

EXPLANATORY NOTES

SAMPLE FIRST NATION ANNUAL EXPENDITURE LAW

The *First Nations Fiscal Management Act* (“FMA”) provides a framework for First Nation real property taxation on reserve. First Nation fiscal powers are set out in Part 1 of the FMA and include, under section 5, the authority to make laws respecting taxation for local purposes, including laws authorizing the expenditure of local revenues. As part of its real property taxation regime, each First Nation will require an assessment law and a taxation law, as well as annual tax rates and expenditure laws. Paragraph 10(b) of the FMA requires a First Nation to, at least once each year at a time prescribed by regulation, make a law establishing a budget for the expenditure of revenues raised under a property taxation law. Subsection 13(3) of the FMA sets the requirement that there be a balanced budget (i.e., that expenditures may not exceed revenues).

Laws enacted under the FMA must comply with all statutory requirements, any regulations made under paragraph 36(1)(d) of the FMA and any standards established by the First Nations Tax Commission (“Commission”) under section 35 of the FMA. Canada has made the *First Nations Rates and Expenditure Laws Timing Regulations*, which requires rates and expenditure laws to be enacted each year by the date set for tax rates for non-reserve land by the province in which the reserve is located. The Commission has established Standards for First Nation Expenditure Laws (“Expenditure Law Standards”) that provide further requirements for the form and content of expenditure laws.

The sample First Nation Annual Expenditure Law (“sample law”) complies with the FMA requirements, the Regulations and the Expenditure Law Standards. It provides a best practices sample for use and adaptation by First Nations in drafting their own FMA expenditure laws.

These Explanatory Notes provide a synopsis of the sample law and highlight issues that may be considered by First Nations in drafting their expenditure laws.

RECITALS

The sample sets out four recitals that provide for the authority of the law, the fact that the First Nation has made an assessment law and a taxation law, the requirement to make an annual expenditure law, and the creation of both an annual budget and an interim budget. If the First Nation is operating under section 83 by-laws that have transitioned to laws under the FMA, recital B can be revised to reflect this.

SECTION 1

This section sets out the legal name for the First Nation’s law. Proper citation of the law should be used when referencing it in literature, forms or other laws.

SECTIONS 2 AND 9

The definitions used are the same as set out in the FMA, the Regulations and the *Indian Act*. Section 9 of the sample law provides for the definitions in the First Nation’s assessment and taxation laws to apply to this law where terms are not otherwise defined.

SECTION 3 AND SCHEDULE

This section provides for the First Nation’s annual budget, which is attached as a Schedule to the sample law.

The budget shows each type of local revenues collected by the First Nation, as well as any accumulated surplus or deficit from the previous fiscal year. Local revenues include all revenues collected under the First Nation’s local revenue laws, which in addition to general property tax revenues, could include revenues from service tax laws, development cost charges laws and business activity tax laws.

The development cost charge revenues are those amounts collected under the development costs laws, and those amounts taken out of existing development cost charge reserve funds to be expended in the budget year. Amounts collected as development cost charges in a budget year are then transferred into the applicable development cost charge reserve fund. Amounts taken out of existing reserve funds to be expended in the budget year are shown as expenditures in the appropriate budget category.

Reserve fund revenues are those amounts taken out of an existing reserve fund to be expended in the budget year. These amounts are then shown as expenditures in the appropriate budget category. Amounts that are borrowed from a reserve fund are also shown as revenues. Reference should be made to the First Nation's taxation law, and to the Expenditure Law Standards, for requirements respecting the use, borrowing and transfer of reserve fund moneys.

The Expenditure Law Standards require the budget to use the categories of expenditures that are shown in the Schedule.

Subsection 13(3) of the FMA requires the budget to be balanced in each year, which means that the total revenues must equal the total expenditures in the budget, such that the balance showing is zero.

