





“weighted final sales factor” means, in respect of a year, the proportion that collected or collectible LSCIF on sales to consumers from a location on reserve is of the aggregate of all LSCIF reported as collected or collectible on schedules;

“year” means, unless the context otherwise requires, a calendar year during the term of this agreement.

2. Any term not defined in section 1 has the meaning assigned to it in the Act.

#### **First Nation Covenants**

3. During the term of this Agreement, Little Shuswap shall keep in force a by-law which:
- (a) conforms to the requirements of section 25 of the Act; and
  - (b) is consistent with subsection 26(2) of the Act with respect to the application of Part IX of the *Excise Tax Act* and proceedings that could be taken under any other Act of Parliament in respect of the tax imposed under subsection 165(1) of the *Excise Tax Act*.

#### **Covenants by Canada**

4. Canada agrees to collect for and on behalf of Little Shuswap, the LSCIF for the term of this agreement and to remit amounts in respect thereof to Little Shuswap in accordance with this agreement.
5. Canada agrees that, in accordance with section 27 of the Act, no tax under subsection 165(1) of the *Excise Tax Act* will be levied on the sale of designated products on reserve that are subject to the LSCIF while this agreement is in effect.

#### **Costs of Administration**

6. Any costs, charges or expenses, including amounts required to be paid in respect of prosecutions or other legal proceedings, incurred by Canada in the collection, enforcement and administration of the LSCIF for any year during the term of the agreement will be paid by Canada.
7. Unless otherwise agreed to by the parties, Little Shuswap will pay its own costs, charges and expenses, should it become party to litigation, either voluntarily or because a party other than Canada requires it, relating to the validity of the Act, a by-law or the LSCIF.

#### **Payments to Little Shuswap**

8. The parties agree that the interim payments will be an estimate of net LSCIF Revenues for that year divided into twelve instalments. This estimate will be based on the best data available and acceptable to the parties and may, where appropriate,

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14. The weighted final sales factor which is equivalent to an estimate of the proportion of LSCIF taxable sales which are made to final consumers excluding the proportion of sales made to businesses which are eligible for an input tax credit, will be determined in the following manner:

$$WFSF_t = \frac{((FSFA_t * AS_t) + (FSFTP_t * TPS_t) + (FSFG_t * GS_t) + (FSFD_t * DS_t) + (FSFP_t * PS_t))}{(AS_t + TPS_t + GS_t + DS_t + PS_t)}$$

where

- FSFA represents the estimated final sales factor, in period t, established by the parties for alcoholic beverages subject to the LSCIF;
- AS represents the estimated sales of alcoholic beverages in dollars, in period t, sold on the reserve and subject to the LSCIF;
- FSFTP represents the estimated final sales factor, in period t, established by the parties for tobacco products subject to the LSCIF;
- TPS represents the estimated sales of tobacco products in dollars, in period t, sold on the reserve and subject to the LSCIF;
- FSFG represents the estimated final sales factor, in period t, established by the parties for gasoline subject to the LSCIF;
- GS represents the estimated sales of gasoline in dollars, in period t, sold on the reserve and subject to the LSCIF;
- FSFD represents the estimated final sales factor, in period t, established by the parties for diesel fuel subject to the LSCIF;
- DS represents the estimated sales of diesel fuel in dollars, in period t, sold on the reserve and subject to the LSCIF;
- FSFP represents the estimated final sales factor, in period t, established by the parties for propane subject to the LSCIF;
- PS represents the estimated sales of propane in dollars, in period t, sold on the reserve and subject to the LSCIF;

15. If either party becomes aware of any change in circumstances that could have an impact on the current final sales factor, it will provide notice to the other party. As soon as is possible after such notice is given, the parties will meet to discuss and attempt to reach agreement on the following:

- (a) a new weighted final sales factor;
- (b) the date that the new weighted final sales factor will take effect; and

