EXPLANATORY NOTES
SAMPLE FIRST NATION PROPERTY TAXATION LAW
(MANITOBA)

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 matters such as assessment, setting tax rates, authorizing expenditures and providing for the enforcement of these laws. 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.

The taxation law creates the framework for the administration of the taxation regime, including setting out the duties of the tax administrator, how taxes are levied, exemptions from taxation, the preparation of the tax roll and tax notices, the imposition of penalties and interest, and the enforcement and collection provisions.

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 Taxation Enforcement Regulations* ("Enforcement Regulations"), which set out detailed requirements for the enforcement of local revenue laws. The Commission has established Standards for First Nation Property Taxation Laws ("Taxation Law Standards") that provide further requirements for the form and content of taxation laws.

The sample First Nation Property Taxation Law ("sample law") complies with the FMA requirements, the Regulations and the Taxation Law Standards. It provides a comprehensive taxation law, including enforcement measures, that reflects taxation practices on reserve lands and incorporates components of the Manitoba provincial taxation regime under *The Municipal Act*. It provides a best practices sample for use and adaptation by First Nations in drafting their own FMA taxation laws.

These Explanatory Notes provide a brief synopsis of each Part of the sample law and highlight issues for further consideration by First Nations. There are aspects of the sample law that are required, as well as aspects that are left to the discretion of the First Nation. In some cases, the sample law sets out examples of the types of provisions a First Nation may wish to consider in its law.

PART I
CITATION

This Part 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.

PART II
DEFINITIONS

The definitions used are the same as set out in the *Indian Act*, the FMA and the Regulations. Where terms are not defined in those statutes or regulations, definitions generally reflect provincial taxation legislation with necessary changes.

The definition of "interest in land" includes any occupation or right to occupy any land or improvements (or both) in the reserve. The definition of "holder" includes all occupiers of reserve land. Taken together, these definitions are intended to capture all occupiers of reserve land for taxation purposes.

"Taxes" includes penalties, interest and costs added to unpaid taxes. Taxes also include, in respect of collection and enforcement, taxes owing from any other local revenue law enacted by the First Nation under section 5 of the FMA. This definition allows a First Nation to use the collection and enforcement provisions in this law to collect taxes owing under all of its FMA tax laws.

PART III
ADMINISTRATION

Subsection 3(1) requires Council to appoint a tax administrator to administer the taxation law. The tax administrator has the responsibilities set out in subsection 3(4), as well as other duties specified in the taxation law and the assessment law. Subsection 3(3) authorizes a specified person to allow the tax administrator to assign the performance of any of his or her duties to another person. The tax administrator is a required position under the Enforcement Regulations.

Section 4 is required by subsection 5(5) of the FMA. The law must include a "third-party management" provision that appoints the Financial Management Board as the First Nation's agent under a property taxation law, in certain defined circumstances under the FMA.

PART IV
LIABILITY FOR TAXATION

Under section 5 and subsection 6(1), the law applies to all interests in land in the reserve and all interests in land are subject to taxation except where specifically exempted. These provisions are required by the Taxation Law Standards.

Subsections 6(2) to 6(6) contain important provisions respecting tax liability, including tax collection and payment. Where there are multiple interests in the same property, each interest in the property is subject to taxation. Holders who share the same interest in taxable property are jointly and severally liable for taxes.

Section 7 provides suggested wording for tax refunds. The Taxation Law Standards require provisions that set out the circumstances under which refunds will be given. At a minimum, excess taxes paid must be refunded, plus interest (at a rate of at least prime minus two percent (2%)), where a change in the assessment results in a reduction of taxes.

PART V
EXEMPTIONS FROM TAXATION

Section 8 provides sample wording for the types of exemptions that a First Nation may wish to consider. It is the First Nation's decision whether to provide any exemptions from taxation. The Taxation Law Standards require any exemptions from taxation to be set out in the taxation law. Under these standards, exemptions are permitted in respect of interests in land in one or more of the following categories:

- exemptions for interests in land held or occupied by members of the First Nation;
- 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
- exemptions within a class of exemption used by local governments in the province.

