

# First Nations Restoring Their Jurisdiction

## A Brief History of First Nation Tax Jurisdiction

### PROPERTY TAXATION

Indigenous peoples had property tax systems including the Inca in Peru and the Aztec in Mexico. There were also redistribution of wealth practices throughout the Americas.

### INFORMAL TAX SYSTEMS

Informal yet effective property tax systems were in place before and during early contact with European settlers. For example, First Nations collected taxes or rents from settlers for the privilege of fishing and trapping on their grounds. They charged tolls to individuals who wished to pass along bridges they had constructed. Further, they collected taxes on miners and ranchers. They also redistributed wealth among community members through ceremonies such as the potlatch and giveaway dances.

**First Nations had pre-contact and early contact tax systems. At the time of contact, First Nation tax jurisdiction was suppressed.**

It was effectively eliminated between 1918 and 1927 through legislation. First Nations

have made some recent progress to once again exercise their tax jurisdiction.

The Canadian tax framework that filled the First Nation tax power void creates

significant obstacles for re-emerging First Nation tax systems.

### BANNING TRADITIONAL REVENUES

Beginning in 1881, traditional methods of generating revenues were banned through the Pass and Permit System which prevented First Nations from leaving their reserves or trading outside their communities. In 1884-1885 potlatches were banned. Subsequently, in 1890, the ban was extended to include sun dances, giveaways and similar ceremonies. In 1895, an amendment was made to the *Indian Act* to broaden the application of the potlatch ban to include "any Indian festival, dance or other ceremony of which the giving away or paying back of money, goods or articles takes place..."

### FIRST NATION TAX POWERS

#### EXPANDING TAX JURISDICTION

First Nations begin to implement a number of other tax and revenue jurisdictions. These have included sales tax, tobacco and alcohol taxes, mining and licenses. The *First Nations Fiscal Management Act* has supported tax jurisdiction over business activities, property transfers and services.

#### PROPERTY ASSESSMENT AND TAXATION LAWS

These laws not only establish the legal authority to collect real property tax, but they also establish the administrative framework for a First Nation's taxation system.

#### ANNUAL EXPENDITURE LAWS

These laws provide the First Nation with the authority to expend the revenues collected under their property taxation law.

#### BORROWING LAWS

First Nations have the ability to use their tax revenues to access long-term debt financing.

#### BUSINESS ACTIVITY TAXES

This authority enables First Nations to tax a variety of business activities conducted on their reserve lands including business occupancy and well-drilling.

#### DEVELOPMENT COST CHARGES LAW

Development cost charges (DCCs) are one-time fees that are collected from developers of reserve land to offset some of the infrastructure costs required to service the needs of the development.

#### PROPERTY TRANSFER TAX LAWS

PTT is generally paid by the purchaser, and is based on the fair market value of the property being transferred.

#### SERVICE TAX LAWS

Unlike property taxes—which provide local revenues that may be expended in a number of areas, service taxes are collected to fund a specific service being provided by or on behalf of the First Nation. All of the revenues collected from a service tax must be spent only on the specific service for which they are collected.

### FULL JURISDICTION

First Nations have full jurisdictional powers over their own lands and the authority to implement any taxes to assist in raising public revenue for services and infrastructure like any other government.

### FULL JURISDICTION

### EARLY INITIATIVES

1850 1860

### PROHIBITION

1870 1880 1890 1900 1910 1920 1930 1940

### MODERNIZATION

1950 1960 1970 1980

### RESTORATION

1990 2000 2010 2020

### FULL JURISDICTION

### 1841 ABENAKI PROTESTS

The Abenaki of Odanak in Quebec protested that the district was trying to collect taxes from them. The Abenaki stated that they raised their own public revenues for local services.

### TAXATION IN CANADA

The Constitution Act of 1867 provided unlimited taxing powers to the federal government and limited taxing powers to the provinces. It is interesting to note that at the time the major taxation elements of the Canadian tax framework were being developed, the First Nations tax powers were being suppressed.

