

EXPLANATORY NOTES
SAMPLE PROPERTY TAXATION 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 matters such as assessment, setting tax rates, authorizing expenditures and providing for the enforcement of these laws. 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.

The taxation law creates the framework for the administration of the taxation regime, including setting out the duties of the tax administrator, how taxes are levied, exemptions from taxation, the preparation of the tax roll and tax notices, the imposition of penalties and interest, and the enforcement and collection provisions.

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 Taxation Enforcement Regulations* (“Enforcement Regulations”), which set out detailed requirements for the enforcement of local revenue laws. The Commission has established Standards for First Nation Property Taxation Laws (“Taxation Law Standards”) that provide further requirements for the form and content of taxation laws.

The sample Taxation Law (“sample law”) complies with the FSMA requirements, the Regulations and the Taxation Law Standards. It provides a comprehensive taxation law, including enforcement measures, that reflects taxation practices on reserve lands and incorporates components of the provincial taxation regimes. It provides a best practices sample for use and adaptation by First Nations in drafting their own FSMA taxation laws.

These Explanatory Notes provide a brief synopsis of each Part of the sample law and highlight issues for further consideration by First Nations. There are aspects of the sample law that are required, but there are also aspects that are left to the discretion of the First Nation. In some cases, the sample law sets out examples of the types of provisions that a First Nation may wish to consider in its law.

PART I
CITATION

This Part 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.

PART II DEFINITIONS

The definitions used are the same as set out in the *Indian Act*, the FSMA and the Regulations. Where terms are not defined in those statutes or regulations, definitions reflect BC provincial taxation legislation.

The definition of “interest in land” includes any occupation or right to occupy, and the definition of “holder” includes all occupiers of reserve land. These definitions are intended to capture all occupiers of reserve land for taxation purposes.

“Taxes” includes penalties, interest and costs added to unpaid taxes. Taxes also include, in respect of collection and enforcement, taxes owing from any other local revenue law enacted by the First Nation under section 5 of the FSMA. This definition allows a First Nation to use the collection and enforcement provisions in this law to collect taxes owing under all of its FSMA tax laws.

PART III ADMINISTRATION

Section 3.1 requires Council to appoint a tax administrator to administer the taxation law. The tax administrator may also have duties under the assessment law, as referenced in section 3.2. The tax administrator is a required position under the Enforcement Regulations.

Section 4.1 is required by subsection 5(5) of the FSMA. The law must include a “third-party management” provision that appoints the Financial Management Board as the First Nation’s agent under a property taxation law, in certain defined circumstances under the FSMA.

PART IV LIABILITY FOR TAXATION

Under sections 5.1 and 6.1, the law applies to all interests in land in the reserve and all interests in land are subject to taxation except where specifically exempted. These provisions are required by the Taxation Law Standards.

Sections 6.2 to 6.6 contain important provisions respecting tax liability, including tax collection and payment. Where there are multiple interests in the same property, each interest in the property is subject to taxation. Holders who share the same interest in taxable property are jointly and severally liable for taxes.

Sections 7.1 to 7.3 provide suggested wording for tax refunds. The Taxation Law Standards require provisions that set out the circumstances under which refunds will be given. At a minimum, excess taxes paid must be refunded, plus interest (at a rate of at least prime minus two percent (2%)), where a change in the assessment results in a reduction of taxes. The sample law reflects these requirements and is modeled on BC legislation governing property taxation.

PART V

EXEMPTIONS FROM TAXATION

Section 8.1 provides sample wording for the types of exemptions that a First Nation may wish to consider. It is the First Nation's decision whether to provide any exemptions from taxation. The Taxation Law Standards require any exemptions from taxation to be set out in the taxation law. Under these standards, exemptions are permitted in respect of interests in land in one or more of the following categories:

- exemptions for interests in land held or occupied by members of the First Nation;
- exemptions for interests in land held or occupied by the First Nation or corporations that are at least majority-owned by the First Nation; or
- exemptions within a class of exemption used by local governments in the province.

Where Council wishes to provide exemptions on a case by case or annual basis, it can either amend its taxation law to authorize the exemption, or it can proceed by way of an annual grant rather than a tax exemption. By using a grant, the First Nation may achieve the same goal more efficiently, as a First Nation can authorize grants under its annual expenditure law.

