

FIRST NATION REAL PROPERTY TAXATION GUIDE THIRD EDITION



First Nations Tax Commission



The First Nation Real Property Taxation Guide, Third Edition is published under the authority of the First Nations Tax Commission, 2014.

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CHIEF COMMISSIONER'S FOREWORD



The First Nations Tax Commission is dedicated to promoting transparency and understanding in the First Nation tax system. This approach is central to the ongoing task of building a tax system that is credible, sustainable, and supported by taxpayers and First Nations. In keeping with those objectives, I am pleased to present the third edition of the First Nation Real Property Taxation Guide. It is designed to provide general information regarding First Nation property taxation. We hope it will assist First Nations, taxpayers, First Nation members, and investors in understanding an evolving tax system.

The First Nations Tax Commission welcomes your comments. Further property taxation questions can be directed to the First Nations Tax Commission or to a tax administrator of a specific First Nation.

Best Regards,

C.T. (Manny) Jules
Chief Commissioner and CEO
First Nations Tax Commission



INTRODUCTION

The first edition of the First Nation Real Property Taxation Guide was published in 2007 to help First Nation governments, taxpayers, First Nation residents, the general public, other governments, and potential investors understand First Nation property taxation and how it works. The goal was to provide general information on virtually every aspect of the First Nation property taxation system. With this third edition of the Guide, we have the same goals, and have updated the contents.

The Guide consists of four parts:

- » Part I - Background
- » Part II - First Nation Property Tax Powers and the First Nations Tax Commission
- » Part III - First Nation Property Taxation Process
- » Part IV - Financing Tools for First Nation Infrastructure

The Background provides an overview of property taxation, the origins of First Nation taxation, and the evolution and role of the Indian Taxation Advisory Board.

Part II of the Guide describes the legal framework for First Nation property tax, the taxing powers of First Nations, and how the *First Nations Fiscal Management Act (FMA)* confirmed new powers and created the First Nations Tax Commission.



The third part of the Guide describes the typical First Nation assessment and taxation process. It includes the legal requirements for assessment inspections, assessment appeals, the setting of tax rates, tax collection, enforcement, and First Nation expenditures. It also includes an illustration of some of the options available to First Nations to strengthen taxpayer relations.

Finally, under Financing Tools for First Nation Infrastructure, the Guide explains some of the laws a First Nation may have in place to support economic growth through the development of community infrastructure. These laws include those used to establish development cost charges, taxation for the provision of services (e.g., local improvement taxes), and borrowing laws used to access the First Nation debenture financing system.

While the Guide provides general information on First Nation property taxation, First Nation tax systems do vary. Individuals interested in learning more about how a specific First Nation property taxation system works are urged to contact the First Nation's tax administrator in that community.

It is important to note that the Guide provides general information, and is not intended to provide legal advice or legal interpretation and should not be relied upon as such.

PART I

BACKGROUND





WHAT IS PROPERTY TAX?

Property taxes are the oldest form of taxation created by governments. Ancient Egypt and Greece both had forms of property taxation and, like governments today, they used property taxes to provide services to their citizens.

Principally, property value taxes are one of the three basic forms of taxation, the other two being taxes on income (e.g., federal income tax) and consumption (e.g., Goods and Services Tax and Provincial Sales Tax). As a tax on real property - the land and structures attached to the land - it is calculated on the basis of one's relative ability to pay as measured by the value of one's property as a portion of all the property under assessment in the jurisdiction. Greater property value means, all else being equal, more tax is paid.

Property taxes used by municipalities in Canada often include special property-based taxes such as local improvement taxes and business area improvement taxes. These are among a number of sources of local government revenue, such as:

- » licenses and permit fees;
- » receipts from fines and penalties;
- » investment income;
- » transfer payments from other levels of government; and
- » sale of services.

In Canada, property taxes generate about 10% of all government revenues. By comparison, income taxes generate about 41% of all government revenues and consumption taxes about 22%. However, for local governments, it is the single most important source of revenue. For example, in 2008, property taxes represented 39% of local government revenues.

Property taxes in Canada are used to cover the costs of local services that are not met from other revenue sources or transfers from federal and provincial governments. Property taxation revenue is expended on local programs and services in the same community where it is collected.



These programs and services may include:

- » Water and sewer services;
- » Police and fire protection;
- » Garbage collection;
- » Road and lighting improvements; and
- » Parks, recreation and cultural facilities.

Finally, most property taxation in Canada is under provincial or territorial jurisdiction, and therefore it is somewhat unique in each province and territory. While differences exist, provincial/territorial property tax systems are fairly homogenous. Every province/territory uses market valuation for assessment and applies property tax revenues to create and improve local community infrastructure and services. First Nation property taxation has much the same objective, although in a different legal and constitutional framework.





FIRST NATION PROPERTY TAXATION: HISTORICAL OVERVIEW

First Nation taxation can be traced back to the earliest of times. Long before the appearance of Europeans in North America, paying tribute for occupying or using someone's territory was a common practice amongst First Nations in what would eventually become Canada. This form of tax was a concession given in exchange for a privilege. Another form of taxation which was markedly different was the wealth redistribution ceremonies performed in the community. Ceremonies such as potlatch and giveaway dances are a few examples. As First Nation economies were transformed by the many changes brought by the arrival of non-aboriginal peoples to their lands, so too were their tax systems.

By the mid to late 1800s, real property taxation began to emerge in several First Nation communities in Quebec and Ontario. Initially, First Nations collected tax for specific expenditures like the construction of bridges, and later for more general expenditures like the cost of government administration. In the late 1800s, the federal government passed the Indian Advancement Act, which gave Indian Band Governments the federal legislative power to raise internal funds. These provisions would later be incorporated in a revised *Indian Act* in 1951, the precursor to the current property tax power under the *Indian Act*.

Up until the 1960s, most provinces and municipalities taxed non-member interests on reserve land. Gradually, this changed as some provinces introduced legislation limiting their tax reach at the reserve boundary. Other provinces, (e.g. B.C. and Quebec) chose to maintain their power to tax on reserve until the First Nation occupied the power to tax. In the early 1970s, First Nations in Alberta and Ontario became the first to raise property tax through an *Indian Act* by-law.

In 1988, a significant amendment was made by Parliament to section 83 of the *Indian Act* to clarify First Nation jurisdiction. With the passage of Bill C-115, First Nation governments were better able to participate in property taxation. This legislative change, known as the "Kamloops Amendment," was led by then Chief C.T. (Manny) Jules of the Kamloops Indian Band.



It provided First Nations with broader tax powers over the interests within reserves, thereby:

- » Establishing their taxing jurisdictions;
- » Creating economic development opportunities; and
- » Providing a basic tool for governance.

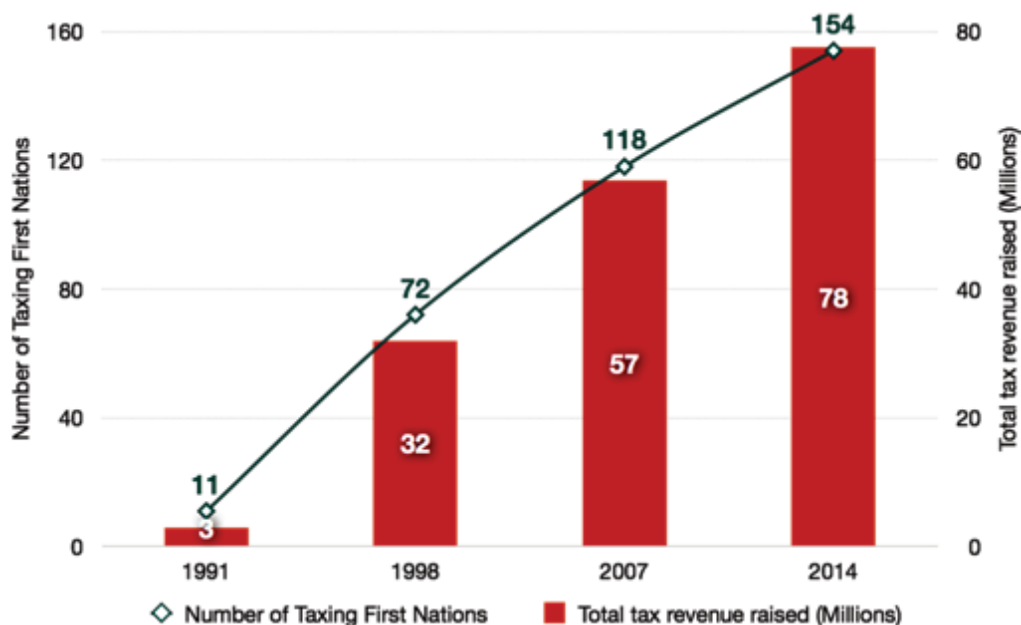
For First Nation governments, property tax is confirmed under federal jurisdiction. Until 2005, the exclusive statutory authority to levy First Nation property tax was under section 83(1) of the *Indian Act*. First Nations use their property tax revenues to provide local services, the same kind of services that local governments provide

Geographically, First Nation property taxation is widely practiced in the western provinces, particularly British Columbia where much of it originated. In recent years, a growing number of First Nations from the other provinces are exercising property tax jurisdiction. First Nation property taxation is now in place in nine provinces.

