

Proposed *Osoyoos Indian Band Accommodation Operator Tax Law, 2020:* Overview, Summary and Q&A

Overview

An accommodation operator tax law is a form of business activity tax law made under the authority of subparagraph 5(1)(a)(iv) of the federal *First Nations Fiscal Management Act* (the “FMA”). First Nations like the Osoyoos Indian Band (“OIB”) that are scheduled to the FMA have the authority to enact an accommodation operator tax law. Such laws must comply with the FMA and its regulations, and with standards developed by the First Nations Tax Commission (the “FNTC”), and do not come into force until they are enacted by the Council and approved by the FNTC.

The proposed *Osoyoos Indian Band Accommodation Operator Tax Law, 2020* (the “Accommodation Tax Law”) is based on the FNTC’s sample accommodation operator tax law, which complies with FMA, regulations under the FMA, and FNTC standards. Under the Accommodation Tax Law, a tax will be charged at the rate of 3% on the gross revenues received by operators from the sale of lodging located on the reserve (the “accommodation tax”).

The Accommodation Tax Law includes provisions for the appointment of an administrator, for the determination of gross revenues, for returns, payment and reassessments, and inspections. The law also includes provisions regarding penalties, interest and enforcement, and for a complaints process respecting alleged errors and omissions in a Notice of Accommodation Tax Reassessment.

Summary

Parts I and II – Citation, Definitions and References

The proper citation for the Accommodation Tax Law is set out at section 1. Section 2 sets out the definitions that are used in the law and sets out interpretive rules.

Part III – Administration

Under section 3, the person appointed as the tax administrator under the *Osoyoos Indian Band Property Taxation Law, 2012* (the “Taxation Law”) is appointed as the tax administrator under the Accommodation Tax Law. The tax administrator is responsible for fulfilling their responsibilities under the Accommodation Tax Law and performing duties as assigned by OIB

from time to time. With the approval of the chief financial officer, the tax administrator may delegate some of their duties to another person.

Property tax, business activity tax, and other taxes on interests in reserve land under the FMA are known as “local revenues”. Section 4 requires accommodation tax revenues to be placed in OIB’s local revenue account, and provides that the moneys in that account can only be spent by passing an expenditure law under the FMA:

Part IV – Accommodation Tax Liability and Levy

Pursuant to sections 5 and 6, the Accommodation Tax Law applies to all operators on OIB reserve lands. An “operator” is defined as a person, other than a tourism agent, who sells, provides, or offers to sell accommodation on the reserve. Operators must pay tax on the operator’s use and occupation of the reserve for the provision of accommodation, at the rate of 3% of the operator’s gross revenues during each quarterly reporting period.

Section 7 provides that a person who must pay tax under the Accommodation Tax Law is liable for the tax even if the person pays other taxes, or if the person is exempt, under other property taxation laws. Where more than one person is an operator, they are jointly and severally liable for accommodation taxes payable under the Accommodation Tax Law, and the taxes must be paid notwithstanding any outstanding complaint or court action.

Part V – Determination of Gross Revenues

Section 8 sets out the rules for calculating an operator’s gross revenues. Gross revenues are the total amount earned by the operator from the sale of accommodation. Section 9 sets out what is included in and excluded from the determination of gross revenues.

Part VI – Returns, Payment and Reassessments

Section 10 provides that, within 30 days of the end of each quarterly reporting period, every operator must complete and deliver to OIB a Return in the form attached at Schedule A to the Accommodation Tax Law, together with any taxes owing. Accommodation taxes must be paid electronically, or at OIB’s offices during normal business hours, by cheque, cash, money order, or bank draft.

Section 11 states that the operator or their authorized signatory must certify the Return; this is formal confirmation that the information in the Return is complete and correct. A Return must be submitted regardless of whether the operator received revenues from the sale of accommodation during the reporting period.

Section 12 requires the tax administrator to review every Return, make an accommodation tax assessment, and provide an Accommodation Tax Reassessment (in the form provided at Schedule B) to an operator in the event there is an inaccuracy on the Return, or no Return has been provided. Section 12 also provides a process for refunding excess accommodation taxes paid, including interest.