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- (c) in the event that the new weighted final sales factor takes effect on a date other than January 1<sup>st</sup>, a transitional weighted final sales factor representing an average of the old weighted final sales factor and the new weighted final sales factor, which will be applied in the year the amendment takes effect.
16. Subject to article 17, the Pre-Adjusted LSCIF Revenues will be adjusted to arrive at net LSCIF Revenues for the year:
- (a) LSCIF amounts assessed or reassessed by the Minister during that year shall be added or deducted as the case requires; and
  - (b) LSCIF amounts relating to the year in question, or to prior years, that have been successfully appealed or settled and repaid to a registrant or other person during the reconciliation period shall be deducted.
17. An adjustment will only be made if it relates to a change in a registrant's tax collected or collectible reported on a schedule. Where possible, such adjustment should be multiplied by the weighted final sales factor that applied for the year in which the relevant reporting period ended, or in a case where no schedule is filed, the weighted final sales factor that would have applied had the information been included in a schedule filed for the relevant reporting period.
18. The parties also agree to assume, for the purposes of determining annual net LSCIF Revenues, that the amount of GST on retail sales of designated products made on-reserve and delivered to a location off-reserve are equivalent to the amount of LSCIF on retail sales of designated products made off-reserve and delivered to a location on-reserve. As a result, no adjustment relating to this issue is required for the purposes of determining net LSCIF Revenues. However, should either party become aware of a significant imbalance in the relationship between retail sales of designated products made on-reserve and delivered to a location off-reserve and retail sales of designated products made off-reserve and delivered to a location on-reserve, the parties agree to review this assumption with a view to ensuring that the calculation of net LSCIF Revenues is adjusted appropriately.
19. From time to time, the parties may agree to conduct or have conducted a survey of final vs. business sales of one or more products subject to LSCIF. Little Shuswap and Canada will each assume fifty (50) percent of the cost of surveys conducted, Little Shuswap's share of the cost being calculated net of any federal transfer.
20. Once a survey pursuant to article 19 has been completed and the data analysed, the parties will meet and attempt to reach agreement on the following:
- (a) a new weighted final sales factor;
  - (b) the date that the new weighted final sales factor will take effect; and
  - (c) in the event that the new weighted final sales factor takes effect on a date other than January 1<sup>st</sup>, a transitional weighted final sales factor representing an

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average of the old weighted final sales factor and the new weighted final sales factor, which will be applied in the year the amendment takes effect.

### Reconciliation

21. A reconciliation comparing the interim payments paid to Little Shuswap during the reconciliation period and net LSCIF Revenues for the reconciliation period will be made once a year. A copy of such reconciliation, together with any relevant information used in arriving at net LSCIF Revenues, except in cases where the provision of such information is prohibited by law, and the Auditor General's report, referred to in article 39, will be provided to Little Shuswap on or before November 30<sup>th</sup>.
22. The first reconciliation will be provided to Little Shuswap on or before November 30, 2008.
23. If the reconciliation determines that net LSCIF Revenues for the reconciliation period exceeded interim payments made to Little Shuswap during the reconciliation period, so that an amount remains payable to Little Shuswap, such amount will be paid to Little Shuswap in the following manner, unless Canada and Little Shuswap agree otherwise:
  - (a) in any case where the agreement is in effect, the amount will be paid to Little Shuswap in twelve equal monthly instalments beginning in the month after the Auditor General's report, referred to in article 39, is provided to Little Shuswap; or
  - (b) in any case where the term of the agreement has ended, the amount will be paid to Little Shuswap within sixty days from the date that the Auditor General's report, referred to in article 39, is provided to Little Shuswap.
24. If the reconciliation determines that the interim payments made to Little Shuswap in the reconciliation period exceeded net LSCIF Revenues for that reconciliation period, such overpayment will be recovered in the following manner, unless Canada and Little Shuswap agree otherwise:
  - (a) in any case where the agreement is in effect, the amount will be recovered as a set-off against future interim payments from Canada to Little Shuswap in twelve equal monthly instalments beginning in the month after the Auditor General's report, referred to in article 39, is provided to Little Shuswap; or
  - (b) in any case where the term of the agreement has ended, the amount will be paid to Canada by Little Shuswap within sixty days from the date that the Auditor General's report, referred to in article 39, is provided to the Little Shuswap.