The table on the next page illustrates the scale of First Nation property taxation nationally. The table illustrates the growth of property taxation both in the number of taxation First Nations and in the amount of total tax revenue raised annually.



First Nation Property Taxation Growth 1991-2014



INDIAN TAXATION ADVISORY BOARD

The Indian Taxation Advisory Board (ITAB) was established in 1989 to support the implementation of the Kamloops Amendment to the *Indian Act* and to facilitate the approval of First Nation taxation by-laws. Composed of individuals with extensive backgrounds in First Nation economic development and property tax, ITAB was given a mandate to promote the development and implementation of First Nation local property tax systems and ensure the overall integrity of property taxation nationally. Consequently, it became the first independent, First Nation-led institution involved in making recommendations on the exercise of the ministerial decision-making authority under the *Indian Act*.



As more First Nation governments entered the field of property taxation, complex issues emerged that touched upon the relationships among First Nation governments, the federal, provincial and municipal governments, as well as investors and taxpayers. For nearly two decades, ITAB worked to assist First Nation taxation authorities in gaining the confidence of investors and taxpayers, and in improving relations between First Nations and other governments.

ITAB's analysis of how the tax system works across the country was an important contribution to the growth of First Nation taxation. ITAB helped First Nations achieve a measure of jurisdictional equality with adjacent municipal and regional governments. Recognizing similarities and differences between provinces and their administration of property taxes, ITAB put forth a regulatory framework that captured, and in some cases improved on, existing best practices. The administrative stability under the regulatory framework of section 83 and ITAB policies across First Nation jurisdictions meant that business development interests were well served and that First Nation property taxation was largely consistent across the country.

Examples of improving the delivery of the property tax system include collapsing the assessment appeal system to only two levels of appeal, unlike some provinces and municipalities that have three levels of appeal. Another improvement was the inclusion of more public consultation in the process of property taxation on First Nation lands.

Having developed a proven tax model under section 83 of the *Indian Act*, ITAB moved ahead in advocating a new regulatory framework that would strengthen First Nation tax powers, provide greater protection to taxpayers, and allow First Nations to leverage their property tax revenue for infrastructure financing. Working with the Government of Canada and other stakeholders, ITAB championed the development of the *First Nations Fiscal Management Act*. The Act was an historic achievement in First Nation property taxation in that it not only improved property tax powers for First Nations but it also established the First Nations Tax Commission as the regulatory body to continue and expand the work of ITAB, and to ensure the integrity of the First Nation tax system.

PART II

FIRST NATION PROPERTY TAX POWERS & FIRST NATIONS TAX COMMISSION





Property taxation is an optional legislative power that a First Nation may choose to exercise. In making its decision to legislate in the area of property tax, a First Nation must assess a wide array of considerations, some of which may include:

- » service responsibilities to leasehold residents or businesses;
- » the need for economic infrastructure; and
- » the assertion of jurisdictional authority.

When a First Nation decides to exercise property taxation jurisdiction, it can access one of two enabling federal statutes: the *Indian Act* or the *First Nations Fiscal Management Act*. In either case, the First Nations Tax Commission is the body that provides institutional and regulatory support to First Nation property taxation.

FIRST NATION PROPERTY TAX POWERS: TWO STATUTORY SOURCES

Under section 83 of the *Indian Act*, a Band may, for local purposes, make by-laws for taxation of land or interests in land in a reserve. The concept of “interest in land” includes rights to occupy, possess or use lands in a reserve. Once the sole legislative authority for First Nation property tax, section 83 taxation continues to serve many First Nations as a basic regulatory framework for property taxation. Accessing section 83 normally requires consultation with local taxpayers on reserve lands, the development of section 83 property tax and assessment by-laws, and the passage of annual rates and expenditures by-laws each year thereafter. Each by-law is reviewed by the First Nations Tax Commission and is subject to the approval of the Minister of Aboriginal Affairs and Northern Development. First Nations choosing to use section 83 must consider the extent to which access to other fiscal governance tools like debenture financing is vital, and whether they wish to allow their by-laws to continue to be subject to ministerial approval.

The other way to levy property taxation on reserve lands is the *First Nations Fiscal Management Act* (FMA).



Enacted in 2005, the FMA provides First Nations with access to a more comprehensive property taxation framework, and offers an additional array of fiscal governance tools to increase revenue, improve financial management, and leverage property tax for long term financing. These laws enhance the ability of a First Nation to make its property taxation regime an important part of its overall strategy of economic development.

First Nations wishing to access the FMA taxation and financing powers must pass a band council resolution requesting to be added to the FMA Schedule. Once the Governor-in-Council adds the First Nation to the FMA Schedule by Order-in-Council, the First Nation's tax powers are drawn from the provisions of the FMA, and any *Indian Act* property taxation by-laws that may have been in place are moved into the FMA framework. Property taxation under the FMA requires taxpayer consultation, the enacting of property tax and assessment laws, and the passage of annual laws for expenditures and rates. Laws are subject to the review and approval of the First Nations Tax Commission.

SELF-GOVERNING FIRST NATIONS

Any Aboriginal group that is not a band as defined under the *Indian Act* but is party to a treaty, land claim agreement or self-government agreement, and wishes to come under the provisions of FMA may do so through the development of regulations made under section 141 of FMA. The Commission will work with the interested group and the appropriate government officials to develop the opt-in regulations. Regulations are made by the Governor-in-Council.

FIRST NATIONS TAX COMMISSION

Established by the FMA, the First Nations Tax Commission (FNTC or the Commission) is a shared-governance First Nation public institution with legislative powers to regulate the on-reserve property tax system. It replaces and builds on the work of ITAB by ensuring that the First Nation property tax system is administratively efficient, harmonized with the rest of the country, and is reconciled with the interests of on-reserve taxpayers.



The FNTC has direct regulatory authority for FMA taxation. These responsibilities and processes are described below. For First Nation taxation under the *Indian Act*, the FNTC has functional regulatory authority. Specifically, the FNTC is mandated to:

- » review and approve First Nation local revenue laws including property tax laws;
- » develop national policies, standards and regulations on matters pertaining to First Nation property tax systems;
- » regulate and, where required, enforce national standards to provide assurance to taxpayers and investors on First Nation land;
- » provide education to raise awareness of the benefits of First Nation taxation;
- » promote the reconciliation of conflicting interests, prevent and minimize the costs of disputes by providing a mechanism for hearing the concerns of affected parties under First Nations tax regimes, and provide measures for facilitating solutions, including mediation;
- » provide certified training courses to ensure standards are achieved for First Nations real property tax administrators;
- » certify First Nation capacity for borrowing and debenture financing;
- » provide the regulatory certainty to enable property tax revenues to support debenture financing, thereby reducing the cost of local infrastructure;
- » support First Nation economies by helping to build a competitive investment climate; and
- » provide services and regulatory support for section 83 of the *Indian Act*, under a Memorandum of Understanding with the Minister of Indian Affairs and Northern Development (now referred to as Aboriginal Affairs and Northern Development Canada).



Governance

The Commission is composed of men and women from across Canada, including members of First Nations, who are committed to the development of a system of First Nation real property taxation and who have the experience and capacity to enable the Commission to fulfill its mandate. The FNTC consists of 10 Commissioners including a Chief Commissioner and Deputy Chief Commissioner. Nine of the 10 Commissioners are appointed by the Governor-in-Council on the recommendation of the Minister. In accordance with FMA regulations, an additional Commissioner is appointed by a non-government body (currently the Native Law Centre, University of Saskatchewan). All Commissioners hold office for no more than a five year term. Commissioners may be reappointed for additional terms.