PART VI

TAX ABATEMENT

This Part sets out sample wording where a First Nation wishes to provide for annual grants or other forms of tax abatement. Section 9.1 provides for annual grants for areas of land surrounding buildings that are exempted under section 8.1. Note that as an alternative, a First Nation could exempt both land and buildings under section 8.1.

Sections 10.1 to 10.3 provide for annual grants to non-profits and the annual homeowner grant. Section 10.4 provides sample wording where a First Nation wishes to authorize other types of tax abatement. These could include other types of grants or other programs such as tax deferrals. The Taxation Law Standards require that qualifying requirements for other types of tax abatement be set out in the taxation law in order to provide transparency and notice to taxpayers that certain types of abatement may be available.

PART VII

LEVY OF TAX

Section 11.1 requires the adoption of an annual rates law by May 15 in each year (for BC First Nations), as required by the *First Nations Rates and Expenditure Laws Timing Regulations*. Both an annual rates law and an annual expenditure law are required by section 10 of the FSMA.

Section 11.2 allows different tax rates to be established for each of the property classes set out in the First Nation's assessment law.

Sections 11.5 and 11.6 apply where a First Nation wishes to set a minimum tax. The maximum amount for a minimum tax should be set out in the taxation law, and the minimum tax actually set each year should be set out in the rates law. The Commission's Standards for Property Rates Laws provide that a minimum tax must not exceed one hundred dollars (\$100) except where required to create a fair taxation regime because of one or more of the following circumstances:

- the First Nation had established a higher minimum tax amount in its taxation regime existing at the time of being scheduled under the FSMA;
- to harmonize with minimum tax amounts established in the relevant province or the reference jurisdiction; and
- to recover a greater proportion of the First Nation's costs of providing services to properties with lower assessed values.

Sections 12.1 to 12.3 set the tax due date, where tax payments must be made and the acceptable forms of payment. These provisions are required by the Taxation Law Standards.

PART VIII TAX ROLL AND TAX NOTICE

Section 13.1 requires the tax administrator to create a tax roll for each taxation year by the date specified. The Taxation Law Standards require the law to provide for an annual tax roll that is completed by a date set out in the law. The tax roll is generally the assessment roll with the addition of the total taxes payable for the year, as well as any unpaid taxes, including penalties and interest. The law can also provide for other information to be added to the tax roll, such as other taxes payable to the First Nation in respect of the property (for example, service taxes and business taxes).

Under section 14.1, the tax administrator must mail tax notices by a date specified in the law. The Taxation Law Standards require the law to specify a date for mailing tax notices that is at least thirty (30) days before the tax due date. Tax notices must be mailed to each holder of taxable property and each person whose name appears on the tax roll in respect of taxable property (i.e., persons added under section 14.5). The Taxation Law Standards specify the information required in a tax notice and require amended tax notices where the tax roll is amended.

Sections 15.1 to 15.3 provide for amending the tax roll and sending out amended tax notices where the tax roll is amended. Section 15.4 gives taxpayers thirty (30) days to pay additional taxes before interest and penalties are assessed by the First Nation.

Sections 16.1 to 16.3 allow the tax administrator to amend the tax roll and apportion taxes owing where taxable property is subdivided after delivery of the certified assessment roll and before June 1 in a taxation year.

Section 17.1 allows the tax administrator to request information respecting taxable property using the form set out in Schedule I.

**PART IX
PERIODIC PAYMENTS**

These provisions allow for taxes on leased lands to be expressed as a percentage of rent and paid with rental payments.

**PART X
PAYMENT RECEIPTS AND TAX CERTIFICATES**

This Part provides for the issuance of receipts for taxes paid, as well as the issuance of tax certificates upon request and payment of the fee specified in the law. A First Nation can decide whether it will collect a fee for the issuance of tax certificates.

**PART XI
PENALTIES AND INTEREST**

The assessment of penalties and interest for unpaid taxes is subject to the conditions and procedures set out in the Enforcement Regulations and the requirements set out in the Taxation Law Standards.

Section 21.1 provides for the automatic levy of a penalty where taxes are not paid in full on the due date. Under the Enforcement Regulations, the amount of the penalty (which cannot exceed ten percent (10%) of the unpaid taxes) and when it will be imposed must be specified in the law. A First Nation can decide whether to impose a penalty and how and when a penalty is imposed. It could choose a lesser percentage, or impose an initial penalty and then a further penalty if taxes remain unpaid at a later date, provided the total penalty does not exceed ten percent (10%).

