



First Nations Tax Commission
Commission de la fiscalité des premières nations

FIRST NATIONS REAL PROPERTY TAXATION GUIDE





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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. Transparency and understanding are vital elements in 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 this *First Nations 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 often challenging and evolving tax system.

I encourage community members, taxpayers, investors and others to read the *First Nations Real Property Taxation Guide*. What is in place today - the result of many people working together, helps build economic growth and stability in First Nation communities.

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. Finally, I would like to thank all of those individuals who assisted in the development of this guide. Your contributions are greatly appreciated.

Best Regards,

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



INTRODUCTION

The *First Nations Real Property Taxation Guide* was written to help First Nation governments, taxpayers, First Nation residents, the general public, other governments, and potential investors, understand First Nation property tax and how it works. It provides general information on virtually every aspect of the First Nation property taxation system. Whether you are new to First Nation property tax or would just like to learn more, this publication will be a useful resource.

The guide consists of four parts:

- Part I - Background
- Part II - First Nation Property Tax Powers and First Nations Tax Commission
- Part III - First Nation Assessment and Property Taxation
- Part IV - Financing Tools for First Nations

The Background section 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 and Statistical Management Act* confirmed new powers and created the First Nations Tax Commission. The Commission is the regulatory body that reviews and approves First Nation property tax laws, sets national standards, provides regulatory advice and continuing oversight for taxation under the *Indian Act*, and otherwise ensures the integrity of the First Nation tax system.

Part III 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 Nations, 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 tax administrator in that community.

It is important to note that the guide provides general information. It 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?

With roots in Ancient Egypt and Greece, property tax is the oldest form of taxation, and it is one of the three types of basic tax, 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 ability to pay as measured by the value of one's property also referred to as *ad valorem* (meaning "according to value") tax.

Greater property value means more tax is paid. In this way, property tax equals a percentage of property value on a yearly basis.

Property taxes often include special property-based taxes such as local improvement taxes and business 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
- » sales of services.

In Canada, property tax generates 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 2004, property taxes represented 53.3% of local government revenues.¹ 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 tax revenue, like real property, stays in the community where the tax is collected.

¹Source: Statistics Canada, CANSIM, table 385-0004



Property taxes are used to finance many local programs and services. These 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 unique to each province and territory. While differences exist, provincial/territorial property tax systems are fairly homogenous. Every province/territory uses market value principles for assessment valuation which forms the basis for creating tax revenues used to improve local community infrastructure and services.

FIRST NATION PROPERTY TAXATION: HISTORICAL OVERVIEW

For First Nation governments, property tax is confirmed under federal jurisdiction, and up 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. It is important to note that taxation is used to cover the costs of local services that are not met from other revenue sources or transfers from the federal government.

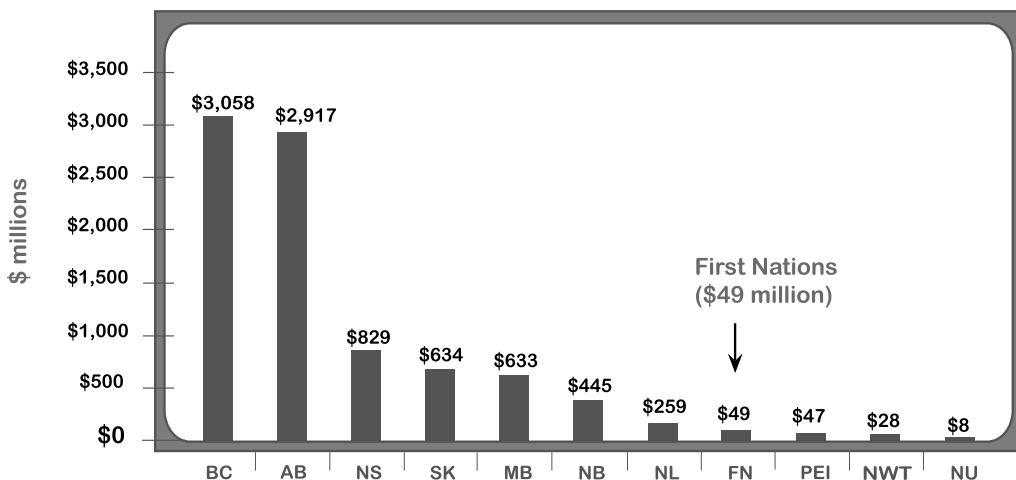
Geographically, First Nation property taxation is widely practiced in the western provinces, particularly British Columbia where much of it originated.