Three Commissioners must have direct taxpayer experience on reserve – one is a taxpayer using the reserve for commercial purposes; one is a taxpayer using the reserve for residential purposes; and one is a taxpayer using the reserve for utility purposes. The Chief Commissioner is also the Chief Executive Officer of the Commission and directs the work and staff of the Commission. The Chief Commissioner serves full time, while the other Commissioners serve part time.

The head office is located on the reserve lands of the Tk'emlups Indian Band in Kamloops, British Columbia (BC). An additional office is maintained in the National Capital Region.

FNTC Policy Objectives

The Commission has seven policy objectives that guide and inform its mandate. They have been formulated by drawing from the FMA, particularly the Act's Preamble and section 29 which lists the Commission's purposes.

The policy objectives are as follows:

- » **Support First Nation Jurisdiction** – The Commission will protect and support First Nation tax jurisdiction by providing certainty and preserving the integrity of the First Nation local revenue system.



- » **Reconcile Interests** - The Commission seeks to reconcile interests and create mutual benefits for First Nation governments and stakeholders in the First Nation tax system. To this end, the Commission seeks to achieve a First Nation tax system that prevents disputes before they arise, and effectively resolves them once they occur. The Commission advocates the use of strategies to improve taxpayer relations, and appropriate dispute resolution as an alternative to formal complaints or litigation.
- » **Promote Transparency** – The Commission promotes transparency and clarity in the First Nation tax system. Transparency is a cornerstone in building a First Nation tax system that is credible, sustainable and supported by taxpayers.
- » **Support First Nations in Achieving Sustainable Economic Development** - Stable local revenue, the infrastructure it affords, and a competitive investment climate are prerequisites for sustainable economic development. The Commission is committed to helping First Nations facilitate investments on their lands.
- » **Educate and Promote Understanding** – Education and promoting understanding are key ingredients in securing a healthy and sustainable First Nation property tax system. The Commission is committed to building capacity among First Nations to enable them to better administer their property tax systems.
- » **Promote Harmonization** – The First Nation property tax system should be harmonized with its relevant provincial property tax system where possible. This creates certainty and transparency and promotes sustainable economic development.
- » **Foster Administrative Efficiencies** - The Commission works to achieve an efficient and practicable First Nation property tax system.



FMA Local Revenue Laws

First Nations taxing under the FMA must pass an assessment law and property taxation law and obtain FNTC approval of these laws before they can levy and collect property tax. Assessment and property taxation laws are part of a group of laws called “local revenue laws” that a First Nation can pass under the Act.

Specifically, a Council of a First Nation may make local revenue laws respecting:

- » Property taxation on First Nations lands including:
 - Assessment of property, the requisition of information to assess a property and the inspection of property;
 - Setting tax rates to be applied to the assessed value of property;
 - Collection of taxes for the provision of services to property;
 - Taxation of business activities;
 - Imposing development cost charges; and
 - Property Transfer Tax
- » Authorizing the expenditure of local revenues;
- » Establishing procedures by which the interests of taxpayers may be represented to Council;
- » Authorizing the borrowing of money from the First Nations Finance Authority;
- » Providing for the enforcement of laws in respect of outstanding taxes or charges; and
- » Delegation of law making power.



The property taxation and property assessment laws are sometimes referred to as the “core laws” as they not only establish the legal authority to collect property value tax, but they also establish the administrative framework for a First Nation’s taxation system. First Nations tend to establish property value taxes, and then build on that framework with additional local revenues such as service taxes and development cost charges.

FMA Standards and Sample Laws

The FMA provides the Commission with the ability to take an active and ongoing role in protecting the integrity of the First Nation property taxation system by the way of standards.

The standards established by the Commission place requirements on s.5 local revenue laws enacted by First Nations. Together with the Act and its associated regulations, the standards form the regulatory framework governing First Nation taxation under the Act.

The FNTC has developed standards concerning most of the law making powers provided to First Nations under the FMA. The standards currently in force are:

- Standards for First Nation Property Assessment Laws
- Standards for First Nation Property Taxation Laws
- Standards for First Nation Service Tax Laws
- Standards for First Nation Tax Rates Laws
- Standards for Property Transfer Tax Laws
- Standards for Business Activity Laws
- Standards for First Nation Development Cost Charges Laws
- Standards for First Nation Expenditure Laws
- Standards for First Nation Taxpayer Representation to Council Laws



- Standards for Submission of Information Required under Section 8 of the Act
- Standards for Establishing Criteria for Approval of Borrowing Laws
- Standards for the Form and Content of Borrowing Laws

Each standard has been developed to complement the Act and its regulations to ensure best practices in First Nation property taxation.

The Commission has also developed sample laws that are provided to assist First Nations in drafting their property taxation laws. The sample laws reflect best practices and comply with the FMA, the regulations and Commission Standards. First Nations that use sample laws as a foundation for developing their own laws can ensure legislative requirements are met, and can save time and associated legal fees.

FMA Law Review and Approval Process

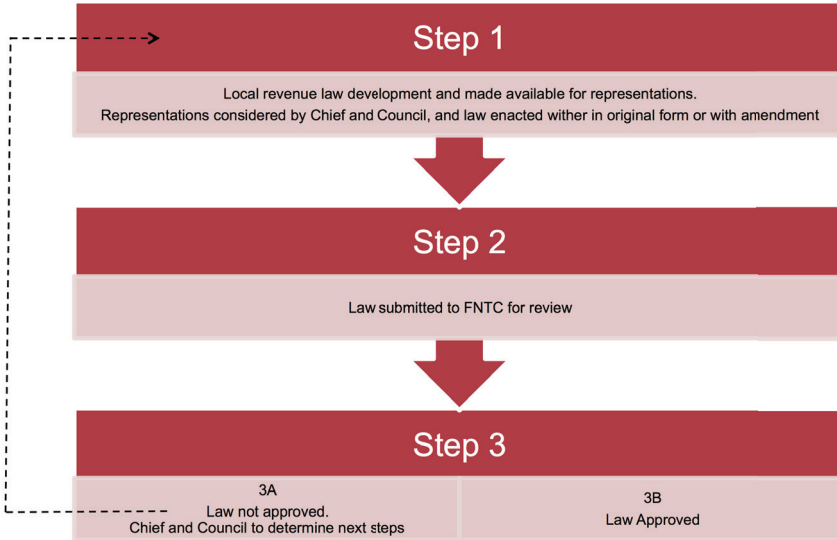
Currently, under the FMA, First Nations are required to provide 60-day notice and an opportunity for persons to review and provide written comment on proposed local revenue laws.¹ The Council must consider these representations before it makes its law. The proposed law, amended if Council decides that is necessary, is then passed by Council and sent to the FNTC for review.

When the Council sends a law to the FNTC for approval, it must provide a copy of the law to those persons who made representations to Council, and it must invite those persons to make further representations to the FNTC. The FNTC is required to review each local revenue law to determine whether the law has met all the legal requirements stipulated in the Act, regulations, and Commission standards.

¹ Borrowing laws and annual rates and expenditures laws are excluded from this requirement.



This chart illustrates the law development process:



The duration of the FNTC review will vary with the type of law. Minor amendments to existing assessment and property tax laws may require a relatively short review process, while new laws may require a significantly longer period of review.

In conducting its review, the FNTC may draw upon other documentation (e.g., evidence that proper notice was given to taxpayers, tax rates used by adjacent jurisdictions, cost estimates, etc.) to determine whether standards and procedural requirements have been met. Once the FNTC is satisfied that requirements have been met, it approves and publishes the law. An FNTC approved law has the force of federal law.

In order to streamline the law approval process, the FNTC may use panels of Commissioners to review property tax laws and laws establishing procedures for taxpayer representations to Council.



FMA Section 33 Compliance Review

A critical component in safeguarding the integrity of the First Nation tax system, compliance review is a FNTC function that can be initiated by a complaint made under subsection 33 (1) of the FMA, or by the FNTC itself, under subsection 33 (2). In either instance, the FNTC has the responsibility to conduct reviews in cases where a First Nation may not have complied with the FMA or may have unfairly or improperly applied its own local revenue laws.

