



## St. Mary's Indian Band

### Background Information :

#### Amendment to St. Mary's Indian Band Property Taxation Law, 2008

An amendment to the existing St. Mary's Indian Band Property Taxation Law, 2008 is being proposed by Chief and Council to provide for a revitalization tax exemption program.

In late 2012, St. Mary's Indian Band received informal notification from the British Columbia Assessment Authority (BCAA) that St. Mary's 1A (IR-1A) is a part of the Band's Property Taxation jurisdiction. From the limited information available, it appears that in 1992 when the land survey for the Resort and Golf course were taking place the Province was requested to add IR-1A onto St. Mary's Indian Band Indian Self-Government Enabling Act Certificate. This meant that the Band had the sole ability and obligation to assess and levy property taxes on those lands, without any multi-jurisdictional property tax agreement with the other bands being in place or within the context of any future agreements made with Resort.

There is now legal confirmation from the B.C Assessment Authority that the 5-Band lands are subject to both assessment and taxation under the St. Mary's Indian Band's Assessment and Property Tax Laws. Having IR-1A on the Band's Tax Certificate means that the Band is now required to both assess and levy property taxes annually to all occupiers of those lands, namely the St. Eugene's Mission Resort.

The following excerpt from the St. Mary's Indian Band Law, 2008 specifically outlines that it is the **occupier** of the land that creates the **tax against the property**, not the owner of the land:

#### **"PART V**

#### **EXEMPTIONS FROM TAXATION**

##### *Exemptions*

**8.(1)** *The following interests in land are exempt from taxation under this Law to the extent indicated:*

- (a) subject to subsection (2), any interest in land held or occupied by a member of SMIB;*
- (b) subject to subsection (2), any interest in land held or occupied by SMIB or a SMIB Corporation;*

*(c) a building used for public school purposes or for a purpose ancillary to the operation of a public school, and the land on which the building stands;*

*(d) a building used or occupied by a religious body and used for public worship, religious education or as a church hall, and the land on which the building stands;*

*(e) an institutional building used to provide housing accommodation for the elderly or persons suffering from physical or mental disability, not operated for profit, and the land on which the building stands; and*

*(f) that land of a cemetery actually used for burial purposes.*

*(2) The exemptions in paragraphs (1)(a) and (b) do not apply to interests in land that are held by a member of SMIB, SMIB or a SMIB Corporation, as the case may be, where that interest in land is actually occupied by someone other than a member of SMIB, SMIB or a SMIB Corporation.*

*(3) An exemption from taxation applies only to that portion of a building occupied or used for the purpose for which the exemption is granted, and a proportionate part of the land on which the building stands.”*

The **existing** St. Mary’s Property Taxation Law, 2008 recognizes that if an *ᐱᓐᓐᓐ* member is the occupier of a property on reserve under any type of ownership including Certificates of Possession then that property is not taxable. The property must be occupied by an *ᐱᓐᓐᓐ* member, when a non-*ᐱᓐᓐᓐ* member resides on the property that the property then becomes taxable. The property also becomes taxable when occupied by a Ktunaxa Nation Member from another of the member Bands, a non-aboriginal or another First Nation’s person. The proposed property tax amendment will **not** affect property owned or occupied by *ᐱᓐᓐᓐ* members on Band lands.

The **existing** St. Mary’s Property Taxation Law, 2008 also deems that only businesses, corporations or other entities which are 100% owned by the Band are exempt from property taxation. This means that if a business is operating within St. Mary’s Indian Band Tax Jurisdiction and is not 100% owned by the Band, then that property where the business is located is taxable.

One of the main occupiers of the 5-Band land is the St. Eugene Mission Resort (SEM Resort). Under the existing St. Mary’s Property Taxation Law, 2008 the Band must now levy property taxes on all occupiers of the 5-Band lands. Given the current SEM Resort Agreements of which the St. Mary’s Indian Band is legally bound to and the ill-advised inclusion regarding the legal ability to levy property taxes contained in those same agreements, Council wishes to amend the Property Tax Law, 2008 to possibly mitigate some of the legal ramifications of those same agreements. If the property tax amendment for the exemption be approved, Council then has the *option* to provide a revitalization tax exemption to eligible occupiers. The amendment outlines the requirements under which Council can provide a tax exemption to an occupier of *any lands* under their jurisdiction including 1R-1A:

- Environmental revitalization;
- Economic revitalization

A Property Tax exemption can be used for any occupier of Band land or 5-Band lands and is not just specific to the SEM Resort. This would allow the Band to promote first nation's employment or environmental stewardship on St. Mary's lands. Council is only considering an amendment to the existing *Law* at this time. If the amendment is approved a revitalization tax exemption for property is not automatic in that there must be an agreement made between the occupier and Council. The agreement would outline the specific conditions for the exemption including the term which cannot be for more than 5 years.

As part of the amendment process, notice must be given under the *First Nations Fiscal Management Act* with a copy of the notice mailed to every member of *ᐱᓐᓐᓐ*. Additionally, the notice is also published in the local newspaper, posted within the Band office and taken to all Band meetings during the notice period. The wording of the notice and draft law must meet the specific requirements of the First Nation's Tax Commission who controls the entire process.

All written representations including all email, letters, requests for information and verbal notices received during the notice period must be considered by Chief and Council. After due consideration at a regularly scheduled Council meeting which are *always* open to the community and public at large, Council will make the final decision to amend the St. Mary's Indian Band Property Taxation Law, 2008 or not.

- Written representation must be received by Council by November 18, 2013
- Council will consider amending the law on November 19, 2013

Council may also have the option of removing IR-1A from the Band's Tax Certificate at which time the Province of British Columbia would most likely allocate the 5-Band lands to the City of Cranbrook's taxing jurisdiction via the Assessment Authority. All lands including: reserve lands, Provincial crown, Federal Crown and privately held lands must be allocated to a taxing jurisdiction. This would occur whether or not the Band had a tax law or not.

If Council chooses not to amend the Property Tax Law, 2008 the Resort will be assessed and levied taxes in 2014.