Part VII – Records, Receipts, Information and Investigations

Sections 13 and 14 require the tax administrator to maintain records regarding the administration of accommodation taxes, and to issue receipts for all accommodation tax payments. Section 15 requires each operator to keep accurate and complete books of account and other records in order to allow OIB to determine the gross revenues of the operator, and to make such documents available to OIB on request.

Sections 16 and 17 give the tax administrator the authority to request information and conduct inspections related to accommodation taxes.

Part VII – Penalties, Interest and Enforcement

At section 18, a penalty of 10% will be charged on any portion of accommodation taxes that remain unpaid. Interest of 15% per year accrues on all unpaid accommodation tax, under section 19. The tax administrator must credit payment for accommodation taxes toward unpaid taxes from previous reporting periods prior to more recent periods, in accordance with section 20.

Section 21 states that OIB has the authority to recover unpaid accommodation taxes in court or the civil resolution tribunal, and by any other method authorized under the Taxation Law or other applicable laws.

Part IX – Complaints to Tax Administrator

Pursuant to section 22, an operator may deliver a complaint to the tax administrator respecting an alleged error or omission in a Notice of Accommodation Tax Reassessment, by providing the complaint in the form provided at Schedule IV to the Accommodation Tax Law within 30 days of receiving the Notice. If the tax administrator determines that there was an error on the Notice of Accommodation Tax Reassessment, the tax administrator must mail an amended Notice of Accommodation Tax Reassessment, correcting the error or omission.

Part XI – General Provisions

Sections 23 and 24 set out the circumstances under which information or records obtained or created under the Accommodation Tax Law can be disclosed, including for research and statistical purposes. Section 25 provides that an error or omission by OIB or the tax administrator under the Accommodation Tax Law does not make the law invalid.

Section 26 sets a six-month time limit for starting an action to recover moneys paid under the Accommodation Tax Law. Section 27 sets out the methods of giving notice under the Accommodation Tax Law. General rules of interpretation are set out at section 28.

Section 29 provides that the Accommodation Tax Law comes into force on the day after it is approved by the FNTC.

Schedules I-IV

The Schedules set out the format and the information that must be included on various documents under the Accommodation Tax Law, including the Accommodation Tax Return, the Notice of Accommodation Tax Reassessment, the Request for Information by Tax Administrator, and the Complaint to Tax Administrator Respecting Accommodation Tax.

Questions and Answers

Q: Who will pay accommodation tax under the proposed Accommodation Tax Law?

A: The accommodation tax will apply to “operators” who sell short-term accommodations on OIB reserve lands. This includes accommodations in:

- hotels, motels and resorts;
- boarding, lodging or rooming houses;
- bed and breakfasts;
- bunkhouses, cabins, condominiums, dormitories, hostels, vacation homes, mobile homes, trailers and stationary vehicles;
- RV parks and campgrounds;
- dwellings operated by clubs and associations, whether or not a membership is required for the use of the dwelling; and
- residential dwellings.

This includes operators who offer accommodation using an online platform such as Airbnb. It does NOT include:

- accommodation that is occupied by the same person for 28 days or more; and
- a space that does not contain a bed, and is used to display merchandise, to entertain or to hold a meeting, dinner or reception.

An “operator” means a person who sells, provides, or offers to sell accommodation on the reserve, but does not include a tourism agent.

Q: I am an “operator”. How much accommodation tax will I have to pay?

A: The tax rate is 3% on gross revenues received by the operator on the sale of accommodations (see list above) during a reporting period. Gross revenues include money, services and property given in exchange for accommodation. However, gross revenue does not include taxes or other levies on the sale of accommodation.

Q: Is OIB’s proposed accommodation tax similar to the province’s Municipal and Regional District Tax (“MRDT”) on short term accommodation?