If a member of a First Nation, or a person who holds an interest in reserve lands or who has a right to occupy, possess or use the reserve lands believes that a First Nation has not complied with the FMA or that a law made under the FMA has been made unfairly, or has been improperly applied, they may request that the FNTC conduct a review of the matter. Requests for review must be in writing, and can only be made after the individual has requested the First Nation Council to remedy the situation and is of the view that the Council has not done so. In making a request for review, the individual must include the grounds for making the request. The FNTC can make a decision in any review without a hearing, and can use settlement conferences or recommend mediation as alternatives to hearings.

The FNTC may also initiate a review independently. In these situations, the FNTC will give notice to the First Nation including the reasons for the review. At any time during FNTC-initiated reviews the FNTC may hold a hearing; as well, a First Nation can request and receive a hearing at any time during this type of review.

In reviews where the FNTC holds hearings: the FNTC follows formal procedures on how hearings will be conducted; who may be represented; the role of the interveners; and all procedural matters, including the subpoenaing of witnesses and documents.

Upon making its decision, the FNTC provides written reasons for its decision and provides those reasons to all those involved in the review.



FNTC Orders

If, after conducting the review, the FNTC determines that a First Nation has not complied with the FMA, or that a law has been improperly or unfairly applied, it will order the First Nation to remedy the situation. If the First Nation does not remedy the situation in a timely manner, the FNTC may require the First Nations Financial Management Board to intervene and rectify the situation (for more information about the First Nations Financial Management Board, see page 53 of this Guide).

FNTC and Section 83 Property Taxation

Under a Memorandum of Understanding with the Minister of Indian Affairs (now Minister of Aboriginal Affairs and Northern Development), the FNTC is responsible for providing regulatory advice with respect to section 83 property taxation, including the review and recommendation of section 83 by-laws for ministerial approval.

The Commission is responsible for:

- » reviewing and recommending section 83 by-laws;
- » providing policy support to First Nation tax jurisdictions;
- » expanding property tax jurisdictions;
- » reconciling taxpayer and First Nation interests;
- » researching and developing tax policy;
- » providing training for tax administration;
- » providing mediation and negotiations; and
- » managing and promoting the First Nations Gazette.

A First Nation real property taxation system operating under section 83 of the *Indian Act* contains four main by-laws:



» *Property Taxation By-law*

The property taxation by-law establishes the framework for property value taxes on the reserve. It provides for administrative procedures, sets out the taxable interests, provides for a tax roll and annual tax notices, sets the tax due date, and include provisions for tax collection and enforcement.

» *Property Assessment By-law*

The property assessment by-law establishes the assessment processes that will apply on the reserve. It provides for the assessment of taxable interests and the appointment of an assessor, sets out the rules for conducting assessments, and requires the creation of an annual assessment roll and the mailing of assessment notices. It also provides procedures for assessment inspections, corrections to the assessment roll, the reconsideration of assessments, and appeals to an independent assessment review board established under the by-law.

» *Annual Rates By-law*

Each taxing First Nation establishes its tax rates each year by making an annual rates by-law. This by-law is required before tax notices can be sent in each year, as it sets the tax rates that will be used to determine the taxes payable by each taxpayer. This by-law must be approved by the Minister each year.

» *Expenditure By-law*

Each taxing First Nation authorizes the expenditure of its tax revenues by making an annual expenditure by-law. This by-law attached a budget setting out how the First Nation will expend its tax revenues in the coming year. Tax revenues are used for community works and services, general government services, public works and utilities and other local services. This by-law must be approved by the Minister each year.

In addition to these by-laws, First Nations may pass other section 83 by-laws dealing with the following subject matters:

- » financial management; and
- » business licensing.



Section 83 By-law Review

The FNTC by-law review process is triggered when a section 83 by-law is enacted (or amended) by the First Nation Chief and Council, and then submitted to the FNTC. It is either returned to Chief and Council for amendment, or the FNTC recommends the by-law for approval by the Minister.

The FNTC examines a by-law to ensure it:

- » is within legal authority;
- » has the essential elements for taxation including such things as reasonable notice, assessment appeal, and enforcement provisions;
- » complies with the Canadian Charter of Rights and Freedoms;
- » is consistent with the principles of natural justice;
- » is consistent with FNTC policies; and
- » is clearly drafted.

When the above criteria are met, the FNTC will forward the by-law with a favourable recommendation to the Minister for his/her approval.

Section 83 Ministerial Approvals

Once approved by the Minister, section 83 by-laws are transmitted from the Minister's Office to the FNTC. The First Nation is notified and the by-law is published in the First Nations Gazette online.



First Nations Gazette: Publication of Laws, Standards and Procedures

Transparency within the property tax system is in First Nations' and taxpayers' interests. Publication of all FMA laws and all *Indian Act* section 83 by-laws is an important part of ensuring transparency.

Since June 21, 1997, the First Nations Gazette has been published semi-annually and is administered by the Native Law Centre of the University of Saskatchewan. All local revenue laws passed by First Nations and approved by the FNTC, as well as standards and procedures approved by the FNTC are required by the FMA to be published.

Standards established by the First Nations Financial Management Board in regard to section 9 financial administration laws, as well as approved section 9 laws, are also published in the Gazette. As of April 1, 2014, the First Nations Gazette ceased producing a printed version of laws. All laws are published in online format only at www.fng.ca.

First Nations Gazette

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Professional Education and Support for Tax Administration

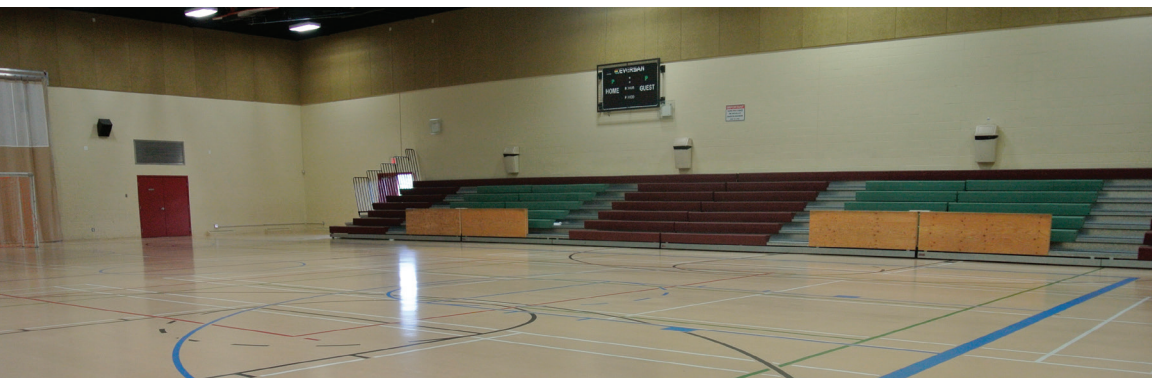
Certificate in First Nation Tax Administration

The FNTC, the Tulo Centre of Indigenous Economics, and Thompson Rivers University (TRU) have developed an accredited Certificate in First Nation Tax Administration. The Certificate program assists First Nation tax administrators to develop the skill set for First Nation tax administration under the FMA, or for working under section 83 of the *Indian Act*.

The eight courses in this Certificate program are offered through the Executive Format (in-person/intensive session/on-campus) or the Online Format.

- » Introduction to First Nation Taxation
- » Establishing First Nations Tax Rates & Expenditures
- » Assessment and Assessment Appeals
- » Administration – Tax Notices, Collecting and Enforcement
- » Communications and Taxpayer Relations
- » Service Agreements and Joint Contracts
- » Development Cost Charges
- » Capital Infrastructure & Debenture Financing

Bursaries to assist with the costs for First Nation students are often available. Please visit the Tulo website (www.tulo.ca) for current schedule and registration information, or contact Tulo by phone at: (250) 828-9881.





Tax Administration System

The Commission has supported the development of the Tax Administration Software (TAS) system. TAS is a tool to assist tax administrators working for First Nation governments through the complete annual tax cycle: assessments, budgeting, rate approval, tax notices, collection and enforcement. This new system addresses the administrative rules and requirements resulting from s.83 of the *Indian Act*, the FMA and Commission standards. Please visit the TAS website at <http://tascloud.ca> for more information.

FNTC Communications

Public Education

An important part of the FNTC mandate is public education. Commissioners and members of staff are available to meet with First Nations and others interested in the issue of property taxation on First Nation lands.

