

**STANDARDS FOR  
FIRST NATION BUSINESS ACTIVITY TAX LAWS**

**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 local revenue laws enacted under subparagraph 5(1)(a)(iv) of the Act. These Standards are used by the Commission in its review and approval of First Nations' business activity tax 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 all First Nation business activity tax laws submitted to the Commission for approval under the Act.

Part VII of these Standards apply only to business activity tax laws that provide for the assessment and taxation of business premises on reserves located in the Province of Manitoba.

**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 liable to assessment under a Law;

“assessed value” means the value of business premises determined in accordance with a Law;

“assessment” means the valuation and classification of property;

“assessment law” means a law enacted by a First Nation under subparagraph 5(1)(a)(i) of the Act that provides for the assessment of property;

“Assessment Review Board” means an independent appeal body established by a First Nation to hear and determine assessment appeals;

“assessor” means a person qualified to assess property for taxation purposes in the province in which the assessable property is located;

“business” means

(a) a commercial, merchandising or industrial activity or undertaking,

(b) a profession, trade, occupation, calling or employment, or

(c) an activity providing goods or services,

whether or not carried on continuously or on an intermittent or one-time basis and whether or not for profit, and however organized or formed, and includes a co-operative and an association of persons;

“business activity tax” or “tax” means a tax imposed, levied, assessed or assessable under a Law and all penalties, interest and costs added to taxes as provided in a Law;

“business assessment roll” means a list setting out interests in land and their assessed values for the purposes of taxation and includes a supplementary roll and any amendments to the roll;

“business operator” means a holder of business premises who conducts business on or from a business premises;

“business premises” means property used in respect of a business, or on or from which a business is carried on;

“business tax notice” means a notice of business activity taxes owing sent to a business operator under a Law;

“business tax roll” means a list prepared under a Law of persons liable to pay business activity tax on business premises and includes a supplementary roll and any amendments to the roll;

“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;

“First Nation Corporation” means a corporation 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;

“interest in land” or “property” means land or improvements, or both, in the reserve and, without limitation, includes 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 business activity tax law enacted under subparagraph 5(1)(a)(iv) of the Act;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“reference date” means the date used as a reference date for assessments conducted under a First Nation’s assessment law;

“reference jurisdiction” means the taxing jurisdiction that a First Nation specifies to the Commission for the purpose of setting tax rates and comparing local service standards;

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

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

“taxation law” means a law enacted by a First Nation under paragraph 5(1)(a) of the Act respecting the taxation of interests in land; and

“taxation year” means the calendar year in which taxes are levied.

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

## **PART VI STANDARDS**

### **1. Administration and Enforcement of Law**

The Law must provide for

- (a) the appointment by resolution of a tax administrator, or
- (b) the tax administrator appointed under the First Nation’s taxation law,

to oversee the administration and enforcement of the Law.

### **2. 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.

### **3. Tax Collection and Enforcement**

3.1 The Law must provide for the enforcement measures that may be taken by the First Nation to collect unpaid taxes.

3.2 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.

### **4. 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**  
**STANDARDS FOR BUSINESS ACTIVITY TAX (OCCUPANCY)**  
**LAWS IN MANITOBA**

**5. Assessor**

The Law must

- (a) provide for the appointment by resolution of an assessor, or
- (b) require the assessor appointed under the First Nation's assessment law,

to undertake assessments of assessable property in accordance with the Law and such other duties as set out in the Law.

**6. Assessment Timing and Method**

6.1 The Law must provide for the assessment of business premises in each year when a general assessment is made in the Province of Manitoba.

6.2 The Law must require the assessor to determine the assessed value of business premises based on the annual rental value of the business premises on the reference date, by using the

- (a) valuation methods, rates, rules and formulas established under the Province of Manitoba's assessment legislation for the assessment of business premises; and
- (b) assessment practices used by assessors for conducting assessments off the reserve in the Province of Manitoba for business premises.

