 - ii. British Columbia commenced levying tax under the *Consumption Tax Rebate and Transition Act*;

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

- C. The Maa-nulth First Nations Tax Treatment Agreement and the provincial legislation do not provide authority to British Columbia for tax rebates of the Excise Tax Act or the Consumption Tax Rebate and Transition Act. The Parties agree that the Maa-nulth First Nations, and other Claimants should receive payments equivalent to certain taxes paid by them under sections 165(2), 212.1 and 218.1 the *Excise Tax Act* and Part 5 of the *Consumption Tax Rebate and Transition Act*, on conditions comparable to those contained in the Maa-nulth First Nations Tax Treatment Agreement; and
- D. In lieu of negotiating an amendment to the Maa-nulth First Nations Tax Treatment Agreement or amending provincial legislation to authorize the payment of tax rebates to Claimants, British Columbia has agreed to make payments to Claimants equivalent to certain taxes paid by them in the period commencing July 1, 2010 and ending March 31, 2013, on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the premises and the covenants and agreements set out below, the Parties agree as follows:

Definitions

1. Unless the context otherwise requires, words and expressions used in this Agreement and not otherwise defined have the same meaning as in the Maa-nulth First Nations Tax Treatment Agreement.

2. In this Agreement:

“Agreement” means this Maa-nulth First Nations Consumption Taxes Payment Agreement;

“Claimant” has the same meaning as in section 5 of the Maa-nulth First Nations Tax Treatment Agreement;

“Claimant Tax Amount” means the amount of tax, other than tax on the purchase of liquor, paid by a Claimant under Consumption Taxes in respect of property or service:

(a) acquired or leased at any place; or

(b) consumed or used at any place

to the extent that the tax is not otherwise recoverable by the Claimant under any law, if:

(c) the property or service was not acquired or leased for consumption or use in the course of a business or other activity for profit or gain; and

(d) substantially all of the property or service is consumed or used in respect of performing:

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

- i. a function of government within the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation associated with the Claimant, or
- ii fisheries management by the applicable Maa-nulth First Nation within the Domestic Fishing Area, or
- iii wildlife management by the applicable Maa-nulth First Nation within the Wildlife Harvest Area

under the Maa-nulth First Nations Final Agreement or other agreement between Canada and British Columbia, together or separately, and the applicable Maa-nulth First Nation;

“*Consumption Tax Rebate and Transition Act*” means the *Consumption Tax Rebate and Transition Act*, S.B.C. 2010, c.5;

“Consumption Taxes” means Participating Province Tax and Tax on Designated Property;

“*Excise Tax Act*” means the *Excise Tax Act*, R.S.C. 1985, c. E-15;

“*Financial Administration Act*” means the *Financial Administration Act*, R.S.B.C. 1996, c. 138;

“First Period Claimant Tax” means Claimant Tax Amount paid or payable for the period commencing April 1, 2011 and ending March 31, 2012;

“Fiscal Year” means the period from April 1 in one Calendar Year to March 31 in the next Calendar Year;

“Interim Payment” means the payment by British Columbia to a Maa-nulth First Nation identified in Schedule 1;

“Invoice” means an invoice which includes First Period Claimant Tax;

“Maa-nulth First Nations Tax Treatment Agreement” means the Maa-nulth First Nations Tax Treatment Agreement between Canada, British Columbia and the Maa-nulth First Nations, effective April 1, 2011.

“Participating Province Tax” means tax payable under section 165(2), 212.1 or 218.1 of the *Excise Tax Act* in respect of British Columbia as a participating province;

“Parties” means the Parties to this Agreement and “Party” means any of them;

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

“Second Period Claimant Tax” means Claimant Tax Amount paid in the period commencing April 1, 2012 and ending March 31, 2013; and

“Tax on Designated Property” means tax payable under Part 5 of the *Consumption Tax Rebate and Transition Act*.

Payment Calculation

3. Each Maa-nulth First Nation acknowledges receipt of the applicable Interim Payments identified in schedule 1.
4. British Columbia and the Maa-nulth First Nations agree no further calculation, payment or reconciliation will occur for the purposes of rebates or tax sharing based on the Consumption Taxes paid by Claimants, except as provided for under this Agreement.
5. Claimants may submit to British Columbia information of Claimant Tax Amounts that are not otherwise recoverable or recovered under any law.
6. Claimants will submit information relating to First Period Claimant Tax no later than February 28, 2013.
7. Claimants will submit information relating to Second Period Claimant Tax no later than October 30, 2013.
8. To enable British Columbia to perform a verification audit on all or a portion of Claimant Tax Amounts identified in the information submitted under sections 6 or 7, the Claimants will provide British Columbia access to documents and records relating to the Claimant Tax Amounts and, when requested by British Columbia, provide copies thereof.
9. Subject to section 10, as soon as practicable British Columbia will make payments to Claimants equal to that Claimant’s Claimant Tax Amount and any applicable interest.
10. Each Maa-nulth First Nation acknowledges that the applicable Interim Payment is set off against amounts payable to it under this Agreement and no amount is payable by British Columbia to a Maa-nulth First Nation under this Agreement until the sum of the Claimant Tax Amounts submitted by that Maa-nulth First Nation and any applicable interest is greater than the applicable Interim Payment.

