

EXPLANATORY NOTES
SAMPLE ANNUAL BUDGET EXPENDITURE LAW

The *First Nations Fiscal and Statistical Management Act* (“FSMA”) provides a framework for First Nation real property taxation on reserve. First Nation fiscal powers are set out in Part 1 of the FSMA and include, under section 5, the authority to make laws respecting taxation for local purposes, including laws authorizing the expenditure of local revenues. As part of its real property taxation regime, each First Nation will require an assessment law and a taxation law, as well as annual tax rates and expenditure laws. Paragraph 10(b) of the FSMA requires a First Nation to, at least once each year at a time prescribed by regulation, make a law establishing a budget for the expenditure of revenues raised under a property taxation law. Subsection 13(3) of the FSMA sets the requirement that there be a balanced budget (i.e., that expenditures may not exceed revenues).

Laws enacted under the FSMA must comply with all statutory requirements, any regulations made under paragraph 36(1)(d) of the FSMA and any standards established by the First Nations Tax Commission (“Commission”) under section 35 of the FSMA. Canada has made the *First Nations Rates and Expenditure Laws Timing Regulations*, which requires rates and expenditure laws to be enacted each year by the date set for tax rates for non-reserve land by the province in which the reserve is located. The Commission has established Standards for First Nation Property Expenditure Laws (“Expenditure Law Standards”) that provide further requirements for the form and content of expenditure laws.

The sample Annual Budget Expenditure Law (“sample law”) complies with the FSMA requirements, the Regulations and the Expenditure Law Standards. It provides a best practices sample for use and adaptation by First Nations in drafting their own FSMA expenditure laws.

These Explanatory Notes provide a synopsis of the sample law and highlight issues that may be considered by First Nations in drafting their expenditure laws.

Section 1

This section sets out the legal name for the First Nation’s law. Proper citation of the law should be used when referencing it in literature, forms or other laws.

Sections 2 and 12

The definitions used are the same as set out in the *Indian Act*, the FSMA and the Regulations. Section 12 of the sample law provides for the definitions in the First Nation’s assessment and taxation laws to apply to this law where terms are not otherwise defined.

Section 3

This section references the First Nation’s annual budget, which is attached as Schedule I to the sample law. The Expenditure Law Standards require the budget to use the categories of expenditures that are shown in this Schedule.

The Expenditure Law Standards require the budget to provide for a contingency amount of at least one percent (1%) and not more than ten percent (10%) of the First Nation's total annual local service expenditures. The Standards also require that the budget set out all amounts payable under service agreements during the budget period.

Sections 4, 10 and 11

Section 4 of the sample law authorizes the specific expenditures that are set out in the budget, and section 10 prohibits expenditures that are not set out in the annual budget. If a First Nation needs to authorize further expenditures or make changes to the budget during the year, it must adopt a new expenditure law or an amending expenditure law as set out in section 11.

Section 5

Annual grants given by the First Nation must be authorized in the budget. Section 5 of the sample law authorizes the grants set out in Schedule II. Schedule II includes each property and the grant received by the property holder for that year.

Sections 6, 7 and 8

A First Nation may establish certain types of reserve funds in accordance with the parameters set out in its taxation law. The Commission's Standards for Property Taxation Laws provide that reserve funds can be established either in a taxation law or an expenditure law. The Taxation Law Standards also establish certain reserve fund requirements that apply to all reserve funds, regardless of how the reserve fund is established. Section 6 of the sample law provides for establishing reserve funds, and sections 7 and 8, respectively, provide for transfers of money into and out of reserve funds.

Section 9

This section authorizes the expenditure of monies from the contingency amounts set out in each budget. A First Nation can spend contingency amounts as needed, provided they are used only within expenditure categories set out in the First Nation's budget.

Section 16

This section provides for when the law will come into force. This can be either on the approval of the Commission or a later date as specified by Council.