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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2021

LAW 358C.001 & 493B.004
TOPICS IN FIRST NATIONS LAW – TAXATION, ASSIMILATION
AND RECONCILIATION

Adjunct Professor Faille

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS
and 20 minutes reading time

NOTES:

1. THIS IS AN OPEN BOOK EXAMINATION, MEANING CANDIDATES MAY REFER TO CLASS NOTES, CASE LAW, PRESENTATION SLIDES, AND OTHER CLASS READINGS.
2. ANSWER ALL QUESTIONS.
3. THIS EXAMINATION CONSISTS OF 7 QUESTIONS IN TOTAL (DIVIDED INTO 3 PARTS)

LAW 358C.001 & 493B.004 FALL 2021 EXAMINATION**Part 1 (Fact Pattern) (3 questions; 60 Marks Total)**

United Northern BC Tribal Council Child and Family Services Society (“the Society”) is a not-for-profit social agency established under the *Societies Act* of British Columbia that is dedicated to providing a range of child and family support services to Indigenous persons who are members of six First Nations that are collectively organized under the United Northern BC Tribal Council.

The Society has 8 members (similar to shareholders), consisting of: the six First Nations of the Tribal Council (as represented by the Chief of each Nation), as well as the Province of British Columbia (as represented by the Minister of Indigenous Relations) and Canada (as represented by the Minister of Indigenous Services Canada).

The Board of the Society is made up of 12 members: one appointed by each of the six First Nations, 3 appointed by the Government of the Province of British Columbia, and 3 appointed by the Federal Government.

The Society operates and delivers its services from 8 different offices: 7 on reserve (one on each of the six First Nations, and one in an office tower on the reserve lands of Squamish First Nation near downtown Vancouver), and one off-reserve in downtown Prince George, British Columbia.

The off-reserve office located in Prince George is by far the largest of the 5 offices. Approximately 100 employees work at this office. The Prince George office has two roles: delivering services to clients, as well as most of the administrative functions for running the Society, including: bookkeeping, payroll, employee training and support, and finance. The main computer servers of the Society are also located at this office. The Society does its banking at an on-reserve banking centre.

The office on the Squamish reserve is the smallest, with only three people working there with any regularity: a full-time secretary, as well as the Chief Executive Officer and the Executive Director, who each spend about half their time at this office and about half their time at the off-reserve office in Prince George. They occasionally work from the other offices, which are all located on reserve.

The other offices (all located on reserve) employ about 10-20 employees each.

The Annual General Meeting (“AGM”) of members of the Society normally takes place off reserve, at a hotel in downtown Prince George, B.C.. The Board of the Society meets 6 times a year, typically off-reserve in either downtown Prince George or downtown Vancouver. However, in 2020, both the Annual General Meeting and all the Board meetings of the Society were held on-line, by Zoom, due to the COVID-19 pandemic. For both the Annual General Meeting and the Board meetings, the host of the remote meeting was the Chief Operating Officer of the Society who logged in from her computer at the Squamish on-reserve office, and attendees participated remotely, from their respective locations. The First Nation attendees at both the 2020 AGM and the 2020 Board meetings participated remotely on their laptops from their respective homes or offices – all on reserve. The provincial and federal government attendees participated remotely from their laptops from their respective homes or offices, all off reserve.

Part 1 (Fact Pattern, Continued)

As noted, the Society's clients consist of children and families who are members of the six United Northern BC First Nations. Just over half the clients are resident on reserve. A slight majority of the services, however, are delivered off-reserve (at the Prince George office).

A majority of the employees of the Society are Indigenous and registered as status Indians under the *Indian Act*.

For many years, the Society has treated all of its status Indian employees as tax exempt, and has not deducted or remitted any employment income tax for any of these employees. None of the status Indian employees has paid any income tax in regard to their employment income earned from working for the Society.

A new Chief Financial Officer has just been hired. She is unfamiliar with Indigenous non-profit organizations/societies and does not have a clear understanding of s. 87 of the *Indian Act*. She has received approval from the Chief Executive Officer to obtain an opinion from you in regard to the tax treatment of the Society's status Indian employees.

Please answer the following questions that have been directed to you by the Society:

Question 1 (a) (30 Marks)

For the 2020 tax year, would the Society be correct in treating each and all of its status Indian employees as tax exempt?

Question 1 (b) (15 Marks)

About half of the Society's status Indian employees reside on reserve. Those employees who live on reserve also work on-reserve essentially full time.

Does your answer to (a) differ in regard to these employees?

Question 1 (c) (15 Marks)

For those status Indian employees who live off-reserve, some nevertheless spend a certain amount of their time working on reserve (usually visiting clients on reserve). For those who do spend time working on reserve, the amount varies from 10% for some employees to around 75% for others.

Does your answer to (a) differ depending on whether and how often a status Indian employee of the Society works on reserve?

Part 2 (Essay) (20 Marks)

Question 2: Taking as your reference any of the cases reviewed in the course, identify a prior decision of the Tax Court, Federal Court or Federal Court of Appeal applying s. 87 of the *Indian Act* that in your view might be decided differently if it were being argued and decided today. Explain why.

Part 3 (Short Answer Questions) (20 points total)

Question 3 (a) (6 points)

A corporation is 51% owned and controlled by a First Nation, and is located on reserve. Is the income of the corporation taxable? Briefly explain your answer.

Question 3 (b) (4 points)

Generally speaking, when a lawyer renders an account to a First Nation client for advice relating to a claim the First Nation has against Canada, should GST be charged to the client? Briefly explain your answer.

Question 3 (c) (10 points)

If a First Nation wishes to collect taxes, what are some of the options available? Specifically what kinds of tax can it collect and through what mechanisms?

END OF EXAMINATION