A: The Accommodation Tax Law is enacted under the *First Nations Fiscal Management Act* (“FMA”), to which OIB is scheduled. The MRDT is levied by the province, by regulation, at the request of a municipality.

The 3% tax rate imposed by the Accommodation Tax Law matches the Town of Osoyoos’ MRDT tax rate (3% of the purchase price of the accommodation). The MRDT is implemented widely across the province, and applies to accommodations in most tourism areas of British Columbia.

Q: Will both the OIB accommodation tax and the MRDT apply to accommodations that I provide on OIB reserve lands?

A: No. The MRDT and the OIB accommodation tax will not overlap. The MRDT only applies in “designated accommodation areas”, as defined in the regulations to the BC *Provincial Sales Tax Act*. As OIB reserve lands are not included in any designated accommodation areas (OIB reserve lands are not part of the Town of Osoyoos), the MRDT does not apply.

Q: How will the OIB spend the revenues generated from the accommodation tax?

A: The OIB accommodation tax will be placed in OIB’s local revenue account and can only be spent in accordance with an OIB expenditure law. Local revenues are spent on local services such as police, firefighting, roads and streets, water supply, recycling, etc. Revenues from the accommodation tax may also be used for initiatives with nearby local governments to promote tourism in the region. This helps grow local economies collectively.

Q: I offer packages that include dinner, outings and accommodation. How do I determine my gross revenues for the purposes of calculating the accommodation tax I must pay?

A: If accommodation is sold as part of a combination of accommodation, meals and other services sold for a single price, the accommodation tax will only apply to the fair market value reasonably attributed to the sale of the accommodation alone.

Q: Can I require my customers to pay the accommodation tax by adding 3% to my invoices for accommodation?

A: The accommodation tax is a tax on the operator and not on the customer. As a result, it should not be shown on invoices to the customer.

Q: How often will I have to file an accommodation tax Return?

A: An accommodation tax Return must be delivered to the OIB within 30 days of the end of each quarterly reporting period in every year. The reporting periods end on March 31, June 30, September 30 and December 31 of each year.

Q: When and how will I pay accommodation tax?

A: The accommodation tax must be paid within 30 days of the end of each quarterly reporting period, when you file your Return.

You can pay the accommodation tax electronically or at the OIB administration office during normal business hours by cheque, cash, money order or bank draft made payable to the Osoyoos Indian Band.

Q: I might not make any money on the sale of accommodation during a reporting period. Will I still have to file a Return?

A: Yes. All operators must file a Return, regardless of whether they have gross revenues during a reporting period.

Q: Will my Return be reviewed by anyone?

A: Yes. The OIB tax administrator will review every Return and may deliver a “Notice of Accommodation Tax Reassessment” if they determine that anything on the Return is incorrect or missing. The tax administrator can also deliver a “Request for Information” in order to obtain information and records that would verify the information in a Return.

Q: What can I do if I disagree with a Notice of Accommodation Tax Reassessment?

A: An operator can make a complaint to the tax administrator about an alleged error or omission on a Notice of Accommodation Tax Reassessment by completing a complaint in the form required by the proposed Accommodation Tax Law. Complaints must be delivered to the tax administrator within 30 days after receipt of the Notice of Accommodation Tax Reassessment. The tax administrator will review the matter within 21 days and attempt to resolve the complaint.

Q: I am exempt from paying property tax to OIB. Does this mean I am exempt from paying accommodation tax?

A: No. All operators must pay the accommodation tax. Exemption from tax under another OIB Law does not exempt a person from accommodation tax.

Q: What happens if I am late paying the accommodation tax? Are there penalties and interest?

A: If all or part of the accommodation taxes are not paid when due, a penalty of 10% of the unpaid taxes will apply. Interest at a rate of 15% per year will also apply on any unpaid amount of taxes.

Q: My customers book accommodations at my property using an online booking platform. Do I pay accommodation tax to OIB, or does the booking platform remit the tax to the OIB?

A: If you are an operator, you must pay the accommodation based on your own gross revenues on accommodation – the online booking platform will not remit it for you.