**7. Business Assessment Roll and Notice**

7.1 The Law must provide for the completion of an annual business assessment roll

- (a) on or before December 31 of the year before the taxation year;
- (b) containing a list of every business premises that is liable to taxation under the Law; and
- (c) containing at least the following information in respect of each business premises:
  - (i) the name and last known address of the business operator,
  - (ii) the address of the business premises, and
  - (iii) the assessed value of the business premises.

7.2 The Law may provide for the business assessment roll to be combined with the First Nation's assessment roll under its assessment law.

7.3 The Law must provide for

- (a) certification of the business assessment roll by the assessor that the business assessment roll was completed in accordance with the Law;
- (b) delivery of the certified business assessment roll by the assessor to the Council;
- (c) inspection of the business assessment roll by any person;
- (d) a prohibition on using the information contained in the business assessment roll for solicitation purposes; and
- (e) a procedure where holders can apply to have their name, address or other information about the business operator omitted or obscured from the business assessment roll for reasons of safety or the mental or physical health of the business operator or a member of their household.

## **8. Correction of Errors and Omissions**

8.1 The Law must provide procedures for the correction by the assessor of errors and omissions in the business assessment roll through amended or supplementary business assessment rolls.

8.2 Where the First Nation has made an assessment law, the Law may provide for the application of the provisions for the correction of errors and omissions in the assessment roll set out in that assessment law to apply to the correction of errors and omissions in the business assessment roll.

## **9. Business Assessment Notice**

9.1 The Law must provide for business assessment notices to be mailed to all persons named on the business assessment roll in respect of a business premises by a date specified in the Law that is on or before the date set for mailing of business tax notices.

9.2 The Law must require a business assessment notice to contain at least the following information:

- (a) the name and address of the business operator;
- (b) the address of the business premises;
- (c) the assessed value of the business premises;
- (d) the opportunity to make a request for reconsideration of the assessment by the assessor and the deadline for making such a request; and
- (e) the right to appeal the assessment to the Assessment Review Board, how to appeal and the deadline for an appeal.

## **10. Reconsideration**

10.1 The reconsideration procedures in the Law must

- (a) allow a person named on the business assessment roll in respect of a property to request that the assessor reconsider the assessment of that property;
- (b) provide for at least thirty (30) days after the date of delivery of a business assessment notice for a person to request a reconsideration by the assessor;
- (c) set out the grounds for reconsideration;
- (d) require the assessor to complete the reconsideration within fourteen (14) days after the assessor receives a request for reconsideration and
  - (i) notify the person that made the request that the assessment is confirmed, or
  - (ii) where the assessor determines that the property should have been assessed differently, offer to modify the assessment; and
- (e) where the person that made the request agrees to a modification, provide for the assessor
  - (i) to amend the business assessment roll,
  - (ii) to give notice of the amendment to all persons who received a business assessment notice in respect of the assessable property, and
  - (iii) where a notice of appeal has been given in respect of an assessable property, to give notice of the amendment to the Assessment Review Board.

10.2 Where the First Nation has made an assessment law, the Law may provide for the application of the reconsideration provisions in that assessment law to apply to requests for reconsiderations, provided the requirements in subsection 10.1 are met.

## **11. Assessment Appeals**

11.1 The Law must set out, at a minimum, the following grounds for appeal to the Assessment Review Board:

- (a) the assessed value of the property;
- (b) the applicability of an exemption to the property; and
- (c) an alleged error or omission in the assessment.

11.2 If the Law provides for an administration fee for the filing of an assessment appeal, the fee must not exceed thirty dollars (\$30).

## **12. Assessment Review Board**

12.1 Where the First Nation has made an assessment law, the Law must

- (a) provide for the application of the Assessment Review Board provisions in that assessment law to apply to appeals, provided the requirements in this section are met; or
- (b) include the provisions set out in this section.

