

PROPERTY TAXATION BY-LAW POLICY

PART I

PREAMBLE

WHEREAS:

- A. Subsection 83 (1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property tax;
- B. A Memorandum of Understanding (MOU) between the First Nations Tax Commission (FNTC or Commission) and the Minister of Aboriginal Affairs and Northern Development provides for the FNTC to review and recommend section 83 by-laws for Ministerial approval; and
- C. Policies are established by the Commission to further the policy objectives expressed in the MOU, 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.

PART II

PURPOSE

This policy sets out the requirements that should be met for First Nation property taxation by-laws enacted under subsection 83(1) of the Act. This policy is used by the Commission in its review and recommendation of First Nations' by-laws.

PART III

AUTHORITY AND PUBLICATION

This policy is established pursuant to subsection 1.2 of the MOU between the FNTC and the Minister of Aboriginal Affairs and Northern Development.

PART IV

APPLICATION

This policy applies to every property taxation by-law submitted to the Commission for review and recommendation pursuant to the MOU.

PART V
DEFINITIONS

In this Policy:

“Act” means the *Indian Act*, R.S.C. 1985, c. I-5 and the regulations enacted under that Act;

“assessable property” means property that is subject to assessment under an assessment by-law enacted under paragraph 83(1)(a) of the Act;

“assessment” means a valuation and classification of interests in land;

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

“by-law” means a by-law enacted under subsection 83(1) of the Act;

“Commission” means the First Nations Tax Commission established under the *First Nations Fiscal and Statistical Management Act*, S.C. 2005, c.9;

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

“First Nation” means a band as defined under 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;

“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*;

“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 by-law;

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

under a by-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 by-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 or other basis of assessment imposed, levied, assessed or assessable under an assessment by-law, and all penalties, interest and costs added to taxes under a by-law, and
- b) for the purposes of collection and enforcement, all taxes on interests in land or other basis of assessment imposed, levied, assessed or assessable under any by-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 this policy, words and expressions used in this policy have the same meaning as those used or defined in the Act.

PART VI POLICY

1.0 Pre-By-law Requirements

Prior to entering into their initial year of property taxation, First Nations must meet the following requirements outlined in subsections 1.1 to 1.4.

1.1 Early Notification of First Nation Jurisdiction

In order to ensure that procedural fairness is respected, FNTPC must be satisfied that potential taxpayers and affected parties have been given sufficient notice of the First Nation’s intention to assume taxation jurisdiction on reserve lands. A First Nation should inform affected parties of its intention to assume taxation jurisdiction in accordance with paragraph 1.1(a) of this policy. The earlier affected parties are notified, the less potential for confusion and misunderstanding. Where possible, First Nations should hold information meetings with affected parties, namely:

- First Nation Members

Members should have an understanding of real property taxation and its implications for the First Nation community.

- Taxpayers

It is a matter of procedural fairness that taxpayers are informed that the First Nation is assuming taxation jurisdiction and the effect

(e.g. changes in rates, level and types of services) on their interests on reserve.

- Members of Parliament and Provincial Legislative Representatives
Federal and provincial legislative representatives should be informed so they can respond to inquiries from constituents.

- Provincial and Municipal Governments
Provincial and municipal governments should be notified because of potential changes in their tax base. Also, First Nations may have to negotiate with provincial or municipal governments for services.

- Other Affected Parties
Other affected parties include provincial assessment authorities that would be affected by First Nation taxation.

The following procedures are required:

- a) Council, at least thirty (30) days before making its initial assessment or taxation by-law, shall
 - i. publish notice of the proposed by-law in the *First Nations Gazette* website;
 - ii. post the notice in a public place on its reserve lands;
 - iii. where reasonably practicable, send a copy of the notice, by mail or electronic means, to taxpayers; and
 - iv. send a copy of the notice to the FNTC.
- b) The notice shall
 - i. describe the proposed by-law;
 - ii. state where a copy of the proposed by-law and any documents necessary to understand it may be obtained;
 - iii. invite representations regarding the proposed by-law to be made, in writing, to the Council within thirty (30) days after the day stated in the notice; and:
 - iv. if Council is to review the by-law at a public meeting, state the time and place of the meeting.
- c) Before enacting the by-law, Council should consider representations made by taxpayers.

- d) Written taxpayer representations to Council, if any, shall be forwarded to the FNTC as part of the submittal of the proposed by-law.

First Nations are to provide FNTC with the following additional documentation:

- a) a description of taxable interests on reserve;
- b) copies of letters to potential taxpayers informing them that the First Nation intends to assume taxation jurisdiction on reserve lands;
- c) copies of notices of proposed meetings to discuss the implementation of taxation; and
- d) any other information that may be relevant.

1.2 Services Provided by Other Jurisdictions

First Nations should initiate service agreement discussions with any municipalities providing services on reserve in the year preceding the targeted date of taxation. This will ensure the continuity of services and will enable both the First Nation and the municipality to plan accordingly. First Nations will provide FNTC with a list of services provided and the status of the service agreement negotiations.

The FNTC encourages First Nations to consider entering a protocol agreement with the adjacent local government to establish a framework for negotiating a service agreement.