Newsletter

Clearing the Path is the FNTC quarterly newsletter published to keep readers informed of issues concerning First Nation property taxation and real property taxation more generally. Since 1995, Clearing the Path has reported on policy changes, court cases, legislative developments, and other issues affecting First Nation property taxation.

Website

The Commission's website (www.fntc.ca) is a valuable resource with a complete collection of the legislation, regulations, standards, sample laws, policies and procedures that guide the Commission's work. The Commission's Corporate Plan and Annual Report as well as the Clearing the Path newsletter are also available on the website.

PART III

FIRST NATION PROPERTY TAXATION PROCESS





First Nation tax authorities levy and collect taxes in the same manner as other local governments throughout Canada. All property tax systems, including those of First Nations, base taxation on a property assessment, use market value assessment methods, use professional assessors, and set rates based on a budget. Procedures for assessment appeals and tax enforcement are quite similar as well.

The similarity between First Nation property taxation and local government taxation is no coincidence. First Nations have tried to harmonize their tax systems with those of local governments so that taxpayers can expect similar taxation and assessment practices on First Nation lands as they would receive from local governments adjacent to the First Nation. By harmonizing taxation and assessment practices, First Nations can provide confidence to taxpayers and investors.

Because of variations in provincial practice, however, the assessment procedures used by various First Nations across the country will vary somewhat. As one example, the practice in some provinces is for assessments to be carried out annually. In other provinces, assessments are only done every three years. In order to meet the goal of harmonization, First Nations will usually follow the assessment practices in the province in which they are located.

This section uses the annual tax cycle to describe each component of a typical First Nation assessment and property tax administration. Although it deals specifically with taxation under the FMA, this section can be useful in describing most of the components of taxation under the *Indian Act*. In addition, the section provides a brief overview of measures used by some First Nations to strengthen taxpayer relations.

Role of the First Nation Tax Administrator

The First Nation tax administrator (sometimes referred to as the Surveyor of Taxes) is the person responsible for the administration of property taxation, taxpayer relations, property tax collection, and the enforcement of payment under the law. Each First Nation with an assessment and property taxation law must, by resolution, appoint a tax administrator to implement the property tax and assessment law.



All enquiries and complaints associated with a specific First Nation local revenue law, including assessment and property taxation laws, should first be directed to the First Nation tax administrator.

Property taxation on First Nation lands is completed in annual cycles. While the timing of these cycles may vary slightly by province or territory, the main elements are consistent across Canada and consist of a number of stages:

1. Assessment on First Nation Lands
2. Setting the Budget and Tax Rate
3. Tax Collection and Enforcement
4. Ongoing Taxpayer Relations

1. ASSESSMENTS ON FIRST NATION LANDS

Assessment standards on First Nation lands conform to standards in all other Canadian jurisdictions. Consistent assessment standards supported by legislation assure taxpayers, property owners, investors, and First Nations of the integrity of the property assessment. They also ensure that property valuations will be conducted fairly. This is an important function upon which both the property taxpayer and the taxing jurisdiction must rely. First Nations in Canada either contract assessment services from provincial agencies, or they contract with an assessor who is qualified to conduct assessments in the province in which the lands are located.

Role of the First Nation Assessor

Each First Nation in its property assessment law provides that real property is assessable for taxation. In all instances, assessments on First Nation lands, for all types of property, must be prepared by professional, qualified assessors. Assessors receive training in a variety of areas including property valuation techniques, legislation, and quality assurance.



In many cases where a provincial assessment authority exists (e.g. British Columbia Assessment Authority), a First Nation may have a service contract with the authority to provide assessment services to the First Nation.

In all cases, an assessor must be qualified to conduct assessments in the province in which the reserve is located. It is the assessor's job to independently conduct assessments according to the assessment rules set out in the law, and does not take direction from the First Nation when determining assessed values.

How Property Assessments are Prepared on First Nation Lands

Property assessments are prepared on First Nation lands in the same way as they are prepared in all other taxing jurisdictions in Canada. They are produced in accordance with each First Nation's assessment and taxation requirements found in the relevant law or by-laws.

What is Assessed?

Not all real property is assessed for property tax purposes. Each First Nation in its property assessment law determines what real property is assessable for taxation. Generally speaking, the property that is assessable for taxation includes land and improvements located on that land. It does not include things like furniture, jewelry, automobiles, or other personal possessions.

If a property cannot be assessed, this means it cannot be taxed. Consistent with practice in Canadian municipalities, properties that are not assessed or taxed on First Nation reserves include things like community owned infrastructure. As well, some properties on First Nation lands are assessable, but not taxable.



Properties that are assessed but are then exempted from taxation might include:

- » Properties such as hospitals, libraries, cultural centers and schools;
- » Places of worship;
- » Property owned by some nonprofit organizations; and
- » Other properties deemed exempt by a First Nation.

Valuation Date

A key date for all First Nation property tax jurisdictions is the valuation date. The valuation date is a fixed point in time at which assessment values are based; it ensures that all properties in a jurisdiction are valued as of the same date and the same market conditions. For instance, for the 2014 tax year, the valuation date for property assessment in some provinces is July 1, 2013. This means that a 2014 property assessment must reflect the value of the property as of July 1, 2013. For reasons of efficiency and tax harmony, First Nations use the same assessment valuation (re-valuation) date as is used by the province in which the reserve is located.

Assessment Inspections

In order for a fair and accurate assessment of a property to be determined, an assessor may decide to inspect a property. Best practices in assessments recommend that every property undergo an inspection at least once every five to ten years. It is good practice that an assessor inspects and then re-inspects a property as it may change over a long period of time.

An inspection ensures that all characteristics of the property that affect the assessment are considered when the assessor determines a property's value. All newly-constructed properties should be inspected. Likewise, existing properties need to be reviewed from time-to-time. This practice ensures that the information used to create the property's assessment remains current.



Assessment inspections must be conducted in a way that protects the taxpayers' and occupants' reasonable expectations of privacy. First Nation laws governing assessment contain provisions that establish procedures for the assessor's access to inspect taxable properties, including notice of inspections, and a process to establish a time for the inspection. Each law states that in the event that no adult occupant is present or that access to the property is denied, the assessor may make the assessment on the best information otherwise available.

Taxpayers and Assessment Information

For accountability, taxpayers must know how their assessment is determined. First Nations, like other governments, are prepared to provide sufficient information to show how the assessment of a property was prepared. As well, the taxpayer has the right to see the assessment roll, which lists the assessed values for all properties on the First Nation's lands.

It is an important principle that property taxpayers have the ability to see their assessment, check the facts, and compare their assessment with other property assessments. This ensures that the assessment system is accessible, transparent, fair, and understandable.

Property Assessment Classes

When the assessed value of a property is determined, the property is assigned to an assessment class. The assessor for the First Nation is responsible for assigning the assessment classes to property. Property is classified according to its actual use.

First Nations use the same assessment classes as other jurisdictions in the province to the extent they are applicable on the First Nation's lands. This creates consistency for property taxpayers and is more easily understood when tax rates are applied to each of the different assessment classes.



Depending on each province, property classes on First Nation lands may include the following:

- » Residential;
- » Non residential;
- » Commercial;
- » Recreation;
- » Farm;
- » Industrial (major and light); and
- » Utility.

Assessment Roll

After the assessed values of all properties on First Nation lands have been determined, and the properties have been placed in appropriate assessment classes, the assessment roll is created. Each First Nation must create an assessment roll no later than that date for creating assessment rolls in the province where the reserve is located. Generally, the assessment roll contains the following information for each assessed property:

- » Property owner(s), including name and mailing address;
- » Location;
- » Property type assessed (land, improvements, or land and improvements);
- » A description of the improvement assessed (structure, pipeline, etc.);
- » Assessed value;
- » Property class; and
- » Taxable status (total or partial exemption from taxation).



Some First Nations will also include the portioned value for the purposes of taxation. First Nation laws generally include procedures for updating the assessment roll through corrections or supplementary rolls to address the construction of new properties, changes in property use, etc.

