

**IT WAS MOVED and seconded to approve the second reading of the Deed Transfer Tax Bylaw.**

**Motion Carried**

## **TOWN OF BERWICK BYLAW**

### **DEED TRANSFER TAX**

This Bylaw is known as and may be cited as the “Deed Transfer Tax Bylaw”.

The Deed Transfer Tax Act, Chapter 121, of the Revised Statutes of Nova Scotia, 1989, as amended, applies to the Town of Berwick and is in effect from the date of approval of the Minister of Housing and Municipal Affairs.

#### **Application of Part**

- 3 (1) Except for this Section, this Part does not apply to and is not in effect in any municipality unless a bylaw under this Section has been passed by the council thereof and is in force.

#### **Bylaw and approval**

- (2) Subject to the approval of the Minister, the council of a municipality may pass a bylaw providing that this Part applies to the municipality and this Part shall apply to the municipality on and after the date named in the bylaw or the date of approval by the Minister, whichever is later.

#### **Part does not apply**

- (3) This Part does not apply to any municipality that under the authority of any other Act levies a tax of a kind permitted by this Part.

#### **Application of Section**

- 4 (1) Notwithstanding Section 3 or any enactment, this Section applies to every municipality that under the authority of this Part or any other Act levies a tax of the kind permitted by this Part.

#### **Exemption of gift or interspousal transfer**

- (2) Where a deed transfers property
- (a) between persons married to one another; or
  - (b) by way of gift, notwithstanding that
- (i) the deed transfers property subject to an encumbrance including a mortgage or a lien for rates and taxes and the grantee assumes the amount of the encumbrance, including interest and expenses thereon, or
- (ii) there is a nominal consideration therefor,
- it is exempt from deed transfer tax.

#### **Tax**

- 5 (1) On every deed a tax of one half of one per cent of the value of the property thereby conveyed is imposed and levied and payable to the municipality within which the property lies.

#### **Apportionment**

- (2) Where the property is situated in more than one municipality, the value shall be apportioned between or among the municipalities, whether or not this Part is in effect in all of them, and the tax for each municipality shall be computed on that part of the value that has been apportioned to that municipality.

### **Determination of apportionment**

- (3) Where the property is situated in more than one municipality, the apportionment shall be made by the Director of Assessment, whose decision is final.

### **Conveyance to charity**

- 6 (1) Where the grantee is a registered Canadian Charitable organization, a deed is exempt from the tax if the property is not to be used for any commercial, industrial, rental or other business purpose and if an officer of the grantee makes and files with the clerk an affidavit to this effect.

### **Conversion to business purpose**

- (2) Notwithstanding subsection (1), where within three years after the filing of the affidavit the property is used by the grantee for a commercial, industrial, rental or other business purpose or is sold or conveyed by the grantee, the clerk shall compute the tax for which the grantee would have been liable if it had not been a registered Canadian charitable organization and the grantee is liable to pay the amount thereof and interest thereon at the rate of six per cent *per annum* computed from the date of the deed first referred to in this Section.

### **Confirmatory deed**

- 7 (1) Where
- (a) a deed merely confirms, corrects, modifies or supplements a deed previously given;
  - (b) there is no consideration therefor beyond one dollar; and
  - (c) it does not include more property than the deed previously given,
- it is exempt from the tax.

### **Transfer between subsidiary and parent**

- (2) Where a deed transfers property between a wholly-owned subsidiary company and its parent company or between companies that are wholly owned by another company or person, then it is exempt from the tax.

### **Deed executed before Part effective in municipality**

8. A deed in which the certificates of execution show on their face that they were signed by the official prior to the date on which this Part becomes effective in the municipality in which the property is situated is not subject to the tax.

### **Affidavit**

- 9 (1) Not later than seventy-two hours after a transfer, and whether or not a tax is payable thereon, the grantee shall file with the clerk an affidavit made by himself or by someone having a full knowledge of the facts, setting out
- (a) the names of the parties;
  - (b) the location of the property; and
  - (c) the sale price of the property with full details of the consideration including the amount of any lien or encumbrance subject to which the transfer was made,

and, if the affidavit is not made by the grantee, it shall state that the person making it has personal knowledge of the facts stated in it.

**Form of affidavit**

- (2) The affidavit may be in the form in Schedule A or to like effect.

**Liability of maker of affidavit**

- (3) Where the affidavit is made by a person other than the grantee, he is personally liable jointly and severally with the grantee for payment of the amount of the tax.