More recently, there has been a growing number of First Nations from the eastern provinces who are exercising property tax jurisdiction. First Nation property taxation is now in place in eight provinces.



The table below illustrates the scale of First Nation property taxation nationally. The table compares total First Nation property tax revenue with total revenue raised by local governments in other selected jurisdictions. It shows that in 2005, First Nations collectively raised approximately \$49 million in property tax revenues, just slightly ahead of the property tax raised by local governments in Prince Edward Island. While this number is at the lower end of property tax revenues collected by governments, it represents revenue from only 18% of the total number of First Nations in Canada.

Real Property Tax Revenues – 2005
First Nations and Selected Provinces and Territories



Origins

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 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, so too were their tax systems.



By the mid to late 1800's, 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 1800's, 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*.

In 1988, a significant amendment was made 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 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.

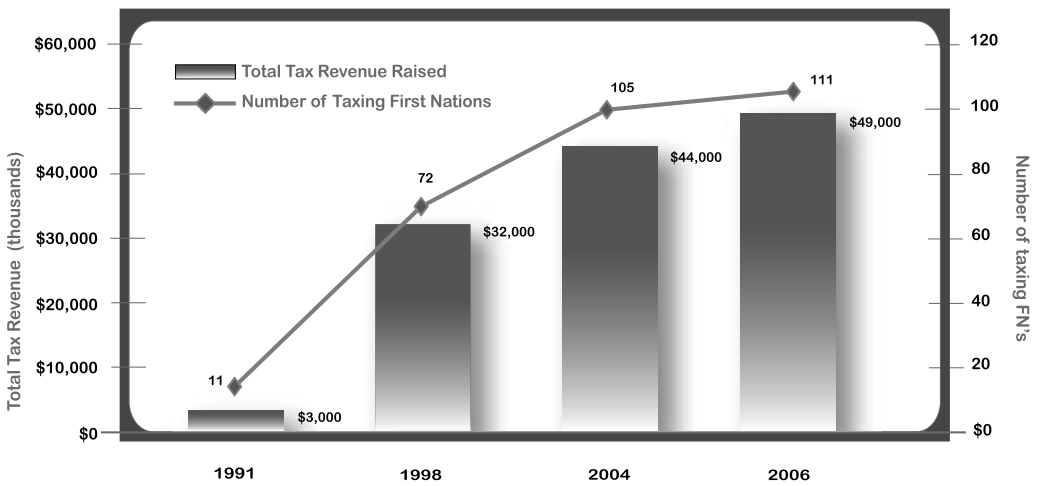
INDIAN TAXATION ADVISORY BOARD

The Indian Taxation Advisory Board (ITAB) was established in 1989 to support the Kamloops Amendment to the *Indian Act* and to facilitate the approval of First Nation taxation bylaws. 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*.



From its inception in 1989, ITAB witnessed steady growth in the number of First Nations participating in property tax under the *Indian Act* amendments. The chart below illustrates how the number of First Nation levying property tax grew significantly over a fifteen year span. In 2006, 111 First Nations levied and collected property tax on their reserve lands. This represented approximately 18% of the 614 First Nations in Canada.²

First Nation Tax Authorities and Total Property Tax Revenue: 1991 – 2006



ITAB developed an extensive body of policy and assisted First Nations with the development and implementation of their property tax systems, helping many First Nation governments operate in diverse circumstances.

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.

² The current number of First Nations is cited in the 2005-06 Report on Plans and Priorities, *Indian and Northern Affairs Canada*



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 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 Nations 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 and Statistical 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 include and continue 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





First Nation taxation is an optional governmental power that a First Nation may choose to exercise. In making its decision to 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; or
- » the assertion of jurisdictional authority.