Assessment Notices

Assessment notices are created from the information on the assessment roll. The assessment notice is the document that First Nations send to property owners or taxpayers to tell them about the assessment of their property. The assessment notice must include the information set out in the First Nation property assessment law. An assessment notice usually includes the following information:

- » All of the information that appears on the assessment roll regarding that property;
- » Mailing date;
- » Date by which a request for reconsideration of the assessment by the assessor can be made
- » Date by which an appeal must be filed if a property owner is challenging an assessment; and
- » Name and address of the officer with whom an appeal can be filed.

Each year, First Nations send assessment notices to every assessed person listed on their assessment rolls.

Sometimes an error is found on an assessment notice. The assessed person can contact the assessor to correct this information as a part of the request for reconsideration process described below.



Review of Assessments

To ensure that property owners have a voice in the property assessment system, First Nation assessment laws set out a comprehensive review process for all property owners on the First Nation's lands.

Each First Nation assessment law provides an informal reconsideration process with the assessor and a more formal appeal procedure with an Assessment Review Board. These procedures are similar to assessment appeal procedures used throughout Canada. The process ensures appeals are conducted in an efficient, timely and fair manner.

Request for Reconsideration of Assessment

As an efficient alternative to filing a formal appeal, taxpayers are encouraged to use a mechanism called a 'request for reconsideration of assessment'. A request for reconsideration is where a taxpayer asks an assessor to reconsider the original assessment.

Taxpayers usually have 30 days from the time the assessment notices are mailed to make a request for reconsideration. Specific deadline dates are printed on the assessment notice. In this process, the assessor reviews the assessment of the taxable property in question and provides the taxpayer with the results of the reconsideration. If the assessor modifies the assessment, a revised notice is sent to the person who requested the reconsideration and to any other persons who were sent an assessment notice concerning the property. A request for reconsideration can deal with any aspect of the assessment, including assessed value, property classification, errors, omissions, or use of exemptions.

Assessment Appeals and the Assessment Review Board

While the use of the request for reconsideration process is available, taxpayers can always appeal their assessments directly to an Assessment Review Board (ARB) without making a request for reconsideration.



An ARB is a three-member appeal board, comprised of at least one individual who has experience in assessment appeals and another who is a member of the law society in the province. It is established pursuant to a First Nation's assessment law.

Taxpayers have no less than 60 days after the date their assessment notice was mailed to file a notice of appeal with the Assessor, who will transmit it to the ARB. Some First Nations may have longer periods for filing an appeal depending on their law. Taxpayers filing a Notice of Appeal must state the grounds for appeal.

Typically the grounds will be one of following:

- » Error in assessed value of the property;
- » Error in assessment classification of the property;
- » Error or omission on an assessment notice; or
- » Error or omission in the use of an exemption.

After receiving a Notice of Appeal, the ARB must schedule and hold an appeal hearing within 90 days, unless all parties (i.e., complainant, assessor, and possibly First Nation tax administrator) consent to a later date. The ARB must give 30 days' notice to all parties before the scheduled hearing day.

At the earliest opportunity after the completion of the hearing, the ARB will deliver a written decision on the appeal to all parties, and if necessary, the assessor shall modify the assessment roll accordingly.

ARB Decisions Only Affect Current Year Assessments

A decision made by an assessment review board applies only to the specific assessment that is being appealed, and only in the year that the assessment is appealed. Generally, appeals relate to the current year's assessment, but there may be circumstances where an appeal is made to an assessment for a previous year. This generally occurs only where an assessor has made a supplementary assessment applicable to a previous year.



2. SETTING THE BUDGET AND THE TAX RATE

Next in the cycle is the process of setting a government budget for the provision of local services. This is where all expenditures are rationally connected to revenues raised through property taxes and other sources. Under the FMA, property tax budgets must be balanced. The following formula is used to establish the budget:

Budget = Total Assessed Value for Each Class x Rates for Each Class

The tax budget expenditure categories and a short list of services are:

1. **General Government Services** – expenditures related to tax appeals, tax administration, legislative, computers, creation of the assessment roll, and general administration.
2. **Protective Services** – 911 administration, fire protection, police protection, inspections, emergency measures, and animal/pest control.
3. **Transportation Services** – the provision of parking, street lights, public transit, traffic signals, and roads and streets.
4. **Recreation and Cultural Services** – recreation and cultural services, local playground and parks, community centre, arena, cultural facilities, and pool.
5. **Community Development Services** – planning, engineering, housing, community programs, public health, and library.
6. **Environmental Health Services** – water, refuse and sewer.
7. **Fiscal Services** – contribution to reserve fund, homeowner grants, debt charges, capital funds, and conditional transfers to other governments.
8. **Other Expenditures** – other planned expenditures.
9. **Taxes for Other Government Services** – provides for the possible collection and transmission of taxes to other governments.

The categories and services above are routinely updated to reflect changes in best practices and are amended in consultation with First Nation tax



administrators. The FNTC maintains and publishes a complete list of expenditure categories.

After budgetary requirements are established for the year, the First Nation Council determines the amount of money needed to operate their services. From this amount the Council then subtracts known revenue (known revenue can include license fees, grants and other sources specific to that First Nation). The remainder is the amount of revenue the First Nation needs to raise through property taxes in order to provide services for the year.

The revenue requirement is divided by the assessment base to determine the tax rate. The assessment base is the total value of all assessed properties on the First Nation's lands, and the tax rate is a percentage of assessed value at which each property is taxed. The tax rate is applied to each individual property assessment using the following formula to yield taxes payable:

$$\text{Taxes Payable} = \text{Property Assessment} \times \text{Tax Rate}$$

A First Nation may adjust its tax rate on a yearly basis depending on its revenue requirements. The tax rate a First Nation chooses to set depends on the assessment base on the First Nation's lands, and the amount of money it needs to generate using property tax.

As in the management of most Canadian taxing jurisdictions, if the First Nation Council requires more revenue to provide local services and the assessment base has remained the same, the Council will have to increase its tax rate to generate the additional revenue. However, rate increases are made only after consideration of a great deal of factors, including the impact on taxpayers on First Nation lands.

If the assessment base on a First Nation increases, and the tax rate remains the same, more tax dollars will be collected compared to the previous year. To collect the same amount of revenue, Council would reduce its tax rate to reflect the increased assessment base.



The following are important points to remember:

- » All First Nations property tax laws are approved by the FNTC;
- » An increased property assessment does not necessarily mean increased property taxation;
- » The tax rate is adjusted by a First Nation and varies up and down to compensate for increases and decreases in property assessments and revenue requirements;
- » Property assessments can be appealed; and
- » Property taxes cannot be appealed.

Tax Rates for the Initial Year of Taxation

In the first year that a First Nation exercises taxation, the tax rate will be the same as the rate used by the previous taxing jurisdiction in the current taxation year, provided that a First Nation adopts the identical assessment method. In the event that no previous jurisdiction exists, the First Nation will specify an adjacent reference jurisdiction and adopt those rates.

Annual Tax Rates and Expenditure Laws

After determining its budgetary requirements and corresponding tax rate for the year, each First Nation under the FMA must pass an annual tax rates law and annual expenditure law. These laws must be approved by the FNTC.

- » Tax rate laws establish the tax rates for the various property tax classes within the property tax system. Many First Nations set rates that are comparable to adjacent property tax jurisdictions.
- » Expenditure laws identify how property tax revenue will be spent and authorize those expenditures.

First Nation annual laws are typically passed at about the same time as the analogous municipal rates and budget by-laws are passed in the relevant province. Aligning dates this way is preferred because this practice provides administrative harmony for tax rate setting and assessment appeal procedures.



Services to Taxpayers

An effective property tax system ensures that arrangements are in place to provide local services to taxpayers, particularly in the case of residential and commercial taxpayers who often require a wide array of services, such as water, sewer, police and fire protection. In practice, First Nations either provide the services themselves, contract with a neighbouring local government, or offer a combination of the two. The FNTC can assist in developing service agreements with neighbouring jurisdictions.

TAX NOTICES AND TAX PAYMENT

Each year, First Nations issue a tax notice to each holder of an interest in land subject to taxation as shown on the assessment roll.

The tax notice includes:

- » a description of the property;
- » amount of tax imposed and owing for the current year;
- » other taxes assessed and owing (e.g., local services tax);
- » any unpaid taxes in respect of the property;
- » date and amount of penalties and interest added if taxes are not paid;
- » when and where the payment is due; and
- » the method of payment.

FNTC standards require that the tax bill is sent at least 30 days before the date on which property taxes are due. All First Nation assessment and property taxation laws provide clear provisions concerning the timing and method of tax payment and collection.

