



First Nations Tax Commission

Commission de la fiscalité des premières nations

April 4, 2011

BULLETIN

Annual By-laws – FNTC Requirements

Important Changes to the 2011 Annual Expenditure By-law Policy

Use of Reserve Funds

First Nations that have established reserve funds may not have adequate reserve fund provisions in their property tax by-laws to govern the use and management of reserve funds.

The change to the FNTC Expenditure Policy is directed at those First Nations that have established, or wish to establish, reserve funds, but do not have reserve fund usage provisions in their property tax by-law. The change (see section 9 of the FNTC Expenditure By-law Policy) establishes the same reserve fund usage requirements that are set out in the FNTC Property Tax By-law Policy.

Important Changes to the 2011 Annual Rates By-law Policy

Accounting for New Construction in the Average Tax Bill Calculation

An amendment to the Annual Rates By-law policy responds to the issue of new construction skewing the current year's average tax bill in the analysis undertaken with the previous year's average tax bill. Accounting for new construction in the calculation will ensure that the comparison only examines tax bill changes as a result of changes in real estate market value and not because the property is substantially different than the previous year.

General Requirements

Timing for the making of rates and expenditure by-laws

FNTC policy requires First Nations to annually enact rates and expenditure by-laws.

Setting tax rates in the first year of taxation (Section 5 of the FNTC Rates Policy)

First Nations entering into their first year of taxation must establish tax rates that are identical to rates established by the former taxing authority in the *current* or *preceding* year or where there was no former taxing authority, the same rates as the reference jurisdiction in the *current* or *preceding* year. (The reference jurisdiction should be contiguous with the First Nation and have similar service obligations).

Setting tax rates in subsequent years (Section 6 of the Rates Policy)

In the second and all subsequent years that a First Nation exercises property taxation, tax rate setting must meet the requirements of section 6 of the Policy. First Nations must ensure that in instances where proposed tax rates will lead to a tax bill increase, the average tax bill for each property class will not increase by more than the national rate of inflation from the previous year.

For the 2011 tax year, the annual rate of inflation or consumer price index is 2.4%.

In determining the average tax bill, tax administrators can use one of two methods:

1. Mean Tax Bill: divide the total number of folios (i.e., taxable interests) into the total revenues collected from that property class. For example, if \$100,000 in taxes were collected from 100 residential properties, the average tax bill would be \$1,000 per residential property; or
2. Median Tax Bill: the tax bill in the middle of each property class. In order to find the median tax bill, you have to put EVERY tax bill in order from lowest to highest by property class, and then find the tax bill that is exactly in the middle. For example the median of the following string of numbers is 45; (2, 32, 33, 45, 60, 62, 70). If there is no "middle" tax bill, because there is an even number of folios, the median is the mean (the usual average) of the middle two values. (The FNTC can provide a spreadsheet application to assist in these calculations).

First Nations can express tax rates in \$1, \$100, or \$1000 of assessed value depending on local practice.

Justification for increased tax bills not meeting Section 6 of the Rates Policy

In situations where First Nations establish tax rates that may result in average tax bills not meeting the criteria stated above, the FNTC may recommend for ministerial approval of these by-laws provided that there is justification on one of the following grounds:

- special projects
- incremental growth
- increases in local inflation above the national average
- taxpayer support, or
- a fundamental change to the assessment methods for that property class.

Also, the FNTC may recommend for ministerial approval rates by-laws that exceed the section 6 requirements if the proposed First Nation's rates are identical to the previous and current year's rates set by the reference jurisdiction. In either scenario, First Nations must give prior notice to taxpayers of the tax bill increase and the reasons for the increase. This ensures that First Nation tax authorities can set appropriate tax rates to meet specific local economic circumstances.

Minimum Tax

First Nations may wish to set a minimum tax to be applied to properties within a property class. A minimum tax means that a property may be levied a minimum amount of tax even though its assessed value would result in a lower amount of tax. FNTC Rates Policy provides 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:

- a. to harmonize with minimum tax amounts established in the relevant province or the reference jurisdiction; and
- b. the First Nation's cost of providing services to properties with lower assessed values exceeds one hundred dollars (\$100).

Establishing of contingency funds and reserve funds

With respect to the annual expenditure by-law, FNTC Expenditure Policy encourages First Nations to establish in their expenditure by-laws contingency funds of 1% to 10% of the property tax revenue.

For First Nations establishing reserve funds for the first time, reserve funds must be established in an annual expenditure by-law and must comply with requirements in the First Nation's taxation by-law. Reserve funds must also meet the criteria set out section 6 of the Expenditure Policy including the requirement for capital plans.

Amendments to the Budget during the Tax Year

First Nations wishing to amend their local revenue projected budgets are reminded that any changes to the budget must be made with an amendment to the Annual Expenditure By-law.

FNTC information requirements

FNTC requires sufficient information to review and approve by-laws. The FNTC may request some or all of the following information to accompany the First Nation's annual by-laws:

- (1) the summary assessment roll for the two previous years and current taxation year;
- (2) the number of property occurrences within each property class (this usually appears on the summary assessment rolls provided by the First Nation's assessor);
- (3) the tax rates from the previous two years;
- (4) the amount of new construction reflected in the current assessment roll, as determined by comparing the folio counts in this year to last year; and
- (5) the nearest or adjacent jurisdiction to be considered as a tax reference along with that jurisdiction's tax rates for the previous and current taxation year.

This information supports proper decisions and ensures the First Nation property tax system remains transparent and maintains taxpayer confidence.

Tax notices must only be issued once by-laws have been approved by the Minister of Indian and Northern Affairs and you have received notice of the approved by-law from the By-law Registrar.

In preparation for your tax rates and expenditure by-laws, please confirm the date when tax notices are to be issued and ensure that the signed by-laws and all supporting materials are filed with the s.83 By-law Registrar, i.e., a copy of your assessment summary, rates of the neighbouring jurisdiction, if rates are comparative, and a copy of the proposed budget, as soon as practicable. To allow sufficient time for the review and approval of your First Nation's annual by-laws and to ensure compliance with the timelines established in your First Nation's taxation by-law, the FNTC recommends that First Nations submit their annual by-laws as early as possible in advance of the date tax notices are to be issued.

Technical Comments on Draft By-laws

Although not required, First Nations are encouraged to submit their draft by-laws as early as possible to FNTC representatives for the purpose of providing technical commentary. Each year a number of common errors are found in by-laws. By providing technical comments on draft by-laws, the FNTC can help minimize the amount of errors before the by-laws are sent to Chief and Council.

For more information, please contact us at:

**First Nations Tax Commission
160 George Street
OTTAWA, ON
K1N 9M2**

Telephone: (613) 789-5000

Email: lilian@fntc.ca