When a First Nation decides to tax, it can access one of two enabling federal statutes: the *Indian Act* or the *First Nations Fiscal and Statistical 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 make bylaws for taxation for local purposes of land, or interests in land in a reserve. This 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 taxpayers, the development of section 83 property tax and assessment bylaws, and the passage of annual rates and expenditures bylaws thereafter. Each bylaw is reviewed by the First Nations Tax Commission and is subject to the approval of the Minister of Indian Affairs. 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 bylaws to continue to be subject to Ministerial approval.



The improved and economic growth-oriented approach is the *First Nations Fiscal and Statistical Management Act (FSMA)*. Enacted in 2005, the *FSMA* 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. First Nations wishing to access the *FSMA* taxation and financing powers must pass a band council resolution requesting that the Minister add the First Nation to the *FSMA* schedule.³ Once the Governor in Council adds the First Nation to the *FSMA* Schedule, the First Nation's tax powers are drawn from the provisions of the *FSMA*, and any section 83 bylaws that may have been in place are moved into the *FSMA* framework. Property taxation under the *FSMA* requires taxpayer notification, property tax and assessment laws, and annual laws for expenditures and rates. Laws are subject to the review and approval of the First Nations Tax Commission.

FIRST NATIONS TAX COMMISSION

Established by the *FSMA*, the First Nations Tax Commission (FNTC) 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 fair to on-reserve taxpayers.

The FNTC has direct regulatory authority for *FSMA* taxation. These responsibilities and processes are described below. For First Nation taxation under the *Indian Act*, the FNTC has functional regulatory authority, and its responsibilities are summarized under the heading FNTC and Section 83 Property Taxation.

³ Any Aboriginal group which 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 *FSMA* may do so through the development of regulations made under section 141 of *FSMA*. The FNTC will work with the interested group and the appropriate government officials to develop the opt-in regulations. Regulations are subject to Governor in Council approval.



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 Nation tax regimes, and provide measures for facilitating solutions, including mediation;
- » set administrative standards, and provide certified training courses to ensure standards are achieved for First Nation real property tax administrators;
- » certify First Nation capacity for 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.



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 *FSMA* regulations, an additional Commissioner is appointed by a non-government body. All Commissioners hold office for no more than five years in a term. Commissioners may be reappointed.

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 has supervision over, 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 Kamloops Indian Band in Kamloops, British Columbia. An additional office is maintained in the National Capital Region.

FNTC Policy Objectives

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

The policy objectives are presented below:

- » **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 amongst First Nations to enable them to better administer their property tax administrations.

- » **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 will work to achieve an efficient and practicable First Nation property tax system.



FSMA Local Revenue Laws

First Nations taxing under the *FSMA* must pass an assessment and property taxation law and obtain FNTC approval before they can levy and collect 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, and
 - imposing development cost charges;
- » 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; and
- » Providing for the enforcement of laws in respect of outstanding taxes or charges.



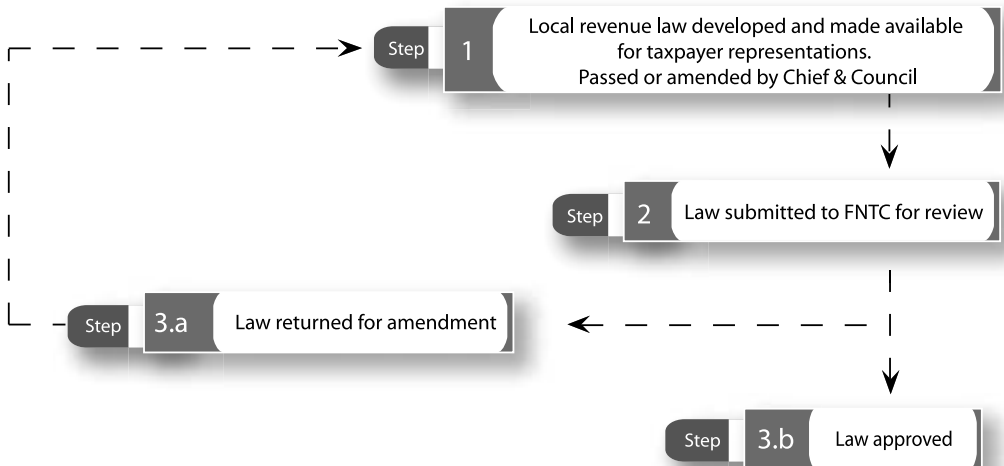
FSMA Law Review and Approval Process

Under the *FSMA*, First Nations are required to provide 60-day notice and an opportunity for persons to review and comment on most local revenue laws.⁴ The Council must consider these representations before it makes its law. The law is then passed or amended 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 has the responsibility of reviewing each local revenue law to determine whether the law has met all the legal requirements stipulated in the statute, regulations, Commission standards, and procedures.