1.3 British Columbia Requirements

In British Columbia, the *Indian Self Government Enabling Act* requires that other taxing authorities vacate the field once a First Nation asserts taxation jurisdiction. In order for the *Indian Self Government Enabling Act* to take effect

- A First Nation submits a Notice of Intention to the BC Minister of Aboriginal Affairs stating its intention to enact a property taxation by-law (independent taxation). If the Notice is submitted prior to March 1, taxation may commence in that calendar year; if the Notice is submitted on or after March 1, taxation may be imposed for the following year. (Note: In order to facilitate an orderly transition, the FNTC has set June 30 as the deadline for the submission of property taxation by-laws to have effect for the following tax year.)
- First Nations are issued a certificate notifying that the Province has vacated the field. (Note: The FNTC requires a copy of the certificate.)

1.4 Quebec Requirements

In Quebec, article 14.8.1. of the *Municipal Code of Québec*, R.S.Q. c. C-27.1 provides that a "... municipality may enter into an agreement with the council of a band within the meaning of the Indian Act (Revised Statutes of Canada, 1985, chapter I-5) in relation to the exercise of its powers on the reserve over which the council of the band has authority and which is included within the territory of the municipality."

Agreements made between Quebec taxing authorities and First Nations are formally approved by the Province through an Order in Council. The FNTC requires a copy of the Order in Council as evidence that the local government has vacated the jurisdiction.

2.0 General By-law Requirements

All by-laws, including those for taxation and assessment, must meet the following requirements outlined in subsections 2.1 to 2.7.

2.1 By-law Drafting

By-laws should be clearly drafted to avoid ambiguities and technical errors. The FNTC recommends that by-laws are drafted

- in plain language;
- in present tense;
- in active voice;
- in gender neutral language; and
- consistent with the *First Nations Gazette Style Guide* (available at www.fntc.ca).

2.2 Charter Conformity

By-laws must comply with guarantees set out in the *Canadian Charter of Rights and Freedoms*.

2.3 Delegation of Unfettered Discretionary Power

By-laws, because they are subordinate legislation made pursuant to the *Indian Act*, cannot contain or delegate unfettered discretionary power.

2.4 Procedural Fairness

In instances where an individual's rights or interests may be affected, by-laws must provide for reasonable notice and opportunities to be heard.

2.5 By-law Amendment Procedure

By-laws can only be amended with an amending by-law that is in accordance with section 83 of the *Indian Act*. Like all section 83 by-laws, amending by-laws are subject to the review of the FNTC and the approval of the Minister of

Aboriginal Affairs and Northern Development. In instances where the First Nation wishes to make a significant amendment to its by-law, the following procedure is required:

- a) Council, at least 30 days before making a significant amendment to its existing by-law, shall
 - i. publish notice of the proposed by-law on the *First Nations Gazette* website;
 - ii. post the notice in a public place on its reserve lands;
 - iii. where reasonably practicable, send a copy of the notice, by mail or electronic means, to taxpayers; and
 - iv. send a copy of the notice to the FNTC.
- b) The notice shall
 - i. describe the proposed by-law;
 - ii. state where a copy of the proposed by-law and any documents necessary to understand it may be obtained;
 - iii. invite representations regarding the proposed by-law to be made, in writing, to the Council within thirty (30) days after the day stated in the notice; and
 - iv. if Council is to review the by-law at a public meeting, state the time and place of the meeting.
- c) Before enacting the by-law, Council should consider representations made by taxpayers.
- d) Written taxpayer representations to Council, if any, shall be forwarded to the FNTC as part of the submittal of the proposed by-law.

2.6 No Crown Liability

By-laws must not contain any provisions which could attract Crown liability.

2.7 Amalgamated By-laws

First Nations may submit separate or amalgamated property taxation and assessment by-laws.

3.0 Property Taxation Requirements

3.1 Appointment of Tax Administrator

All property tax systems require a tax administrator. Property taxation by-laws must provide for the appointment by resolution of a tax administrator to oversee the administration and enforcement of the by-law.

3.2 Tax Liability

Every property taxation by-law must clearly indicate the property tax liability within the First Nation's jurisdiction. Property taxation by-laws must

- a) apply to all interests in land in the reserve; and
- b) state that all interests in land in the reserve are subject to taxation unless exempted from taxation in accordance with the by-law.

3.3 Exemptions from Taxation

Every First Nation has the power to tax and with that power is the power to exempt from taxation. Where a First Nation wishes to provide for exemptions from property taxation under a property taxation by-law, those exemptions must be set out within the by-law. Exemptions must be in respect of interests in land. Examples include, but are not limited to, 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 that are at least majority-owned by the First Nation; or
- c) exemptions within a class of exemption used by local governments in the Province.

Exemptions from taxation under paragraphs 3.3(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.