Interest

11. British Columbia will pay interest on First Period Claimant Tax calculated at the rate of interest set out in section 6(3), and in accordance with the method of calculation set out in section 7, of the *Interest on Overdue Accounts Payable Regulation*, BC Reg. 215/83, as amended from time to time, with interest running from the beginning of the month

following the date of an Invoice until March 31, 2012, on the amount of First Period Claimant Tax included in that Invoice.

Legislative Appropriation

12. Notwithstanding any other provision of this Agreement, the payment of money by British Columbia to a Claimant under this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when any such payment may be required, to make that payment; and
 - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in paragraph (a).

Dispute Resolution

13. If any issue arises with respect to the interpretation of this Agreement, the Parties agree to use the dispute resolution procedures established in accordance with Chapter 25 Dispute Resolution of the Final Agreement. For greater certainty no Party is obligated to proceed to Stage Three of the Chapter 25 Dispute Resolution process in relation to any dispute regarding the interpretation of this Agreement.

Further Assurances

14. The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.

Interpretation

15. In this Agreement:
- (a) unless it is otherwise clear from the context, “including” means “including, but not limited to”, and “includes” means “includes, but is not limited to”;
 - (b) headings are for convenience only, do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement; and
 - (c) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

16. This Agreement is not intended to be a treaty or a land claim agreement, and is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Time of Essence

17. Time is of the essence in this Agreement.

Enurement

18. This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

No Assignment

19. Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.

Notices

20. Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication (each a “communication”) required or permitted to be given or made under this Agreement must be in writing and may be given or made in one or more of the following ways:

- (a) delivered personally or by courier;
- (b) transmitted by facsimile transmission; or
- (c) mailed by prepaid registered post in Canada.

21. A communication will be considered to have been given or made, and received:

- (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day on which it was transmitted; or
- (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

22. A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For: British Columbia
Attention: Minister of Finance
P.O. Box 9048 STN PROV GOVT
Victoria, British Columbia
V8W 9E2
Fax Number: (250) 387-5594

For: Huu-ay-aht First Nations
Attention: Chief Councillor Jeff Cook
3483 3rd Avenue
Port Alberni, BC, V9Y 4E4
Fax Number: (250) 723-4646

For: Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations
Attention: Legislative Chief Therese Smith
General Delivery
Kyuquot, BC, V0P 1J0
Fax Number: (250) 332-5210

For: Toquaht Nation
Attention: Chief Anne Mack
P.O. Box 759
Ucluelet, BC, V0R 3A0
Fax Number: (250) 726-4403

For: Uchucklesaht Tribe
Attention: Chief Councillor Charlie Cootes
PO Box 1118
Port Alberni, BC, V9Y 7L9
Fax Number: (250) 724-1806

For: Ucluelet First Nation
Attention: President Charles McCarthy
P.O. Box 699
Ucluelet, BC, V0R 3A0
Fax Number: (250) 726-7552

23. A Party may change its address or facsimile number by giving a notice of the change to the other Party in the manner set out above.

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

Amendment

24. Subject to any applicable approvals, authorizations or legislative requirements, any amendment to this Agreement must be in writing and executed by the Parties.

Execution

25. Each Party represents and warrants that its signatory to this Agreement is duly authorized to execute this Agreement on its behalf.

Counterparts

26. This Agreement may be entered into by each party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other party by facsimile transmission.

THIS AGREEMENT HAS BEEN EXECUTED as of the day and year first above written.

EXECUTED in the presence of:) **HER MAJESTY THE QUEEN IN**
) **RIGHT OF THE PROVINCE OF**
) **BRITISH COLUMBIA, as represented**
) **by the Minister of Finance**
)
)
)
)
)
)
_____)
As to the signature of the Minister of) Minister of Finance
Finance)

EXECUTED in the presence of:) **HUU-AY-AHT FIRST NATIONS, as**
) **represented by the Chief Councillor**
)
)
)
)
)
)
_____)
As to the signature of) Authorized Signatory

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

EXECUTED in the presence of:) **KA:'YU:K'T'H'/CHE:K'TLES7ET'H'**
) **FIRST NATIONS, as represented by**
) **the Legislative Chief**
)
)
)
)
)
)
)
)

As to the signature of) _____
Authorized Signatory

EXECUTED in the presence of:) **TOQUAHT NATION, as represented**
) **by the Chief**
)
)
)
)
)
)
)
)

As to the signature of) _____
Authorized Signatory

EXECUTED in the presence of:) **UCHUCKLESAHT TRIBE, as**
) **represented by the Chief Councillor**
)
)
)
)
)
)
)
)

As to the signature of) _____
Authorized Signatory

EXECUTED in the presence of:) **UCLUELET FIRST NATION, as**
) **represented by the President**
)
)
)
)
)
)
)
)

As to the signature of) _____
Authorized Signatory

MAA-NULTH FIRST NATIONS CONSUMPTION TAXES PAYMENT AGREEMENT

SCHEDULE 1

MAA-NULTH FIRST NATION	INTERIM PAYMENT
Huu-ay-aht First Nations	\$68,500
Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations	\$35,300
Toquaht Nation	\$5,000
Uchucklesaht Tribe	\$13,000
Ucluelet First Nation	\$25,000