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25. Where, at any time within four years after the report of the Auditor General, referred to in article 39, for a reconciliation period has been delivered to Little Shuswap, either Canada or Little Shuswap discovers information indicating that the weighted final sales factor for that reconciliation period was inaccurate, it will give notice to the other party. As soon as possible after such notice is given, the parties will discuss and attempt to reach agreement on what the weighted final sales factor should have been in the prior year or years.
26. Where an agreement on a new weighted final sales factor for a given reconciliation period is reached, net LSCIF Revenues for that period will be re-calculated by taking the Gross LSCIF Revenue figure from that reconciliation period multiplying it by the new weighted final sales factor to arrive at a new Pre-Adjusted LSCIF Revenue figure. This new Pre-Adjusted LSCIF Revenue figure will then be adjusted by repeating the procedure outlined in article 16 for the relevant year.
27. If the re-calculation indicates an underpayment to Little Shuswap, such amount will be paid to Little Shuswap in the following manner, unless Canada and Little Shuswap agree otherwise:
- (a) in any case where the agreement is in effect, the amount will be paid to Little Shuswap in twelve equal monthly instalments beginning in the month after the re-calculation has been completed; or
  - (b) in any case where the term of the agreement has ended, the amount will be paid to Little Shuswap within sixty days from the date that the recalculation has been completed.
28. If the re-calculation indicates an overpayment to Little Shuswap, such amount will be recovered from Little Shuswap in the following manner, unless Canada and Little Shuswap agree otherwise:
- (a) in any case where the agreement is in effect, the amount will be recovered as a set-off against future interim payments from Canada to Little Shuswap in twelve equal monthly instalments beginning in the month after Little Shuswap has received written notification of the results of the re-calculation; or
  - (b) in any case where the term of the agreement has ended, the amount will be paid to Canada by Little Shuswap within sixty days from the date that Little Shuswap receives written notification of the results of the re-calculation.

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35. Notwithstanding that the term of this agreement has ended the Minister will continue to collect and assess and take steps to ensure the administration of the LSCIF in respect of any period during which the agreement was in effect.
36. Little Shuswap agrees to ensure that the Minister will have the authority, after the term of the agreement has ended, to carry out the functions contemplated in article 35.
37. Actions, suits, prosecutions or other legal proceedings required to be brought or taken in the administration or enforcement of the LSCIF will be brought or taken by Canada. At the request of the Minister, and subject to article 6:
- (a) Little Shuswap will assist Canada with respect to the conduct of any such action, suit, or proceeding or any matter related thereto; and
  - (b) Little Shuswap will forward to the Minister any document that may be received by it relating to any assessment under the LSCIF or relating to any action, suit or other legal proceeding brought or taken under the LSCIF.

#### **Enforcement**

38. For greater certainty, for the purposes of section 89 of the *Indian Act*, Little Shuswap acknowledges that enforcement measures undertaken by the Minister with respect to the LSCIF are undertaken at the instance of Little Shuswap.

#### **Inspection**

39. The Minister of Finance will annually provide to Little Shuswap a report, signed by the Auditor General of Canada, on the results of applying specified auditing procedures to the reconciliation described in article 21.
40. The Auditor General's report will constitute the only auditing procedures conducted with respect to Canada's obligations under this agreement.

#### **Dispute Settlement**

41. In the event of a dispute between Little Shuswap and Canada arising out of or in connection with this agreement, the parties agree to use the procedure set out in articles 42 to 45 prior to pursuing any other legal remedy.
42. Within thirty days of either party receiving written notice from the other of a dispute under this agreement, a meeting will be held between the parties to attempt in good faith to settle the dispute.
43. If, within sixty days after this meeting, the parties have failed to resolve the dispute, they agree to submit the dispute to mediation and to equally bear the costs of that mediation.

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44. The parties will jointly select a mediator. If after thirty days the parties are unable to agree upon the choice of a mediator, the matter will be referred to a neutral appointing authority that will be asked to choose a mediator.
45. The parties agree to participate in good faith in the mediation process for a period of sixty days before pursuing another course of action.
46. The parties may mutually determine time periods other than those referred to in articles 42 to 45.