A chart illustrating the law development process is presented below.

FNTC Law Approval Process



⁴ Borrowing laws and annual rates and expenditures laws are excluded from this requirement.



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, copies of 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.

FSMA 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 section 33 (1) of the *FSMA*, or by the FNTC itself, under section 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 *FSMA*.

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 *FSMA* or that a law made under the *FSMA* has been 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 decisions and communicates 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 *FSMA*, 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.

FNTC and Education

The FNTC is committed to assisting First Nations in developing strong and responsive tax administrations. This is accomplished by the provision of professional education and training. The FNTC provides training for tax administrators in a number of areas including: law development, preparation of notices, coordinating assessment appeals, taxpayer relations, budgeting, tax rate setting, and enforcement. In addition, the FNTC provides training for the Client Lands Assessment Services System (CLASS) administrative software program for the management of the property tax system. The software provides a state of the art program for the preparation of the property tax roll, assessment notices, tax notices, budgeting, and the tracking of payments and arrears. CLASS is an essential tool for the tax system and is currently used by 32 First Nation tax authorities.



In furthering its education objectives, the FNTC will develop an accredited certificate in First Nation Economics and Public Finance (taxation) in cooperation with Thompson Rivers University (TRU). It is anticipated that the FNTC will develop a not-for-profit institution to deliver, coordinate and certify along with TRU, the accredited certificate in First Nation Economics and Public Finance (taxation). Delivered by leading academics and practitioners, these courses will include tax administration, tax policy, understanding the assessment process, and budgeting.

Public Education

An important part of the FNTC mandate is public education. The FNTC meets with interested First Nations and gives presentations on First Nation property tax or on specific elements of property tax. It also holds information, education and training workshops across the country. Priorities are set to meet the outstanding requests from First Nation communities, as well as to respond to public and private sector requests for presentations and speeches.

Previously published by ITAB, *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 been keeping its subscribers up to date on policy changes, court cases, legislative developments, and other issues affecting First Nation property taxation. It is available electronically at www.fntc.ca or through direct mail (see Contact Information section).

FNTC AND SECTION 83 PROPERTY TAXATION

Under a Memorandum of Understanding with the Minister of Indian Affairs, the FNTC is responsible for providing regulatory advice with respect to section 83 property taxation, including the review and recommendation of section 83 bylaws for Ministerial approval.



Consistent with the original ITAB core functions and services, the FNTC is responsible for:

- » reviewing and recommending section 83 bylaws;
- » 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 under section 83 contains four main bylaws. In some cases these bylaws may be amalgamated.

Property Taxation Bylaw

Property taxation bylaws include the First Nation's administration procedures, liability to taxation provisions and tax notice provisions. Tax due dates and interest are defined, as are tax collection and enforcement provisions. The bylaw defines local improvement charges and other provisions required by the First Nation.

Property Assessment Bylaw

The property assessment bylaw includes provisions for assessment including property inspection. It calls for the creation of the assessment roll and the individual property assessment notice. Importantly, the bylaw ensures the process for assessment appeals.

Annual Rates Bylaw

The annual rates bylaw establishes the rate of taxation. This bylaw is passed and approved by the Minister each year, and following taxpayer notice, the bylaw is used to generate revenue.

Expenditure Bylaw

The bylaw is also passed annually and authorizes the expenditure of property tax revenue for local purposes. These expenditures are for community works and services, general government services, public works and utility services.

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

- » financial management;
- » business licensing;
- » local improvement taxation; and
- » telephone/telecommunication companies.



FNTC Bylaw Review

The FNTC bylaw review process is triggered when a section 83 bylaw is passed (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 bylaw for approval by the Minister.