**Where exemption claimed**

- (4) If the grantee claims exemption from the tax, the affidavit shall be filed but shall set out the facts on which the grantee claims to be exempt and, in the case of a registered Canadian charitable organization, shall give the number of its registration under the *Income Tax Act* (Canada).

**Computation of tax**

- 10 (1) On receipt of the affidavit, the clerk shall compute the amount of the tax.

**Payment of tax**

- (2) The tax shall be paid by the grantee named in the deed and shall be due and payable by him at the time of making transfer.

**Refusal to accept affidavit**

- 11 (1) If the clerk is not satisfied that the affidavit sets out the true and complete sale price or if for any reason he is not able from the affidavit to determine the sale price, he may refuse to accept the affidavit and to endorse the deed, and shall so advise the person who tenders the affidavit.

**Tender of affidavit to court**

- (2) The grantee shall thereupon tender the affidavit to a regional assessment appeal court named by the clerk or by the Minister if the clerk does not name one within six hours after he has declined to accept the affidavit.

**Determination by court**

- (3) This court shall proceed to determine the sale price and for that purpose may examine persons on oath.

**Expenses of court**

- (4) This court shall also determine who is to pay its fees and expenses and, if any of these are to be paid by the grantee, then the municipality may pay the entire fees and expenses of the court and add to the tax the amount or part thereof that is to be paid by the grantee.

**Determination final**

- (5) The determination of an assessment appeal court shall be final.

**Endorsement of deed**

- 12 (1) Upon payment of the tax, the clerk shall endorse the deed with a certificate in the form in Schedule B or to like effect.

**Endorsement of deed exempt from tax**

- (2) If the clerk finds that the deed is exempt from tax, he shall endorse the deed with a certificate in the form in Schedule C or to like effect.

### **Registrar appointed to perform duties of clerk**

- 13 (1) With the consent of the Attorney General, the council of a municipality may by resolution appoint the registrar for the registration district in which the municipality is located, to exercise and perform the powers, duties and responsibilities of the clerk under Sections 9, 10, 11 and 12, and may enter into an agreement determining the compensation to be paid to the registrar.

### **Person appointed to perform duties of clerk**

- (2) Notwithstanding subsection (1) or any enactment, the council of a municipality may appoint a person to exercise and perform the powers, duties and responsibilities of the clerk under Sections 9, 10, 11 and 12 or under any enactment that levies a tax of a kind permitted by this part and may enter into an agreement determining the compensation to be paid to such person.

### **Duties of registrar of deeds**

- (3) After such resolution has been passed and until it has been revoked, affidavits and other documents that may be filed with the clerk or are required to be filed with the clerk shall be filed instead with the registrar and the registrar shall compute the amount of the tax and take all the proceedings that the clerk may or is required to take under this Part, and upon payment of the tax or upon the registrar finding that the deed is exempt from tax, he shall endorse the deed with one of the certificates referred to in Section 12.

### **Report**

- (4) On the first day of each month, the registrar shall transmit to the clerk the documents previously filed with him under this Part with a report of his proceedings thereunder, excepting the documents relating to cases where the registrar has not signed one of the certificates referred to in Section 12, and at the same time shall transmit to the clerk the amount of the tax collected by him after first deducting any remuneration that may be due to him.

### **Interest and penalty**

14. If the grantee does not pay the tax when due, he shall pay interest thereon at the rate of one half of one per cent per month until paid, beginning ten days after the transfer, and a penalty of ten per cent on any tax or portion thereof which remains unpaid after thirty days from the date of the transfer.

### **Lien**

- 15 (1) The tax with interest and penalty constitutes a lien upon the property, situate wholly or in part within the municipality, which is conveyed by the deed.

### **Duration of lien**

- (2) The lien attaches on the date when the tax is due and continues until discharged by payment, or in accordance with law, and may be collected in the same manner as annual rates and taxes of the municipality are collected.

### **Certified deed required**

- 16 If the clerk of any municipality has advised the registrar that the municipality has passed and the Minister has approved a bylaw under Section 3 and that this Part is in force in that municipality, then, notwithstanding the *Registry Act*, the registrar shall not thereafter receive for registration any

deed of property wholly or partly within the municipality unless it bears a certificate signed by the clerk stating that the tax has been paid in full or stating that no tax is payable.

History of this Bylaw:

Enacted - July 29, 1998

Amended - July 10, 2001