3.4 Tax Abatement and Granting Programs

Some First Nations provide tax abatement or tax relief for taxpayers who meet specific criteria. An example would be the Homeowner Grants Program in BC, which is aimed at residential taxpayers. Typically, taxpayers must pay the tax and are provided a grant simultaneously or at later date. The grant can be equal to or a percentage of the tax paid. These programs are generally similar to what is offered in the Province for off-reserve taxpayers. Where a property taxation by-law provides for tax abatement, the by-law must

- a) provide for the same type and offer the same amount or percentage 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.

To achieve greater transparency, any by-law providing for tax abatement must set out the qualifying requirements in the by-law. The amount of the grant may be determined annually in the annual expenditure by-law.

Where a property taxation by-law provides for a granting program, the by-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
 - ii. 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 by-law.

3.5 Application of Revenues

Property taxation by-laws must require that all revenues (i.e., taxes, interest, penalties, and payments-in-lieu) be placed in an account that is separate from other moneys of the First Nation.

All expenditures made out of revenues raised under a property taxation by-law must be authorized under an expenditure by-law.

3.6 Reserve Funds

First Nations are encouraged to establish reserve funds and include in the by-law all payments into a reserve fund and all expenditures from a reserve fund. Where a First Nation wishes to create a reserve fund, the reserve fund must be established in the property taxation by-law or in an expenditure by-law.

- a) The by-law may permit reserve funds to be established only for one or more of the following purposes:
 - i. capital infrastructure replacement, provided its purposes are supported by a capital development plan;
 - ii. capital infrastructure improvement, provided its purposes are supported by a capital development plan; and

- iii. other purposes, provided those purposes are supported by a capital development plan, contingent liability plan, land management plan or long-term economic plan.
- b) The by-law must include the following provisions respecting the use of reserve funds:
 - i. money in a reserve fund and interest earned on it must be used only for the purpose for which the reserve fund was established;
 - ii. for capital purpose reserve funds, Council may under an expenditure by-law transfer monies in a reserve fund to another reserve fund or account only where all projects for which the reserve fund was established have been completed;
 - iii. by resolution borrow money from a reserve fund where these funds are 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;
 - iv. for non-capital purpose reserve funds, transfers or borrowing of reserve funds must be authorized by Council in an expenditure by-law; and
 - v. all payments into a reserve fund and all expenditures from a reserve fund must be authorized by Council in an expenditure by-law.
- c) Where the by-law provides for the investing of monies in a reserve fund that are not immediately required, it must allow for investment only in one or more of the following:
 - i. securities of Canada or of a province;
 - ii. securities guaranteed for principal and interest by Canada or by a province;
 - iii. securities of a municipal finance authority or the First Nations Finance Authority;
 - iv. investments guaranteed by a chartered bank; or

- v. deposits in a savings institution, or non-equity or membership shares of a credit union.

3.7 Tax Roll

The by-law must provide for the tax administrator to create a tax roll each year.

3.8 Tax Payments

Property taxation by-laws must provide for the date on which property taxes are due and payable and set out where tax payments are to be made and the acceptable forms of payment.

3.9 Tax Notices

Each property taxation by-law must require the tax administrator to mail a tax notice each year to each holder of an interest in land subject to property tax and each person whose name appears on the tax roll in respect of a taxable property.

Property taxation by-laws must provide that a tax notice contain at least the following information:

- a) a description of the property;
- b) the taxes imposed under the by-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 the taxes are due.

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

3.10 Tax Refunds

Property taxation by-laws must set out procedures for providing refunds to taxpayers and the circumstances under which refunds will be given. The by-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.

Notwithstanding the above, a by-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.

3.11 Penalties and Interest for Unpaid Taxes

Where the by-law provides for a penalty to be imposed in respect of unpaid taxes, the by-law must set out the date on which a penalty will be imposed if taxes remain unpaid. Penalties cannot exceed ten percent (10%) of unpaid taxes.

Where the by-law provides for interest to be imposed in respect of unpaid taxes, the by-law must set out the rate of interest and the date of which it begins to accrue. Interest cannot exceed fifteen percent (15%) per annum.

3.12 Tax Collection and Enforcement

The by-law must set out the enforcement measures that may be taken by the First Nation to collect unpaid taxes. Enforcement provisions must provide for reasonable notice and be necessary for the purpose of taxation. In instances where a taxation by-law provides for the discontinuance of any services for the non-payment of tax, the First Nation must not discontinue

- a) fire protection or police services to the taxable property of a debtor;
- b) water or garbage collection services to taxable property that is a residential dwelling; or
- c) electrical or natural gas services to taxable property that is a residential dwelling during the period from November 1 in any year to March 31 in the following year.

3.13 Confidentiality

The by-law must provide for the confidentiality of information and documents obtained by the tax administrator, assessor, the assessment review tribunal and any other person who has custody or control of records obtained or created under the by-law, except

- a) in the course of administering the by-law or performing functions under it;
- b) in proceedings before the assessment review tribunal 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, provided

- i. the information and records do not contain information in an individually identifiable form or business information in an identifiable form, or
- ii. where the research cannot reasonably be accomplished unless the information is provided in an identifiable form, the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

PART VII

COMING INTO FORCE

This Policy is established and in effect as of June 20, 2012.

PART VIII

ENQUIRIES

All enquiries respecting this Policy should be directed to:

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