The FNTC examines a bylaw 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 bylaw is submitted for review and recommendation by FNTC. With a favourable recommendation, the FNTC then forwards the bylaw and supporting documentation to the Minister for his/her approval.

Ministerial Approvals

Once approved by the Minister, section 83 bylaws are transmitted from the Minister's Office to the FNTC. The First Nation is notified and a copy of the bylaw is published in the *First Nations Gazette*.



PUBLICATION OF LAWS, STANDARDS AND PROCEDURES: FIRST NATIONS GAZETTE

Transparency within the First Nation property tax system is in First Nations' and taxpayer interests. A key part of ensuring transparency is through the publication of laws, and for First Nation tax bylaws and laws passed pursuant to the *FSMA*, the *First Nations Gazette* is the official publication.

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 law to be published. Additionally, all section 83 *Indian Act* bylaws passed by First Nations and approved by the Minister of Indian Affairs are published. From time to time, the *Gazette* is used to publish policies or other First Nation legislation affecting First Nation taxation under the *FSMA* or the *Indian Act*. The *Gazette* is governed by an editorial board consisting of representatives from the Native Law Centre and the FNTC.

As a means to inform governments, First Nation taxpayers, members, and potential investors, the *First Nations Gazette* is an indispensable tool. Annual subscriptions of the *First Nations Gazette* are available at:

First Nations Gazette

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PART III

FIRST NATION ASSESSMENT AND PROPERTY TAXATION





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.

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 *FSMA*, 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.

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.

The annual cycle generally consists of a number of stages:

- » Assessment Inspections;
- » Preparation of the Assessment Roll;
- » Assessment Notices;
- » Assessment Appeals;
- » Jurisdiction Budget Setting;
- » Jurisdiction Revenue Needs;



- » Total Assessed Values;
- » Setting of Tax Rates;
- » Annual Tax Rates and Expenditure Laws;
- » Tax Notices/Tax Bill to property owners or occupiers;
- » Tax Payment; and
- » Tax Collection and Enforcement.

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 be directed to the First Nation Tax Administrator.

ASSESSMENTS ON FIRST NATION LANDS

Assessment standards on First Nations 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 First Nation lands are located.



Role of the First Nation Assessor

Each First Nation with an assessment and property taxation law must, by resolution, appoint an assessor to conduct assessments pursuant to the First Nation law. The assessor is responsible for conducting assessments. 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.

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, as the First Nation's law authorizes.

What is Assessed?

Not all real property is assessed for property tax purposes. Each First Nation in its regulated and approved law determines what real property is assessable for taxation. Generally speaking "real property" is defined as:

- » A parcel of land;
- » An improvement (usually a building, fixture or structure); or
- » A parcel of land and the improvement on it.



Real property does not include things like furniture, jewelry, automobiles, or other personal possessions. If a property cannot be assessed, this means it cannot be taxed.

Properties that are not assessed or taxed include things like First Nation-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:

- » Government offices;
- » Properties such as hospitals, libraries, cultural centres and schools;
- » Places of worship;
- » Property owned by some non-profit 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. For instance, for the 2007 tax year, the valuation date for property assessment in some provinces is July 1, 2006. This means that a 2007 property assessment must reflect the value of the property as of July 1, 2006. For reasons of efficiency and tax harmony, First Nations use the same assessment 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 10 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 taxpayer's and occupant's 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 information otherwise available.

During the on-site inspection, the assessor will explain the purpose of the visit, and request permission to carry out the inspection. The assessor will observe, record, and verify relevant physical details of the property. This may include both the interior and exterior inspection of the property.

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. If requested to do so, a First Nation will provide a property taxpayer with a summary of the assessment of any assessed property on the First Nation's lands, as long as the release of information does not breach confidentiality. 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 assessment class determines the tax rate that will be applied to each property in that class. Assessment classes usually have different tax rates. 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. 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);
- » Managed forest land; and
- » Utility.

Assessment Roll

The assessment roll is a list of all assessable properties on First Nation lands and the assessed values for each property. After the assessed values of all properties on a First Nation's land have been determined, and the properties have been placed in appropriate assessment classes, the assessment roll is created. The *FSMA* requires each participating First Nation to annually produce an assessment roll.

Each First Nation creates an annual assessment roll on the calendar date consistent with the date used by the province within which its reserves are located.

