



## **Guidelines for the *FMA* Representation Process and Submission of Property Tax Laws to the FNTC for Review and Approval**

Transparency is an important principle for the exercise of property taxation powers under the *First Nations Fiscal Management Act (FMA)*. For this reason First Nation members, potential taxpayers, and others affected by First Nation taxation are given the right to know about proposed property tax laws before they are enacted.

The *FMA* contains specific provisions (sections 6 and 7) to ensure that these individuals and groups are given notice and an opportunity to raise concerns before a First Nation Council formally enacts a property tax law. Moreover, the *FMA* has additional requirements (section 8) that First Nations must follow when submitting their laws for FNTC review and approval.

Defects in notice have the potential of invalidating laws. Therefore ensuring that the content of the notice, the recipients of notice, and how notice is given is consistent with legislative requirements is very important. For this reason alone, FN administrators should seek legal advice in carrying out their duties associated with section 6 and 7 notice provisions.

These guidelines are intended to assist tax administrators and legal counsel as they coordinate fulfilling the *FMA* requirements concerning representation and the submission of First Nation laws. These Guidelines are divided into two parts: *FMA* Representation Process and Submissions of Laws for FNTC Review and Approval.

## ***FMA Representation Process***

The representation process under the *FMA* is a procedural safeguard designed to ensure that affected persons are given notice and an opportunity to make written representations regarding certain First Nation local revenue laws before they come into force. The *FMA* sets out detailed requirements for how and when notices must be given, the content of those notices and the persons to who notices must be given.

### **Types of First Nations Laws Affected**

Not all First Nation laws made under the *FMA* are required to undergo the representation process under section 6. Only the following laws are affected:

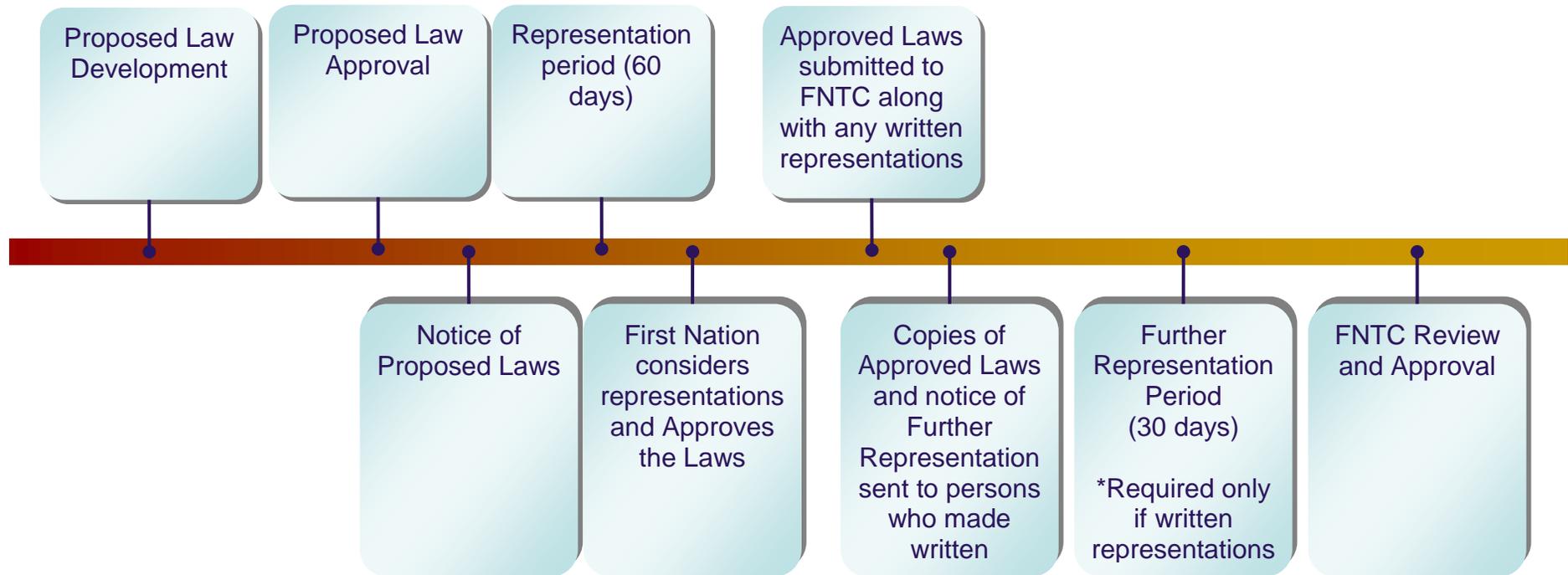
- Property tax
- Property assessment
- Taxation for the provision of services
- Development cost charges
- Taxation of business activities
- Taxpayer representation to council

*Annual Rates and Expenditures Laws are excluded*

For First Nations transitioning into the *FMA*, or First Nations taxing for the first time, the initial laws that will trigger the section 6 representation procedures will be the property tax and assessment laws.



# FMA Representation Process for New Local Revenue Laws



## **Passage of the Proposed Laws**

Before the representation process begins, the Council must approve the proposed laws through BCR or some other official approval procedure. The approval of these laws signifies that the Council is prepared to enact these laws subject to the consideration of any representations it may receive.

Although not required, it is a good practice for the Council to approve a representation plan prepared by the tax administrator. A representation plan would typically indicate the period for making representations, dates and locations for any planned public meetings, the newspaper in which notice will be published, and the recipients of the mailed notice other than those identified by the legislation.

## **Representation Period**

The representation period required under section 6 is **a minimum of 60 days**. It is important to note that the counting of the 60 days period cannot begin until all notices have been given. In order to ensure the full 60 day period is given, the First Nation should determine in advance the date when all notices will have been given as required, and set the 60 day period from that date.