The Expenditure Law Standards require the budget to provide for a contingency amount of at least one percent (1%) and not more than ten percent (10%) of the First Nation's total annual local revenues, excluding any amounts that are transferred into reserve funds in that year. The Standards also require that the budget set out all amounts payable under service agreements during the budget period. These amounts should be shown in the appropriate expenditure categories in the budget, and also noted at the end of the budget in the "Note."

Two appendices are attached to the budget. First, a reserve fund balance sheet that lists each existing reserve fund and shows its balance at the beginning and the end of the budget year, including all transfers in and out of the fund. Second, a development cost charge balance sheet that lists each existing development cost charge reserve fund and shows its balance at the beginning and the end of the budget year, including all transfers in and out of the fund. These appendices are required by the Standards where the First Nation has reserve funds and development costs charge reserve funds. Where a First Nation does not have any reserve funds, Appendix A may be deleted, and Appendix B may be deleted where a First Nation does not have any development cost charges reserve funds.

When using the sample to prepare its budget, the First Nation may delete any aspects of the sample that are not applicable to it in that year.

SECTION 4

Section 4 provides for certain parts of the annual budget to operate as an interim budget in the following taxation year. Having an interim budget provides greater clarity that the First Nation has the authority to make expenditures during the first part of the next taxation year, before a new annual expenditure law is enacted. When the new expenditure law is enacted, the new annual budget will replace the interim budget, and make necessary changes to both the revenues and expenditures. It is open to the First Nation to make a separate interim budget and attach that budget as Schedule B to the law. If this option is taken, section 4 will require redrafting to reference the separate interim budget.

SECTIONS 5 AND 6

Section 5 of the sample law provides that expenditures must be made only in accordance with the budget. This reflects section 13(2) of the FMA. Section 6 provides that where the First Nation wishes to authorize an expenditure not authorized in the annual budget, or change the amount of an expenditure authorized in the annual budget, Council must amend the annual budget by amending this Law in accordance with Council procedure and the requirements of the Act. It is important that First Nations take the necessary steps to amend their expenditure laws if circumstances change during the fiscal year and the budget is no longer accurate.

SECTION 7

This section approves as expenditures the grants shown in the budget. As required by the Commission Standards, grants given in each budget year must be authorized in an expenditure law. The budget details each grant category and the total amounts granted within each category.

SECTION 8 [ONLY IF REQUIRED]

This section provides wording for a First Nation to establish a reserve fund. Reserve funds used for local revenues must be established under an expenditure law and must include a statement setting out the purposes of the reserve fund. If a First Nation has a reserve fund existing when it is scheduled under the FMA, it must establish that reserve fund in an expenditure law if it wishes to use it for local revenues. This section 8 should be deleted if no reserve funds are being established in the budget year.

Under the Expenditure Law Standards, reserve funds can be established for capital infrastructure replacement,

capital infrastructure improvement, contingency reserve purposes, and other purposes that are supported by a capital development plan, contingent liability plan, land management plan, long-term economic plan or financial plan. Contingency reserve funds must be used only for funding unforeseen operating expenditures and stabilizing the temporary impacts of cyclical local revenue decreases. Only unexpended contingency amounts from the previous budget year may be transferred into contingency reserve funds. Further, the amount transferred in any year must not exceed ten percent (10%) of the total local revenues in the current budget year, and the balance in the reserve fund must not at any time exceed the amount that is fifty percent (50%) of the current year's local revenues.

SECTION 8

This section authorizes the expenditure of moneys from the contingency amounts set out in the budget. A First Nation can spend contingency amounts as needed, provided they are used only within expenditure categories set out in the First Nation's budget. Any contingency amounts that are not expended in the budget year are carried into the next budget year as a surplus, and may be transferred into a contingency reserve fund as provided in the Standards.

SECTION 13

This section provides for when the law will come into force. This can be either on the approval of the Commission or a later date as specified by Council. For an expenditure law, it is simplest to provide that it comes into force the day after approval by the Commission, to ensure it comes into force as soon as possible.