### 1875 TYENDINAGA TAXES

The Band Council wanted lessees to pay taxes so they could provide services and infrastructure. Indian Affairs did not allow the Tyendinaga to collect property tax. Instead, the local township was instructed to collect the property tax.

### 1876 THE INDIAN ACT

A consolidation of various laws concerning indigenous peoples, bringing together the primary goals of federal Indian policy: protection and assimilation.

### 1880s FORMAL PROPERTY TAXATION

Several First Nations in Quebec and Ontario attempted to utilize labour taxes to generate revenue to support public services. This would have placed a levy on property owners who do not engage in requisite improvements to property.

### 1881 REDUCING ECONOMIC ACTIVITY

The pass and permit system implemented by the Department of Indian Affairs effectively stopped trade, agriculture and other activities that allowed First Nations to be economically independent from the government.

### 1908 RAIL TAXES PROHIBITED

Six Nations asked for their share of the rail tax revenues from the lines that went through their lands, the same as other local governments. The Ontario government objected stating that Six Nations and other First Nations already receive special consideration in the form of reduced fares.

### 1918 STATE OF DEPENDENCY

A 1918 amendment to the *Indian Act* enshrined many of these previous restrictions on First Nation revenue taxation options. The intention of these amendments was clearly evident in the following statement by an MP in a Parliamentary debate "Well, the Indian may be satisfied and he may not. My personal view with regard to the Indian is that is a the ward of the Government, and being a ward he is bound to accept the treatment given to him."

### 1927 OUTLAWING REVENUE GENERATION

The *Indian Act* was amended once again. This time it was amended to prevent First Nations from raising revenues to pay for lawyers or pursue land claims and property rights.

### 1951 REMOVAL OF RESTRICTIONS

The *Indian Act* was amended to remove many of the restrictive revenue provisions. As a result, First Nations began to develop their revenue sources again.

### 1960s PROPERTY TAX DEBATE

In the 1960s, First Nations in Ontario and BC wanted provincial and local governments to stop collecting property taxes on their lands from their lessees. Ontario stopped collecting property taxes on First Nation lands in 1972. BC still collects property taxes on First Nation lands unless First Nations exercise their own jurisdiction.

### 1988 KAMLOOPS AMENDMENT

In 1988, with the passage of the First Nation-led amendment to the *Indian Act*, many First Nations began taxing again. This amendment significantly increased revenue options, allowing First Nation governments to tax non-aboriginal interests on First Nation lands.

### 1988 BILL 64 (INDIAN SELF-GOVERNMENT ENABLING ACT)

In response to the Kamloops Amendment, the BC Provincial government passed Bill 64 - the Indian Self-Government Enabling Act. Essentially, the province agreed to vacate the field of property taxation if Bands enacted their own taxation bylaws.

### 1995 INHERENT FIRST NATION TAX JURISDICTION

The Supreme Court Matsqui decision identified taxation as an "inherently governmental power". This is a significant confirmation of the fundamental connection between First Nation tax jurisdiction and First Nation government.

### 1997 COURT RECOGNIZES UNDERLYING RIGHT

Although there were other important cases recognizing Aboriginal rights, the Delgamuukw was the landmark case that recognized and clarified Aboriginal title. The decision included recognition of the collective economic component of underlying title, often interpreted as tax jurisdiction.

### 2005 FMA

The *First Nations Fiscal Management Act* was enacted in 2005 and provides First Nations with access to a comprehensive property taxation framework and offers an additional array of fiscal governance tools.

### 2014 ABORIGINAL LAND TITLE RECOGNIZED

The *Tsilhqot'in* decision took the Delgamuukw decision one step further. It recognized a defined area of Aboriginal title. With title to their land recognized, the *Tsilhqot'in* people are currently exploring ways to generate revenues in order to exercise their governmental jurisdiction. Some First Nations are proposing the Aboriginal Resource Tax (ART) as part of a strategy to implement their Aboriginal title.



First Nations Tax Commission

Commission de la fiscalité des premières nations