## **Forms of Notice**

There are three forms of notice that must be completed. Each notice must meet the form and content requirements set out in the section 6 of the *FMA*. This means that the same notice should be used for each of the three forms of notices required.

### 1. Newspaper publication

First Nations must publish the notice in the local newspaper. This would likely be the nearest local newspaper. The date of publication must precede or coincide with the beginning of the 60 day representation period. First Nations should retain a copy of the newspaper notice.

### 2. Public posting

First Nations must also place the notice in a conspicuous location on reserve that is accessible to the public. Posting the notice on a public bulletin board at the Band office would be ideal. The date of posting must precede or coincide with the beginning of the 60 day representation period.

### 3. Mail or Electronic Delivery

First Nations must send the notice by mail or electronic mail to members, the FNTC, potential taxpayers, and others (governments, organizations, or individuals) who, in the opinion of Council, may be affected by the proposed law. The date of mailing or sending electronically must precede or coincide with the beginning of the 60 day representation period. When sending the notice to members, First Nations may make use of the First Nation's electors mailing list to ensure the notice is sent to the last known address.

The FNTC recommends that when a First Nation sends the notice to the FNTC, it include a copy of the proposed laws. This will enable the FNTC to provide technical assistance more readily if the FN requests support.



## **Content of the Notice**

Notices must contain a description of the proposed law. If the notice is for more than one proposed law, the notice must contain a description for each law. The description should identify the proposed law, state its purpose, and summarize generally its provisions.

The notice must indicate where copies of the proposed law may be obtained. This is usually the offices of the tax administrator.

The notice must invite representations regarding the proposed law to be made in writing within 60 days after the date stated in the notice. Notices should provide an address where written representations will be received (e.g., office of the tax administrator). If the Council intends to hold a public meeting regarding the proposed law, the notice must state the time, date and location of the meeting.

The FNTC has developed sample section 6 notices that are available for the use of First Nations. These are available from the *FMA* Registrar and on the FNTC website, [www.fntc.ca](http://www.fntc.ca). *The FNTC strongly recommends that the First Nation seek legal advice in the preparation and delivery procedures of notices.*

## **Considering Representations**

If during the 60 day period, a First Nation receives a written representation concerning the law or if it receives an oral representation during a public meeting concerning the law, it must consider the representation. This does not mean that the Council is required to change the proposed law; it means that Council must review the representation and determine if in its view any changes to the law are warranted.



If written representations are received within the 60 day period, the Council must, when it sends the proposed law to the FNTC for review and approval,

- provide a copy of the law to any persons who made a written representation, and
- invite those same persons to make written representations to the FNTC within 30 days after the day on which they receive the copy of the law.

This is the “section 7 notice”. The *FMA* does not require that delivery of the laws and invitations be done by a specific method, so a First Nation can choose whether to use hand delivery, mail or another method. However, the counting of the 30 day period only begins when the section 7 notice is received. If the First Nation chooses to use mail delivery, it should allow extra time for the law and invitation to be received, by allowing at least 5 days for delivery. In this way, First Nations would set the deadline for making representations to the FNTC at 35 days from the date of mailing. For example, a section 7 notice dated and mailed April 30 would advise that the deadline is June 4 for making written representations to the FNTC.

All deadlines for making further representations to the FNTC should be the same. Where the First Nation has received more than one written representation, the FNTC asks that the First Nation set a 30 day deadline that applies to all persons receiving the section 7 notice. This means that the First Nation will need to begin the 30 day period as soon as all persons who made written representations to Council have received the section 7 notice.



## **Submissions of *FMA* Laws for FNTC Review and Approval (Section 8 Requirements and Additional Documentation)**

### **Property Tax Laws (Taxation, Assessment, Taxation for the Provision of Services, and Development Cost Charges)**

First Nations submitting their property tax laws (including amendments<sup>1</sup>) for FNTC Review must ensure the following requirements are met. All submitted laws must be in the original signed form, enacted at a duly convened meeting on a date later than 60 days from when notice was given of the proposed law. The following information must accompany the submitted laws:

- a description of the lands, interests or rights subject to the law(s) (i.e., First Nations must provide their civic address, Indian Reserve number, and general classification of the types of taxable property on the reserve);
- a description of assessment practices to be applied (i.e., First Nations must indicate that they are using provincial assessment methods, and have elected to use the *FMA* assessment appeal procedures or provincial assessment appeal procedures.);
- information regarding services to be provided from local revenues, existing service agreements, and any service agreement negotiations underway (e.g., First Nations should indicate the types of services - access, road maintenance, general administration, protective services - that will be provided with their local revenues, whether there is an agreement in place to provide local government services, or whether the First Nation is negotiating a service agreement.);
- a description of the notices that were given, any consultation undertaken, and copies of any written representation received by the First Nation; and
- evidence that the law was duly made (This requirement is satisfied with a specific provision in the law – see Sample Law).

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<sup>1</sup> First Nations that are making minor amendments to these laws may be exempted from this requirement upon request to the FNTC.



To assist First Nations, the FNTC has sample letters which can be used to confirm that section 8 requirements have been met.

### **Additional Documentation**

- First Nations must provide a letter of certification that the section 6 requirements have been met. The FNTC has sample letters.
- First Nations in BC and Quebec are required to show evidence that the province has vacated the field of property taxation. In BC, a tax certificate under the *Indian Self Government Enabling Act* is issued by the province. In Quebec, the province issues an Order in Council as per 14.8.1 of the *Municipal Code of Quebec*.
- The FNTC may request additional documentation as evidence that the First Nation's law was made in accordance with the Act, its regulations, and the FNTC standards.