Section 22.1 provides for interest to accrue on unpaid taxes. The Enforcement Regulations provide that interest cannot exceed fifteen percent (15%) per year and require the rate of interest to be specified in the taxation law.

**PART XII
REVENUES AND EXPENDITURES**

This Part provides for the receipt and expenditure of revenues collected under the law. Subsection 13(1) of the FSMA requires a First Nation to place all revenues collected under a local revenue law in a local revenue account, separate from other moneys of the First Nation. Subsection 13(2) provides that local revenues can only be expended under the authority of an expenditure law. Paragraph 10(b) of the FSMA requires the First Nation to establish an annual budget for the expenditure of these revenues. This means that no expenditures can be authorized under the taxation law. All expenditures must be authorized by an expenditure law.

Sections 25.1 to 25.7 provide for the creation and use of reserve funds. The Taxation Law Standards require certain provisions in a taxation law where a First Nation wishes to establish reserve funds. Reserve funds may only be established for one or more of the following purposes:

- capital infrastructure replacement, provided its purposes are supported by a capital development plan;
- capital infrastructure improvement, provided its purposes are supported by a capital development plan; and
- other purposes, provided those purposes are supported by a capital development plan, contingent liability plan, land management plan or long-term economic plan.

Reserve funds may be established either in the taxation law or in a rates law. Regardless of which law establishes a reserve fund, the provisions in the taxation law apply to those funds. These include provisions respecting the use of money in a reserve fund and interest earned on it; the transfer and borrowing of reserve funds; authorizations required for expenditures from a reserve fund; and authorized investments for reserve funds.

PART XIII COLLECTION AND ENFORCEMENT

This Part provides general provisions respecting the collection of unpaid taxes and enforcement of local revenue laws. Specific enforcement measures are set out in subsequent Parts. The Enforcement Regulations set out detailed conditions and procedures respecting a number of enforcement measures that may be used by First Nations. Including the full spectrum of enforcement mechanisms in the taxation law will give a First Nation the option to choose the most effective mechanism for each enforcement situation.

Sections 26.1 to 26.4 contain general provisions respecting tax collection, including allowing recovery by one or more methods set out in the law.

Section 27.1 requires the issuance of a tax arrears certificate to every person named on the tax roll in respect of a property on which there are unpaid taxes. The Enforcement Regulations require this certificate to be delivered before certain enforcement measures or proceedings are commenced. Section 27.2 provides that a tax arrears certificate cannot be issued for at least six (6) months after the day that the taxes became due. A form of certificate is set out in Schedule V to the sample law.

Sections 28.1 to 28.7 provide for the creation, recording and discharging of liens. A First Nation may, but is not required, to create liens as part of its enforcement scheme. The tax administrator is required to maintain a list of all liens created and must register a discharge of a lien without delay on payment of outstanding amounts.

Sections 29.1 to 29.5 set out the document delivery provisions required under the Enforcement Regulations for all enforcement matters.

PART XIV

SEIZURE AND SALE OF PERSONAL PROPERTY

This Part reflects the detailed provisions governing the seizure and sale of personal property belonging to a tax debtor. These provisions are set out in the Enforcement Regulations. This enforcement measure can be taken where taxes remain unpaid thirty (30) days after a tax arrears certificate is issued (i.e., seven (7) months after taxes became due). The First Nation must first deliver a notice of seizure and sale, after which the debtor has seven (7) days to pay the outstanding taxes. If unpaid, the First Nation can seize the property without further notice. A further notice is given prior to the sale of the seized property, which notice cannot be given until at least sixty (60) days after the property was seized. This notice must be published in two (2) consecutive issues of a newspaper.

Section 30.3 allows the First Nation to recover its costs of enforcement in accordance with Schedule III. A First Nation wishing to collect its costs of enforcement must set out in Schedule III the costs it will recover.

Unless there is a court challenge, the seized property can be sold by auction and the proceeds used to pay the taxes. However, where there are registered security interests on property the First Nation wishes to seize, the seizure and sale is subject to any provincial laws regarding the seizure and sale of property. This is reflected in section 34.1 of the sample law. As well, where there are registered security interests against the property, section 20 of the Enforcement Regulations provides, in part, that the proceeds must be paid to the “holders of any registered security interests in the property and to the first nation in order of their priority under the laws applicable in the province in which the property was seized.” This means that a First Nation may be required to pay out other registered security holders from the sale proceeds, before it can retain any of the proceeds for payment of the tax debt. First Nations may wish to seek legal advice in each case in order to assess the registered security interests (if any) in property it is considering for seizure.

