



April 11, 2022

Proposed Standards for First Nation Service Tax Laws, 2022

Standards established by the First Nations Tax Commission (FNTC) reflect best practices in property taxation, and are designed to support First Nation economic growth, First Nation jurisdiction, harmonization, and the interests of all stakeholders in the First Nation property tax system.

Under the *First Nations Fiscal Management Act* (the “Act”), the FNTC reviews and approves laws. Section 35(1) of the Act gives the FNTC the authority to establish standards, not inconsistent with the regulations. The standards established by the FNTC are additional requirements and, together with the Act and its associated regulations, form the regulatory framework supporting First Nation taxation under the Act.

As a matter of policy, the FNTC seeks public input prior to introducing or significantly amending its Standards. This input is critical in developing standards that are acceptable and effective for participating First Nations and their taxpayers.

The FNTC has established *Standards for First Nation Service Tax Laws, 2016* (“Standards”) to support First Nations wishing to enact service tax laws under subparagraph 5(1)(a)(iii) of the Act. First Nations may enact a service tax law to recover all or a portion of the cost of infrastructure used for the provision of local services. Under the current Standards, a First Nation must enact a service tax law before construction of the infrastructure that will be funded by the service tax, based on estimated costs. The FNTC is proposing new Standards that among other changes, would provide an option for First Nations to enact a service tax law after the completion of construction of the infrastructure, based on actual costs. Further the proposed Standards would remove assessed value as a basis on which the service tax can be levied. The proposed Standards are intended to facilitate greater use of the service tax power so that First Nations can fund needed infrastructure.

The proposed Standards include:

- A requirement (s. 1.4) that a First Nation can impose a service tax within a local service area only where it has determined that the service provides a benefit to the area that is different or greater than what is received generally by other interests or rights in reserve lands.
- A new subsection (s.1.5) to ensure that the service tax law is enacted not more than one year after the completion of the infrastructure.

- Section 3.3 clarifies the use of exemptions and extends the requirement of compensating the local revenue account to situations where an interest or right is held indirectly by or on behalf of the First Nation or a member through a corporation, partnership, trust or any other mechanism.
- Section 3.5 is added to prohibit the application of a service tax where an interest, right, or holder of the interest or right, will not have the opportunity to benefit from the service, immediately or in the future.
- Section 6.1 is changed by removing assessed value as a basis on which the service tax can be levied.
- Section 6.2 is changed by removing the reference to physical characteristics and instead specifying the approach to determining taxable area or frontage for corner or irregularly shaped parcels.
- Section 7.4 has been changed to require that the tax rate or rates are set so that similarly benefitted properties are taxed at the same rate, and that the tax rates vary for properties that are not similarly benefitted according to how much they benefit. This change reflects an approach to service taxes that strives to ensure a fair and equitable allocation of taxes on benefiting properties.
- Section 7.5 has been added to require that the rates be supported by a report showing information about the project including description, cost, life expectancy of the service, basis on which the tax is levied, duration of tax, tax rates, and an explanation how the interests or rights are similarly benefitted, or the differences in benefit, as applicable.
- Section 8 adds a minimum of five years in which the tax can be imposed. This minimum ensures that taxpayers will have at least five years over which to pay their share of the service tax.
- Section 14 is changed to include grounds for appeal on the basis that an interest or right or its holder will not have an opportunity to benefit from the service, immediately or in the future.
- Two categories of infrastructure have been removed from the Schedule: administrative buildings and community health buildings.
- Several drafting updates include revising the definition of “holder” to reflect bijural application (i.e., common law and civil law), ensuring the consistent use of the term “levied”, and clarifying the definition of “service”.

The FNTC is seeking public input in respect of these proposed Standards. If you wish to learn more about the proposed changes, please contact the FNTC at mail@fntc.ca or by telephone toll free at 1 (855) 682-3682. Electronic versions of the proposed Standards (changes are highlighted in red) are available at www.fntc.ca or by clicking the link below:

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Please direct your written comments on or before May 16, 2022, to:

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