Like other jurisdictions, a First Nation taxing authority may charge interest and/or penalties for unpaid taxes. However, interest charges cannot exceed 15% per year and penalties cannot exceed 10% of the amount of unpaid taxes.



Homeowner Grants and Other Tax Abatement Programs

Some First Nations may provide tax abatement programs for their taxpayers. These programs may be universal in application or targeted to specific taxpayers. In BC, for example, most First Nations offer a homeowner grant program that is largely consistent with the provincial practice.

3. TAX COLLECTION AND ENFORCEMENT: A GRADUATED APPROACH

There are conditions and procedures for the enforcement of the collection of unpaid taxes. Laws made under the FMA by First Nations are regulated and consistent with property tax enforcement measures, procedures and regulations used throughout Canada. In instances where payment of taxes is in arrears, First Nations take a balanced and graduated approach to tax enforcement. First Nations do not use any enforcement procedures that are not authorized in their property tax law.

Issuance of the Tax Arrears Certificate

Before taking certain enforcement procedures for unpaid taxes, a First Nation taxing authority must issue a tax arrears certificate no earlier than six months after taxes become due.

Seizure and Sale of Personal Property

A First Nation may serve Notice of Seizure and Sale of personal property which is located on the reserve, where amounts owing, including interest and penalties, remain unpaid for more than 30 days after a tax arrears certificate has been issued.

If the tax debtor does not pay the amounts owing within seven days of the serving of the Notice, the personal property described in the notice may be seized. And if within 67 days following the seizure of personal property the taxes remain unpaid, the tax administrator may sell the seized personal property by public auction.



Discontinuance of Services

Where a service is paid for using tax revenues, the First Nation may discontinue that service if taxes remain unpaid for 30 days after the tax arrears certificate has been issued.

The discontinuance of services is subject to the following conditions:

- » A First Nation must give 30 days' notice;
- » A First Nation may not discontinue water, fire and police protection, or garbage collection; and
- » A First Nation may not discontinue electrical and natural gas services to residential dwellings between November 1 in any year and March 31 in the following year.

Seizure and Assignment of Taxable Property

A First Nation may serve a Notice of Seizure and Assignment in respect to a taxable property (generally a lease) where the amount owing, including interest and penalties, remains unpaid for more than nine months after the tax arrears certificate has been issued.

The taxable property may be sold by public tender should the amounts owing remain outstanding for a further six months after the Notice of Seizure has been served. Up to three months after a public tender has been held, the debtor would, under conditions outlined in FMA regulations, be able to redeem the taxable property.

4. ONGOING TAXPAYER RELATIONS

Two-way communication between taxpayers and First Nation jurisdictions is important at a number of stages in the property tax system. Taxpayer knowledge of property tax plays an important role in communities. The FNTC works with First Nations and can assist First Nations in providing accurate and easy to understand information respecting property taxation and its benefits to taxpayers.



Public Communication

Currently, more than 154 First Nations participate in the growing First Nation property tax system. As the economic benefits of property taxation accrue to these First Nations, issues of development and special taxes require communication with existing and potential taxpayers. And, as more First Nations come into the process to benefit from the economic returns, public communication ensures that residents and taxpayers are aware of the system, it's economic and service opportunities, and the responsibilities of the First Nation. As the process evolves, communication with potential taxpayers, the neighbouring local government that may have previously had tax jurisdiction on reserve, members of the First Nation, the federal Member of Parliament and the provincial Member of the Legislative Assembly for the riding in which the First Nation is located, and the provincial assessment office becomes more important. To assist in this stage, FNTC can provide advice for communication to these parties.

Notice

A fundamental aspect of all tax systems is giving fair and adequate notice to those whose interests are at stake. At every critical step in the First Nation tax system there are notice provisions aimed at different stakeholders. Among the types of notice are:

- » Notice to other governments on the assumption of tax jurisdiction;
- » Notice to taxpayers of First Nation property tax laws;
- » Notice of assessment inspections;
- » Assessment Notices;
- » Notice of Assessment Appeals;
- » Tax Notices;
- » Enforcement Notices; and
- » Notice of FNTC Reviews.



Taxpayer Representations

Under the FMA, First Nations are required to provide 60 day notice and an opportunity for members, taxpayers and other persons to make representations concerning most proposed local revenue laws.² The Council must consider these representations before it makes its law. The proposed law, amended if Council decides that is necessary, is then passed by Council and sent to the FNTC for review.

When the Council sends a law to the FNTC for approval, it must provide a copy of the law to those persons who made representations to Council, and it must invite those persons to make further representations to the FNTC.

Taxpayer Representation to Council Laws

Some First Nations may have taxpayer representation to Council laws. These laws are designed to facilitate taxpayer involvement in the making of laws by providing a formal structure for taxpayer representation to Council. Like all local revenue laws, taxpayer representation to Council laws must be approved by the FNTC and published in the *First Nations Gazette*.

Taxpayer Advisory Bodies and Associations

As in many other taxing jurisdictions, First Nations encourage taxpayers to form and participate in taxpayer advisory bodies and associations. Individual and collective ideas in dialogue can create greater awareness of how real property taxation can improve services to taxpayers in communities.

There are many examples of best practices in advisory bodies, and the FNTC can provide information on taxpayer advisory bodies and associations upon request.

² Borrowing laws and annual rates and expenditures laws are excluded from this requirement.

PART IV

FINANCING TOOLS FOR FIRST NATIONS INFRASTRUCTURE





Financing Tools for First Nations Infrastructure

All governments have a mixture of revenue raising tools to assist in meeting an increased demand on infrastructure and services. In some cases, a law providing taxation for the provision of services will be required to respond to a group of taxpayers' request for installation of a sewer system in a specified area. In other instances, a new subdivision may place new capital cost burdens on the First Nation and development cost charges may be appropriate to reduce the burden. Further, there may be a need for a major infrastructure project which can only be funded through long-term financing. The FMA provides First Nations with the legislative tools to respond to these types of demands on community infrastructure. Below is a sample of some of the laws available to First Nations under the FMA.

Taxation for the Provision of Services Law

A service tax law levies a tax to fund a specific service or services. It can be used either to fund the annual operation and maintenance costs of a service, or to fund capital infrastructures costs for a specific service. Services taxes are used for many different types of services, including:

- » Street improvements;
- » Bridge developments;
- » Sewer and water-works; and
- » Park acquisitions and improvements.

Where used to pay for capital infrastructure, the cost of the work is paid up front by the First Nation and then recovered from property owners within the service area using the tax. The tax levy may be based on the assessed value of a parcel, or may be based on a different factor such as parcel frontage or area. In some instances, owners may commute the annual charges imposed on them into a one-time, lump sum payment. Typically, First Nations will contribute a portion of the cost from the local revenue generated through the First Nation's property tax law.



Development Cost Charges Law

DCCs are one-time charges levied against residential, commercial, industrial and institutional developments that will impose a current or future capital cost burden on the First Nation. DCCs are payable by developers at the time of subdivision approval, or at the time of building permit.

DCCs may vary depending on the type of development and the work the DCC is funding. However, the principle of equity requires that charges be similar for all developments that have a similar impact on servicing.

Prior to law development, the First Nation must undertake a number of planning steps to determine matters including the types of services that will be required, the scope of the projects, and the DCC charges for each service, as these will inform the law development process.

In developing the law, a First Nation considers a number of important policy issues, including the:

- » role of the public in providing input into, and/or the review of the law;
- » geographic extent of the DCCs;
- » time frame of the DCC program;
- » categories of development to be charged;
- » development projections;
- » units on which to base the charges;
- » eligibility of capital projects;
- » degree of cost recovery possible; and
- » setting of the First Nation assist factor (level of First Nation financial assistance to the project).



FINANCING DEBENTURES WITH PROPERTY TAXATION REVENUES

As with other jurisdictions collecting property tax, First Nations now have the ability to use their tax revenues to access long term debt financing. Under the FMA, First Nation governments can participate in the debenture financing system, and borrow money based on the certainty of collecting property tax each year.

Modeled from the system established by the British Columbia Municipal Finance Authority, the FMA debenture financing system principally involves the FNTC, the First Nations Financial Management Board and the First Nations Finance Authority. Under the system, participating First Nations will pool their financing requirements and the Finance Authority will sell the collective debt in the form of an investment grade fixed income security (i.e., a debenture or bond). First Nations repay their loans over a long period (usually between 15 and 25 years) by using a portion of their annual property tax revenues.