#### **Amendment and Termination**

47. Subject to article 48, this agreement may only be amended by agreement, in writing, of both Canada and Little Shuswap, subject to any necessary approvals, authorizations or legislative requirements.
48. Changes to the amount of interim payments under article 8, the estimate for the first thirty month period pursuant to article 9, changes to the weighted final sales factor under article 15 and changes to the payment schedule of amounts due or owed to Canada or the Little Shuswap pursuant to clauses 23 and 24, are to be agreed upon and implemented by an exchange of letters between the Chief of the Little Shuswap and the Senior Assistant Deputy Minister (or Assistant Deputy Minister), Tax Policy Branch, Department of Finance.
49. Any amending document will form part of this agreement and will be effective as of the date specified in such amending document.
50. The parties may mutually agree to terminate the agreement at any time on such terms as they may agree.
51. Little Shuswap may terminate, at its discretion, this agreement giving at least six months notice, in writing to the Minister of Finance, of Little Shuswap's desire to terminate this agreement together with a council by-law that repeals the by-law imposing the tax on the date specified in the notice.
52. Canada may terminate, at its discretion, this agreement by giving at least six months notice, in writing to Little Shuswap's Council, of Canada's desire to terminate this agreement on the date specified in the notice.
53. Where Canada has given Little Shuswap notice in accordance with article 52, Little Shuswap will have thirty days from the day it receives the notice to notify Canada if it desires to negotiate a new taxation agreement with Canada. In this case, Canada agrees to make reasonable efforts to negotiate and attempt to reach an agreement, subject to any necessary approvals, authorizations or legislative requirements, on an alternative taxation arrangement with Little Shuswap.

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**Effects of Termination**

54. The effects of termination will be as follows:

- (a) subject to article 35, the Minister's obligations to collect the LSCIF on behalf of Little Shuswap will end on the termination date; and
- (b) after the termination date and subject to section 87 of the *Indian Act*, tax on designated products will be payable under subsection 165(1) of the *Excise Tax Act*.

**Term**

55. The term of this agreement, except as otherwise specified in this agreement, will commence when duly executed by both parties and will end on:

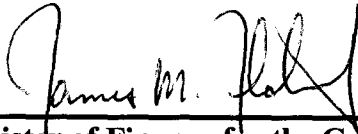
- (a) in the case of termination in accordance with article 50, the date agreed to by the parties;
- (b) in the case of termination by Little Shuswap in accordance with article 51, the date specified in the notice; and
- (c) in the case of termination by Canada in accordance with article 52, the date specified in the notice.

**The Government of Canada**

At \_\_\_\_\_,

This 1 Day of MAY, 2006

By



\_\_\_\_\_  
**Minister of Finance for the Government  
Of Canada**

**Little Shuswap Lake Indian Band**

At \_\_\_\_\_,

This 23 Day of FEB, 2006

By



\_\_\_\_\_  
**Chief of the Little Shuswap Lake Indian  
Band**

Little Shuswap Lake FTA

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## Little Shuswap Lake First Nation Sales Tax By-law, 2006

### Short Title

1. This By-law may be cited as the Little Shuswap Lake First Nation Sales Tax By-law, 2006.

### Federal Legislation

2. This By-law is made under Part 4 of the *Budget Implementation Act, 2000*, S.C., 2000, c. 14.

### Interpretation

3. Words and expressions used in this By-law have the same meaning as in Part 4 of the *Budget Implementation Act, 2000*.


### Imposition of Direct Tax

4. Any person who purchases tobacco products, fuel or alcoholic beverages on the reserve of the Little Shuswap Lake First Nation shall pay the Little Shuswap Lake First Nation a tax calculated on the value of the consideration for the supply at the rates provided for in subsection 165(1) and (3) of the *Excise Tax Act*, R.S., c. E-15.
5. This tax applies to every supply for which consideration is paid on or after the date when this By-law comes into force.
6. This By-law comes into force on the later of the date that:
  - (a) the requirements set out in paragraph 25(4)(b) of Part 4 of the *Budget Implementation Act, 2000* have been satisfied; and,
  - (b) April 1, 2006.

APPROVED AND PASSED BY CHIEF AND COUNCIL at a duly convened meeting of the Little Shuswap Lake First Nation held at Little Shuswap Lake I.R. #1 this 18th day of January 2006.

  
\_\_\_\_\_  
Chief

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor