

**STANDARDS FOR
FIRST NATION PROPERTY TAXATION LAWS**

[Consolidated to 2011-03-29]

**PART I
PREAMBLE**

WHEREAS:

- A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;
- B. Standards are established by the Commission to further the policy objectives of the Commission and the Act, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues; and
- C. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

**PART II
PURPOSE**

These Standards set out the requirements that must be met for First Nation property taxation laws enacted under paragraphs 5(1)(a) and (e) of the Act. These Standards are used by the Commission in its review and approval of First Nations' property taxation laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. These Standards are intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY AND PUBLICATION**

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

PART IV
APPLICATION

These Standards apply to every property taxation law submitted to the Commission for approval under the Act.

PART V
DEFINITIONS

In these Standards:

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c.9, and the regulations enacted under that Act;

“assessable property” means property that is subject to assessment under an assessment law enacted under paragraph 5(1)(a) of the Act;

“Commission” means the First Nations Tax Commission established under the Act;

“Council” has the meaning given to that term in the Act;

“First Nation” means a band named in the schedule to the Act;

“holder” means a person in lawful possession of an interest in land or a person who

- (a) is entitled, through a lease, licence or other legal means, to possess or occupy the interest in land,
- (b) is in actual occupation of the interest in land,
- (c) has any right, title, estate or interest in the interest in land, or
- (d) is a trustee of the interest in land;

“interest in land” or “property” means land or improvements, or both, in a reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

“Law” means a taxation law enacted under paragraphs 5(1)(a) and (e) of the Act;

“Province” refers to the province in which the assessable property is situated;

“reserve” means any land set apart for the use and benefit of a First Nation within the meaning of the *Indian Act*;

“reserve fund” in this Standard does not include a reserve fund established for development cost charges purposes or a debt reserve fund established by a borrowing member;

“resolution” means a motion passed and approved by a majority of Council

present at a duly convened meeting;

“tax administrator” means a person appointed by Council to administer and enforce a Law;

“tax notice” means a notice of taxes owing sent to a holder of taxable property under a Law;

“tax roll” means a list of persons liable to pay tax on taxable property;

“taxable property” means a property that is subject to tax under a Law;

“taxation year” means the calendar year to which an assessment roll applies for the purposes of taxation;

“taxes” includes

(a) all taxes on interests in land imposed, levied, assessed or assessable under an assessment local revenue law, and all penalties, interest and costs added to taxes under a Law; and

(b) for the purposes of collection and enforcement, all taxes on interests in land imposed, levied, assessed or assessable under any local revenue law of the First Nation, and all penalties, interest and costs added to taxes under such a Law; and

“taxpayer” means a person liable for taxes in respect of taxable property.

Except as otherwise provided in these Standards, words and expressions used in these Standards have the same meaning as in the Act.

[am. FNTC Resolution 2008-09-17.]

PART VI STANDARDS

1. Appointment of Tax Administrator

The Law must provide for the appointment by Council resolution of a tax administrator to oversee the administration and enforcement of the Law.

2. Tax Liability

The Law must

(a) provide that it applies to all interests in land in the reserve; and

(b) provide that all interests in land in the reserve are subject to taxation unless exempted from taxation in accordance with the Law.

3. Exemptions from Taxation

3.1 Where a First Nation wishes to provide for exemptions from property taxation under a Law, those exemptions must be set out within the Law.

3.2 Where exemptions from taxation are included in a Law, the exemptions

must be in respect of interests in land in one or more of the following categories:

- (a) exemptions for interests in land held or occupied by members of the First Nation;
- (b) exemptions for interests in land held or occupied by the First Nation or corporations in which at least a majority of the shares are held in trust for the benefit of the First Nation or all of the members of the First Nation; or
- (c) exemptions within a class of exemption used by local governments in the Province.

3.3 Exemptions from taxation under paragraphs 3.2(a) and (b) must not exempt interests in land held by a member, the First Nation or a corporation, as the case may be, that are actually occupied by someone other than a member, the First Nation or a corporation.

[am. FNTC Resolution 2008-09-17.]

4. Tax Abatement and Granting Programs

4.1 Where the Law provides for tax abatement, the Law must

- (a) provide for the same type and offer the same amount or percentage amount of abatement as offered by the Province; or
- (b) offer an abatement for residential taxpayers based on
 - (i) age of sixty-five (65) years or older,
 - (ii) physical or mental disability, or
 - (iii) financial need.

4.2 Where the Law provides for tax abatement, the qualifying requirements must be set out in the Law and the amount of abatements given must be shown annually in the annual expenditure law.

4.3 Where the Law provides for a granting program, the Law must

- (a) set out the objectives of the program, which must relate to a community purpose or goal;
- (b) set out the qualifying criteria for the program;
- (c) provide that the grant
 - (i) may be given only to a holder of property that is taxable in the current taxation year,
 - (ii) must be in an amount equal to or less than the taxes payable on the property in the current taxation year, less any other grants, abatements or offsets, and
 - (iii) must be used only for the purposes of paying the taxes owing on

- the property in the current taxation year; and
- (d) provide that Council will in each taxation year determine all grants that will be given and authorize those grants in an expenditure law.

[am. FNTC Resolution 2010-12-16.]

5. Reserve Funds

5.1 If a First Nation wishes to establish a reserve fund or use a reserve fund existing at the time the First Nation was added to the schedule to the Act,

- (a) the Law must include the provisions set out in this section; and
- (b) each reserve fund must be established in an expenditure law.

5.2 The Law must include the following provisions respecting the use of reserve funds:

- (a) except as authorized in the Law, money in a reserve fund and interest earned on it must be used only for the purpose for which the reserve fund was established;
- (b) Council may, by expenditure law,
 - (i) transfer moneys in a capital purpose reserve fund to another reserve fund or account only where all projects for which the reserve fund was established have been completed,
 - (ii) transfer money in a non-capital purpose reserve fund to another reserve fund or account,
 - (iii) borrow money from a reserve fund where not immediately required, on condition that the First Nation repay the amount borrowed plus interest on that amount at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation, no later than the time when the money is needed for the purposes of that reserve fund, and
 - (iv) as an exception to subparagraph (iii), borrow money from a reserve fund where the First Nations Financial Management Board has assumed third-party management of the First Nation's local revenue account and, acting in the place of the Council, has determined that moneys must be borrowed from a reserve fund to meet the financial obligations of the First Nation; and
- (c) all payments into a reserve fund and all expenditures from a reserve fund must be authorized by expenditure law.

5.3 Where the Law provides for the investing of moneys in a reserve fund that are not immediately required, it must allow for investment only in one or more of the following:

- (a) securities of Canada or of a province;
- (b) securities guaranteed for principal and interest by Canada or by a province;
- (c) securities of a municipal finance authority or the First Nations Finance Authority;
- (d) investments guaranteed by a bank, trust company or credit union; or
- (e) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

[am. FNTC Resolution 2008-09-17; 2011-03-29.]

6. Tax Roll

The Law must provide for the tax administrator to create a tax roll each year by a date set out in the Law.

7. Penalties

Where the Law provides for a penalty to be imposed in respect of unpaid taxes, the Law must set out the date on which a penalty will be imposed if taxes remain unpaid.

8. Tax Payments

8.1 The Law must

- (a) provide for the date on which taxes are due and payable; and
- (b) set out where tax payments must be made and the acceptable forms of payment.

8.2 Where the Law provides for tax payments by installments, the Law must set out

- (a) how a taxpayer may apply to pay taxes by installments;
- (b) the due date for each installment;
- (c) how each installment amount will be calculated;
- (d) any consequences of failing to pay an installment by the installment due date; and
- (e) any penalties or interest that will be levied on unpaid installment payments and when such charges will be imposed.

8.3 The Law may require taxpayers to make an interim tax payment before the First Nation establishes its annual tax rates, provided the First Nation is located in a Province that permits interim tax levies in the provincial property taxation regime.

8.4 Where a Law requires an interim tax payment, the Law must set out

- (a) the date on which the interim payment is due and payable;
- (b) the calculation of the interim payment amount based on a specified percentage of the property value taxes levied on a property in the previous taxation year;
- (c) the interim tax payment percentage for each property class;
- (d) that the interim tax payment will be applied towards the total taxes owing for that taxation year; and
- (e) any penalties or interest that will be levied on an unpaid interim tax payment and when such charges will be imposed.

8.5 The percentages required by paragraph 8.4(c) must not exceed the percentages permitted under the applicable legislation in the Province in which the First Nation is located.

[am. FNTC Resolution 2009-03-25.]

9. Tax Notices

9.1 The Law must require the tax administrator to mail a tax notice in each year by a date set out in the Law that is at least thirty (30) days before the date that any taxes are due.

9.2 The Law must require the tax administrator to mail a tax notice to

- (a) each holder of an interest in land subject to tax; and
- (b) each person whose name appears on the tax roll in respect of a taxable property.

9.3 The Law must require a tax notice to contain at least the following information:

- (a) a description of the property;
- (b) the taxes imposed under the Law for the current taxation year;
- (c) when penalties will be added if taxes are not paid;
- (d) any unpaid taxes, penalties, interest and arrears in respect of the property; and
- (e) where payment must be made, the manner of payment, and the date or dates the taxes are due, including due dates for any interim tax payments and installment tax payments.

9.4 The Law must provide for the mailing of amended tax notices where the tax roll is amended to reflect a revised or supplementary assessment roll.

[am. FNTC Resolution 2009-03-25.]

10. Tax Refunds

10.1 The Law must set out procedures for providing refunds to taxpayers and the circumstances under which refunds will be given. The Law must include at least the following provisions:

- (a) a refund of excess taxes paid where a change in the assessment results in a reduction of taxes for a property;
- (b) payment of interest at a rate of two percent (2%) below the prime lending rate of the principal banker to the First Nation on the fifteenth day of the month immediately preceding the calculation of the interest for the following three (3) month period.

10.2 Notwithstanding subsection 10.1, the Law may provide for a refund of excess taxes paid to be applied as a credit on account of taxes or other unpaid amounts due to the First Nation.

11. Tax Collection and Enforcement

11.1 The Law must set out the enforcement measures that may be taken by the First Nation to collect unpaid taxes.

11.2 If the First Nation wishes to recover its costs where enforcing by way of seizure and sale of personal property, the types of costs and the amounts must be specified in the Law.

12. Confidentiality

The Law must provide for the confidentiality of information and documents obtained by the tax administrator, assessor, the Assessment Review Board and any other person who has custody or control of records obtained or created under the Law, except that disclosure may be made

- (a) in the course of administering the Law or performing functions under it;
- (b) in proceedings before the Assessment Review Board or a court of law;
- (c) where a holder gives written authorization for his or her agent to obtain confidential information relating to a property; or
- (d) by Council to a third party for research (including statistical) purposes.

PART VII COMING INTO FORCE

These Standards are established and in effect as of October 22, 2007.

PART VIII
ENQUIRIES

All enquiries respecting these Standards should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857