12.2 The Law must

- (a) set out the powers, duties and functions of the chair;
- (b) provide for the appointment of members of the Assessment Review Board by Council resolution and for a term of appointment of those members of not less than two (2) years; and
- (c) set out when and how members of the Assessment Review Board may be removed from office.

12.3 The Law must establish practices and procedures for the conduct of Assessment Review Board hearings, including respecting

- (a) a party's right to be heard, have representation, present evidence and call witnesses;
- (b) the manner by which the Assessment Review Board may conduct a hearing; and
- (c) the evidentiary rules that apply during a hearing.

12.4 In establishing practices and procedures, the Law may

- (a) provide for additional practices and procedures to be established in a practices and procedures manual approved by Council resolution; and
- (b) permit the Assessment Review Board to determine its own procedure during a hearing to the extent not inconsistent with the Law.

12.5 The Law must provide for, at a minimum, the complainant, the assessor and business operator (if other than the complainant) to be parties to the appeal.

12.6 The Law must set out procedures for updating the business assessment roll to reflect decisions of the Assessment Review Board.

**13. Tax Liability**

The Law must provide that

- (a) it applies to all business premises; and
- (b) all business premises are subject to taxation unless exempted from taxation in accordance with the Law.

**14. Exemptions from Taxation**

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

14.2 Where exemptions from taxation are included in a Law, the exemptions must be in respect of business premises in one or more of the following categories:

- (a) exemptions for business premises held or occupied by a business operator who is a member of the First Nation;
- (b) exemptions for business premises held or occupied by a business operator that is either the First Nation or a First Nation Corporation; or
- (c) exemptions within a class of exemption from business taxes used by local governments in the Province of Manitoba.

14.3 Exemptions from taxation under paragraphs 14.2(a) and (b) must not exempt business premises held by a member, the First Nation or a First Nation Corporation, as the case may be, that are actually occupied by a business operator who is not a member, the First Nation or a First Nation Corporation.

#### **15. Business Tax Roll**

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

#### **16. Tax Rate**

16.1 The Law must establish a rate of business activity tax as a rate for each one hundred dollars (\$100) of assessed value.

16.2 Where the First Nation is exercising its business activity taxing jurisdiction for business premises for the first time, its Law must

- (a) establish the same or a lower rate of business activity tax as is established by the reference jurisdiction for business taxes in the current year; or
- (b) if the reference jurisdiction does not levy a business tax, establish a rate of business activity tax that is the same or lower than the average of the business tax rates levied by all local governments in the Province of Manitoba.

16.3 Where a First Nation wishes to increase its rate of business activity tax,

- (a) its amending Law must establish a rate of business activity tax that is not more than five percent (5%) higher than the rate in the existing Law; and
- (b) the First Nation must justify the increase by written evidence of special projects, incremental growth, increases in local inflation above the national average, taxpayer support, or a fundamental change to the assessment methods for the assessment of business premises.

**17. No Minimum Tax**

The Law must not establish a minimum amount of tax to be levied on business premises.

**18. Tax Payments**

18.1 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.

18.2 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.

**19. Business Tax Notices**

19.1 The Law must require the tax administrator to mail a business 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.

19.2 The Law must require the tax administrator to mail a business tax notice to

- (a) each business operator subject to tax; and
- (b) each person whose name appears on the business tax roll in respect of a business premises.

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

- (a) a description of the business premises;
- (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 installment tax payments.

19.4 The Law must provide for the mailing of amended business tax notices where the business tax roll is amended to reflect an amended or supplementary business assessment roll.

## **20. Tax Refunds**

20.1 The Law must set out procedures for providing refunds to taxpayers and the circumstances under which refunds will be given.

20.2 The Law must include at least the following provisions:

(a) a refund of excess taxes paid where a change in the business assessment results in a reduction of taxes for a business premises; and

(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.

20.3 Notwithstanding subsection 20.2, 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.

## **PART VIII**

### **COMING INTO FORCE**

These Standards are established and in effect as of March 29, 2012.

## **PART X**

### **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