PART XV

SEIZURE AND ASSIGNMENT OF TAXABLE PROPERTY

This Part reflects the detailed provisions governing the seizure and assignment of taxable property set out in the Enforcement Regulations. This enforcement measure can be taken where the taxes remain unpaid for nine (9) months after a tax arrears certificate is issued (i.e., fifteen (15) months after taxes became due). Under this process, the First Nation seizes the taxable property on which the unpaid taxes are owing and auctions or tenders the right to an assignment of the property to persons eligible to hold the interest in land. After the auction or tender, the debtor is given three (3) months to redeem the property by paying the upset price, plus an additional three percent (3%). This process is similar to the tax sale process in local government jurisdictions.

Section 36.2 provides for the required notice of seizure and assignment and includes a form of notice set out in Schedule VIII. Under the Enforcement Regulations, the notice must describe the proceedings referred to in the Regulations.

Section 36.3 allows the tax administrator to proceed with the sale where the taxes have not been paid after six (6) months from the notice of seizure and assignment.

The Enforcement Regulations allow the sale to be by public tender or auction. The First Nation may wish to provide for one of these methods within the law itself and set out the procedures that will be followed. Alternatively, section 36.4 provides for Council to proceed by resolution.

Section 37.1 requires the tax administrator to set an upset price for the purchase of the property at auction or tender. The upset price must be at least the amount of unpaid taxes, penalties and interest, calculated to the *end* of the redemption period, plus five percent (5%) of that amount. The addition of five percent (5%) is intended to cover the First Nation's costs of undertaking this enforcement method. The property cannot be sold for less than the upset price.

Sections 38.1 and 38.2 provide for the notice of the auction or tender and sets out provisions respecting the conduct of the auction or tender. Under section 38.3, property not sold is deemed to be purchased by the First Nation.

Section 39.1 requires the tax administrator to give notice to the Minister of every purchase under this Part.

Section 40.1 sets out the rights retained by the holder after the sale and during the redemption period. These include the right of the holder to continue to occupy the property during the redemption period. The holder must not permit the property to deteriorate during this period (referred to as "waste") and the purchaser has the right to enter the property in order to maintain it. If the property is not redeemed before the end of the redemption period, the property transfers to the purchaser free and clear of charges other than covenants, building schemes and rights-of-ways registered against the land. The holder is then required to vacate the property.

Section 16 of the Enforcement Regulations requires the proceeds of sale to be paid to the holders of registered interests in the property in order of their priority at law. Section 43.1 provides for an order of payment first to the First Nation and then to other registered security holders, with any remaining moneys to the debtor.

Section 44.1 allows the First Nation to sell property that it acquires as the deemed purchaser at a sale (under section 38.3), provided it is sold for not less than the upset price. Under section 44.2, a sale by the First Nation does not affect the redemption period and the debtor's ability to redeem the property during the redemption period.

PART XVI

DISCONTINUANCE OF SERVICES

This Part reflects the requirements and limitations for a First Nation to discontinue services to a holder for failure to pay taxes. This enforcement measure can be taken where the taxes remain unpaid for thirty (30) days after a tax arrears certificate is issued (i.e., seven (7) months after taxes became due). A First Nation's ability to discontinue services is limited by the

Enforcement Regulations. A First Nation may not discontinue fire or police services to any property, and may not discontinue water or garbage service to a residential dwelling. Electrical and natural gas services cannot be discontinued to a residential dwelling from November 1 to March 31. A form of notice of discontinuance is set out in Schedule X to the sample law.

PART XVII

GENERAL PROVISIONS

Sections 46.1 to 46.3 provide the circumstances under which information or records obtained or created under the law can be disclosed. Section 47.1 provides for the disclosure of information for research purposes. A decision to disclose information for research purposes must be made by Council and Council must take steps to protect the confidentiality of the information. These provisions are required by the Taxation Law Standards.

Sections 49.1 and 49.2 limit a person's ability to challenge a payment made under the taxation law. A person cannot challenge a payment after the expiration of six (6) months from making the payment.

Sections 50.1 and 50.2 set out notice provisions that apply under the law unless otherwise specified. For example, there are specific notice provisions that apply to the enforcement provisions.

Section 52.1 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.