To begin borrowing repayable with property tax revenues under the FMA, First Nations must satisfy several prerequisites. Briefly, First Nations must have:

- » Property tax jurisdiction under the FMA;
- » An approved section 9 Financial Administration Law;
- » FNFA membership;
- » A Borrowing Agreement Laws;





- » Sufficient borrowing room capacity; and
- » An eligible project.

First Nations opting to lever their property tax revenues to access long term capital financing through the provisions of the FMA may only do so through a FNTC approved borrowing law made under section 5(1)(d) of the FMA. The Commission has developed a sample borrowing law, and a sample borrowing agreement law. The amount a First Nation can borrow is calculated taking into consideration a number of factors, including property tax revenues, the composition of the tax base, the security of the tax base, expenditure obligations and other factors. Each of the institutions involved in the borrowing process are described below.

First Nations Financial Management Board

Located in West Vancouver, BC, on Squamish First Nation lands, the First Nations Financial Management Board (FMB) offers tools and services to support First Nations fiscal stewardship and accountability, and will work with First Nations to develop the capacity to meet their expanding fiscal and financial management requirements. Such capacity development is needed to gain private sector confidence and attract the investment capital needed to support First Nation economic and community development. The FMB tools and services are available to any First Nation in Canada, but for those First Nations that choose to participate in the FMA and seek access to long-term capital financing, the FMB provides three key functions in the borrowing process: Financial Administration Law Standards and Approval, Financial Management System Standards and Certification, and Financial Performance Standards and Certification.

For more information, contact:

First Nations Financial Management Board

Suite 905 - 100 Park Royal South
West Vancouver, BC V7T 1A2



Tel: (604) 925-6665
Toll Free: (877) 925-6665
Fax: (604) 925-6662
Email: mail@fnfmb.com
Website: www.fnfmb.com

First Nations Finance Authority

Established in 1995 and given statutory authority in 2005, the First Nations Finance Authority's (FNFA) head office is located on Westbank First Nation lands in BC. It was created to provide professional investment services and capital planning advice to First Nations, and to assist First Nations access public debt financing through a pooled borrowing regime. Loans can be supported by either property tax revenue or other revenues. Each community can choose its own loan repayment term – up to 30 years. Under the provisions of the FMA, the FNFA pools the loan requirements of certified First Nations, issues debentures in its own name, and then re-lends the proceeds of these debentures back to participating First Nations. FNFA is not-for-profit, so it lends to its members at very low rates. FNFA is governed by its borrowing members, so policies are developed to suit their needs.

For more information, contact:

First Nations Finance Authority

202 - 3500 Carrington Road
Westbank, BC V4T 3C1

Telephone: (250) 768-5253
Toll free: (866) 575-3632
Fax: (250) 768-5258
Email: mail@fnfa.ca
Website: www.fnfa.ca



GLOSSARY

Assessment	Means the process conducted by qualified assessors of placing a market value on the properties for taxation purposes. Assessments are conducted using a valuation date for the purpose of establishing the property's value.
Assessment Base	Means the total assessed value of all property within a First Nation as required by the First Nation assessment and property tax law/by-law.
Property Classes	Means the categories of property types established by the assessment law/by-law and used by the assessor to classify properties. Classes can include residential, non-residential, farm, utilities, managed forest, business, industrial and recreation. Different assessment classes usually have different tax rates applied to them.
Assessment By-law	Means a by-law passed under subsection 83 (1) of the <i>Indian Act</i> . The by-law will establish the interests to be assessed and the means of assessment.
Assessment Law	Means a local revenue law passed under subparagraph 5(1) (a) (i) of the <i>First Nations Fiscal Management Act</i> .
Assessment Notice	Means the notice created from the information on the assessment roll for property taxpayers. The assessment indicated on the assessment notice can be appealed.



Assessment Review Board	Means an independent tribunal comprised of at least three members established to hear and determine appeals of assessments. Property owners who disagree with their assessment can appeal directly to an Assessment Review Board.
Assessment Roll	Means a list of all assessable properties and their assessed values in a taxing jurisdiction.
Borrowing Agreement Law	Means a law made under paragraph 5(1)(d) of the FMA that authorizes the First Nation to enter into a borrowing agreement with the FNFA.
Borrowing Law	Means a law made under paragraph 5(1)(d) of the FMA that authorizes the First Nation to borrow a specified amount of money from the FNFA.
Council	Means the same as “council of the band” as defined in the <i>Indian Act</i> .
Debenture:	A debenture (sometimes called a bond) is a type of a loan. The debenture certificate shows the amount owing, the interest payable, and the maturity date for the loan. Usually unsecured by any collateral, debentures are commonly used by governments, large corporations, and municipalities to finance significant expenditures. In the <i>First Nations Fiscal Management Act</i> context, a debenture will reflect the collective borrowing requirements of borrowing members.



Development Cost Charge Law	Means a law made under subparagraph 5(1)(a)(v) of the FMA that provides for the levy development cost charges (DCCs). DCCs are one-time charges levied against residential, commercial, industrial and institutional developments that impose a capital cost burden on the First Nation.
Exemption	Means an exemption from property taxation set out in a First Nation's property taxation law/by-law.
Expenditure Law	Means a law made under paragraph 5(1) (b) of the <i>First Nations Fiscal Management Act</i> . The Law is passed annually and governs how local revenues are expended.
Expenditure By-law	Means a by-law made under subsection 83(2) of the <i>Indian Act</i> , which is passed annually and governs how local revenues are expended.
First Nations Tax Commission	Means the shared governance organization established under the <i>First Nations Fiscal Management Act</i> responsible for regulating the First Nation property taxation system, including dispute resolution and First Nation law approval.
Grants-in-lieu of Taxes	Means payments made by other governments to the First Nation's local government for services that are provided. Grants-in-lieu of Taxes are also known as Payments in Lieu of Taxes (PILT).
Improvements	Means buildings, or other structures, and attachments to land that are intended to remain attached, including sidewalks, pavement, pipelines, etc.



Indian Taxation Advisory Board	Means the body also known as the ITAB, and created in 1989 to act as advisor to the Minister of Indian Affairs (referred to as the Minister of Aboriginal Affairs and Northern Development) in matters related to property taxation. The ITAB was formally succeeded by the First Nations Tax Commission in 2007.
Local Revenue	Means money raised under a local revenue law passed by a First Nation and approved by the First Nations Tax Commission.
Local Revenue Law	Means any of the First Nation laws made under subsection 5(1) of the First Nations <i>Fiscal Management Act</i> .
Market Value	Means the price a property might reasonably be expected to sell for, if sold by a willing seller to a willing buyer after appropriate time and exposure on an open market.
Mill Rate	Means a tax rate expressed in terms of dollars payable per \$1,000 of assessed value. The term comes from the Latin word mil meaning 1,000. One mill is equal to 1/1,000 of a dollar.
Personal Property	Means all movable items of property not permanently attached to, or part of the real estate. Examples include automobiles, furniture, jewelry, works of art, crafts, etc.
Rates By-law	Means a by-law enacted under subsection 83 (1) of the <i>Indian Act</i> . The by-law is passed annually and sets the rate of property tax by class.



Rates Law	Means a law made under subparagraph 5(1) (a) (ii) of the <i>First Nations Fiscal Management Act</i> . The law is passed annually and sets the rate of property tax by class.
Real Estate	Means the physical parcel of land and all permanently attached improvements.
Supplementary Assessment	Means an assessment of improvements that were constructed during the year and not captured on the annual assessment notice.
Tax Rate	Means the percentage of assessed value at which each property is taxed in a jurisdiction. Most jurisdictions, including First Nations, express tax rates in terms of mills or mill rate.
Taxation	Means the process of determining the taxes owing by applying a tax rate to the assessed value.
Taxation for the Provision of Services Law	Means a law made under subparagraph 5(1) (a) (iii) of the <i>First Nations Fiscal Management Act</i> . These laws are used to raise money to pay for a specific service, based on the “benefitter pays” principle.
Valuation Date	Means the date used to determine the assessed value of interests in land. The valuation date may vary depending on the province in which the reserve is located.



CONTACT INFORMATION

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