Generally, the assessment roll contains the following information for each assessed property:



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

First Nations may provide for the use of 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 the property. The assessment notice must conform to the format set out in the First Nation tax and assessment law and FNTC standards.

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 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 person and assessed property listed on their assessment rolls. For some First Nations, it may be the practice to publish a notification in one issue of a local newspaper to announce that the assessment notices have been mailed to property owners within the jurisdiction.

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. Corrections can only be made to current year assessment notices. This means that a person cannot change an error, omission, or wrong description of an assessment notice from a previous year.

Assessment Appeals

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

Each First Nation assessment law provides an informal appeal 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 launching a formal appeal, taxpayers are encouraged to use a mechanism called a *request for reconsideration of assessment*. A request for reconsideration, in this instance, is where a taxpayer asks an assessor to reconsider the original assessment.

Taxpayers usually have at least 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. Typically, a request for reconsideration will deal with valuation; however, reconsiderations can also concern classification, errors, omissions, or use of exemptions.

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 in which the property is situated. 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. 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, First Nation tax administrator and assessor) 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

Any decision made by an assessment review board applies only to the current year's assessment. The decision does not apply to previous assessments, nor will it be applicable to the next year's property assessment. For example, if the assessed value of a property is decreased as a result of an ARB decision, it will not result in adjustments to previous years' assessments, nor will it have any bearing on assessments that are prepared in the future.

SETTING THE BUDGET AND THE TAX RATE

Next in the cycle is the process of setting a government budget. This is where all expenditures are rationally connected to revenues raised through property taxes and other sources. Under the *FSMA*, 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** - tax appeals, tax administration, legislative, computers, and general administration.
2. **Protective Services** - 911 administration, fire protection, police protection, inspections, emergency measures, and animal/pest control.
3. **Transportation Services** - transportation services, 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** - provincial government, regional district hospital, First Nation finance authority, and assessment authority.

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 will maintain and publish 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:

$$\text{Property assessment} \times \text{Tax rate} = \text{Taxes payable}$$

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 the property tax.

As in the management of most Canadian taxing jurisdictions, if the First Nation Council requires more revenue to run the First Nation 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 Nation property tax laws are approved by the FNTPC;
- » An increased property assessment does not 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; and
- » Property assessments can be appealed. Property taxes cannot be appealed.

Tax rates are set for different classes of property depending on the First Nation's property tax law.



Tax Rates for the Initial Year of Taxation

Although the vast majority of First Nations follow the tax rate setting process described above, First Nations entering into taxation for the first time are subject to an additional requirement. 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 previous 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 a 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 *FSMA* must give notice to and pass an annual tax rates law and 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.

A First Nation will align its rates and expenditure laws 14 days after the date used by the province in which that First Nation is located. 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 services to taxpayers, particularly in the case of residential and commercial taxpayers who often require a wide array of services. 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 tax, and to each person whose name appears on the First Nation's 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.

Typically, the tax bill is sent 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, most First Nations offer a homeowner grant program that is largely consistent with the provincial practice.



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 *FSMA* for 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 outlined in their property tax law.

Issuance of the Tax Arrears Certificate

Before taking 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 at least 61 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 revenues from an assessment and property taxation law are used to provide services to taxpayers, a First Nation may discontinue those services 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 Sale of Taxable Property

A First Nation may serve a Notice of Seizure of taxable property 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 *FSMA* regulations, be able to redeem the taxable property.



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 to provide accurate and easy-to-understand information to place property tax in perspective for taxpayer understanding.

Consultations

Community consultation ensures that residents and taxpayers are aware of the system, its economic and service opportunities, and the responsibilities of the First Nation. As the process evolves, communication with potential taxpayers, any neighbouring local government, members of the First Nation, and the federal and provincial representatives for the riding in which the First Nation is located, becomes more important.

Notice

A fundamental aspect of all tax systems is giving fair and adequate notice to those whose interests are at stake. 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 *FSMA*, First Nations are required to provide 60 day notice and an opportunity for persons to make representations concerning most local revenue laws.⁵ The Council must consider these representations before it makes its law. The law is then passed or amended 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 will be 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.

⁵ Borrowing laws and annual rates and expenditures laws are excluded from this requirement.

PART IV

FINANCING TOOLS FOR FIRST NATIONS





Governments have a mixture of revenue raising tools to assist in meeting an increased demand on infrastructure and services. In some cases, local service taxes are 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, whereby 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 *FSMA* 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 *FSMA*.

TAXATION FOR THE PROVISION OF SERVICES LAW

Whereas property taxes generally serve the entire reserve area of a First Nation, taxes for the provision of services are imposed on a specific area within a First Nation to fund the service or improvement applied to a particular area only.

The taxes are generally applied to parcels of land. This means that the owner of the parcel of land is responsible for paying the services tax. A services tax is allocated as an annual charge that may be levied for a set number of years depending on the law. Types of local services include:

- » Street improvements;
- » Bridge developments;
- » Sewer and waterworks; and,
- » Park acquisitions and improvements.

The cost of work undertaken as a provision of services is paid up front by the First Nation then recovered from property owners within the service area using the tax. The tax may be based on a single amount for each unit or the taxable frontage of the parcel. In some instances, owners may commute the charges imposed on them for payments in cash. 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

For many local governments, a development cost charges (DCC) law is an essential financing tool that is designed to assist in recovering monies expended on growth-related infrastructure. Under the *FSMA*, First Nations may use this law to recover costs related to the provision, construction, alteration or expansion of the following kinds of services:

- » Highways;
- » Sanitary sewers;
- » Water;
- » Drainage; and,
- » Parkland acquisition and improvement.

While taxation for the provision of services spans over a number of years and is applied to taxpayers, DCCs are one-time charges levied against residential, commercial, industrial and institutional developments that impose a capital cost burden on the First Nation. Generally speaking, DCCs are payable by developers at the time of subdivision approval, or where subdivision approval is not required, are payable at the time of building permit approval.

Typically DCCs may be specified according to different sectors as they relate to different classes and amounts of development. In all instances, the principle of equity remains that charges be similar for all developments that have a similar impact on servicing. 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).

An open, transparent process involving public input and communication of the process in the development of the law and its approval is important to the understanding and acceptance of development in communities. While these are common cost recovery tools in jurisdictions across the country, DCCs, and taxation for the provision of services may not be appropriate for all specific development situations on First Nation lands.

Further in-depth study of these and other local revenue options is warranted by First Nations exploring their development finance options. In this regard, the FNTC can provide training, models and other statistical and management expertise for First Nation consideration and use in planning and development.





BORROWING UNDER THE FIRST NATIONS FISCAL AND STATISTICAL MANAGEMENT ACT

As with other jurisdictions collecting property tax, First Nations have the ability to use their tax revenues to access long term debt financing. Under the *FSMA*, 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 *FSMA* debenture financing system principally involves three First Nation institutions created by the *FSMA*: the First Nations Tax Commission; the First Nations Financial Management Board; and the First Nations Finance Authority. A fourth *FSMA* institution, the First Nations Statistical Institute, plays a supporting role. Under the system, participating First Nations pool their financing requirements and the FNFA sells the collective debt in the form of an investment grade fixed income security or a 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 under the *FSMA*, First Nations must satisfy several prerequisites. Briefly, First Nations must have:

- » Property tax jurisdiction under the *FSMA*;
- » Financial management system certification from the First Nations Financial Management Board;
- » FNFA Membership;
- » 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 *FSMA* may only do so through a FNTC approved borrowing law made under section 5(1)(d) of the *FSMA*. Debt servicing will be based on a percentage of annual property tax revenue. The percentage will depend on the composition of the tax base, support of membership, security of leasing arrangements, expenditure obligations, and other factors.



Each of the institutions involved in the borrowing process are described below.

First Nations Financial Management Board

Situated on Squamish First Nation lands within BC, the First Nations Financial Management Board (FMB) is a *FSMA* institution whose mission is to assist First Nation governments in establishing effective financial management systems through capacity development, the development of national standards and policies, monitoring, certification, and, if necessary, effective and appropriate remediation, thereby increasing confidence in First Nation governments and supporting the economic and social development of First Nations. The FMB has three key functions in the borrowing process: approval of Financial Administration Laws, certification of the First Nation's financial management system, and intervention if required.

For more information contact:

First Nations Financial Management Board

Suite 905

100 Park Royal South

West Vancouver, BC

V7T 1A2

Phone: (604) 925-6665

Fax: (604) 925-6662

Email: mail@fnfmb.com

Internet: www.fnfmb.com



First Nations Finance Authority

Established in 1995 and given statutory authority in 2005, the First Nations Finance Authority (FNFA) is located on Westbank First Nation lands in BC. It was created to assist First Nations to access long term public debt financing. Under the provisions of the *FSMA*, the FNFA pools the capital requirements of qualified First Nations, issues bonds, and then re-lends the proceeds of the bonds back to participating First Nations. In addition to bond financing, the FNFA provides a range of other financial services to First Nation governments.

For more information contact:

First Nations Finance Authority

Email: mail@fnfa.ca

Internet: www.fnfa.ca

First Nations Statistical Institute

The First Nations Statistical Institute (FNSI) improves the quality and availability of First Nation statistical information. This reduces decision-making time, contributes to effective community planning, and has many uses for citizens and investors. To the extent that improved information will bring about greater confidence among investors, the FNSI can play an important role in reducing the cost of borrowing.

For more information contact:

First Nations Statistics

Email: info@firststats.ca

Internet: www.firststats.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.
Assessment Classes	Means the categories established by the assessment law and used by the assessor to assign properties. Classes can include residential, non-residential, farm, utilities, managed forest, business, industrial or recreation. Different assessment classes usually have different tax rates applied to them.
Assessment Bylaw	Means a bylaw passed under section 83 (1) of the <i>Indian Act</i> . The bylaw will establish the interests to be assessed and the means of assessment.
Assessment Law	Means a local revenue law passed under section 5(1)(a)(i) of the <i>First Nations Fiscal and Statistical 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 a three-member appeal board comprised of individuals with experience in tax assessments and law. 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.



Business Tax	Means a local revenue passed under section (1)(a)(iv) of the <i>First Nations Fiscal and Statistical Management Act</i> . The tax raises revenues from business activity within a jurisdiction. The business tax payable is the responsibility of the person operating the business.
Council	Means the same meaning as “council of the band” as defined in the <i>Indian Act</i> .
Development Cost Charges Law	Means a law made regarding development cost charges (or DCCs), which are one-time charges levied against residential, commercial, industrial and institutional developments that impose a capital cost burden on the First Nation.
Exemption	Means a complete or partial elimination of assessment and/or property taxation as determined by the First Nation.
Expenditure Law	Means a law made under section 5(1)(b) of the <i>First Nations Fiscal and Statistical Management Act</i> . The Law is passed annually and governs how local revenues are expended.
First Nation	Means a jurisdiction known as a band, or a band named in the schedule under law cited in the <i>First Nations Fiscal and Statistical Management Act</i> .
First Nations Tax Commission	Means the shared governance organization established under the <i>First Nations Fiscal and Statistical Management Act</i> , and responsible for regulating the First Nation property tax system, including dispute resolution and First Nation law approval.
Grants in Lieu of Taxes	Means payments made by provincial or federal of 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 advisory to the Minister of Indian Affairs 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 section 5(1) of the <i>First Nations Fiscal and Statistical 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.
Property Taxation Bylaw	Means a bylaw enacted by the First Nation under section 83(1) of the <i>Indian Act</i> .
Property Taxation Law	Means a law enacted by the First Nation under section 5(1)(a) of the <i>First Nations Fiscal and Statistical Management Act</i> .



Rates Bylaw	Means a bylaw enacted under section 83 (1) of the <i>Indian Act</i> . The bylaw is passed annually and sets the rate of property tax by class.
Rates Law	Means a law enacted under section 5(1)(a)(ii) of the <i>First Nations Fiscal and Statistical 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.
Supplement Taxation	Means the levying of taxes based on supplementary assessments.
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 section 5(1)(a)(iii) of the <i>First Nations Fiscal and Statistical Management Act</i> . Taxation for the provision of services laws are for a specified service and service area, and are based on a “benefitter pays” principle.
Valuation Date	Means the fixed point in time on which assessment values are based. The valuation date may vary depending on the province in which the reserve is located.



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