Exemptions for interests in land held or occupied by members, the First Nation or First Nation-owned corporations cannot be given where someone other than an exempted person is actually occupying the property.

The sample law includes sample wording for exemptions for members and First Nation corporations, as well as for core exemptions given by local governments in the province.

Where Council wishes to provide exemptions on a case by case or annual basis, it can either amend its taxation law to authorize the exemption, or it can proceed by way of an annual grant rather than a tax exemption. By using a grant, the First Nation may achieve the same goal more efficiently, as a First Nation can authorize grants under its annual expenditure law.

PART VI
GRANTS AND TAX ABATEMENT

This Part sets out sample wording where a First Nation wishes to provide for annual grants or other forms of tax abatement. Subsection 9(1) provides for annual grants to non-profits. Subsection 9(2) provides sample wording where a First Nation wishes to authorize other types of tax abatement, such as other types of grants or other programs, including tax deferrals. The Taxation Law Standards require qualifying requirements for other types of tax abatement to be set out in the taxation law, in order to provide transparency and notice to taxpayers that certain types of abatement may be available. If a First Nation does not wish to provide for other types of abatement, these provisions should be deleted. Subsection 9(4) provides that the amounts of grants will be determined and authorized each year in an expenditure law.

PART VII
LEVY OF TAX

Subsection 10(1) requires the adoption of an annual rates law by May 29 in each taxation year. Both an annual rates law and an annual expenditure law are required by section 10 of the FMA, and these laws must be made in accordance with the *First Nations Rates and Expenditure Laws Timing Regulations*.

Subsection 10(2) requires portioned values to be used to determine the amount of tax applicable to each property within a property class for which a percentage of value is prescribed under the assessment law. Subsection (3) provides for the tax rate to be applied to each $1000 of the portioned value of the property.

Subsections 10(5) and 10(6) apply where a First Nation wishes to set a minimum tax. The maximum amount for a minimum tax should be set out in the taxation law, and the minimum tax actually set each year should be set out in the rates law. The Commission's Standards for First Nation Rates Laws provide that a minimum tax must not exceed one hundred dollars ($100) except where required to create a fair taxation regime because of one or more of the following circumstances:

- the First Nation had established a higher minimum tax amount in its taxation regime existing at the time of being scheduled under the FMA;
- to harmonize with minimum tax amounts established in the relevant province or the reference jurisdiction; and
- to recover a greater proportion of the First Nation's costs of providing services to properties with lower assessed values.

Section 11 sets the tax due date, where tax payments must be made and the acceptable forms of payment. The Taxation Law Standards require the law to set a tax due date that is at least 30 days after the tax notice date. Section 13 establishes a tax notice date of August 31, following the timeline used in *The Municipal Act*. A First Nation may choose different dates for the tax rates, tax roll, tax notices and tax due date, provided all requirements are met.

Where a First Nation wishes to allow the payment of taxes by installments, the Taxation Law Standards require the law to include certain provisions that set out the details of the payment mechanism. These include provisions respecting how a taxpayer may apply to pay taxes by installments, the due date for each installment, how each installment amount will be calculated, any consequences of failing to pay an installment by the due date, and any penalties and interest that will be imposed on unpaid installments.

PART VIII
TAX ROLL AND TAX NOTICE

The Taxation Law Standards require the law to provide for the tax administrator to create an annual tax roll by a date set out in the law. Section 14 requires the tax administrator to create the tax roll by August 31in each year, following the date used in *The Municipal Act.* The tax roll is generally the assessment roll with the addition of the total taxes payable for the year, as well as any unpaid taxes, including interest. The law can also provide for other information to be added to the tax roll, such as other taxes payable to the First Nation in respect of the property (for example, service taxes and business taxes).

Section 13 sets an August 31 deadline for tax notices, which must be mailed to each holder of taxable property and each person whose name appears on the tax roll in respect of taxable property (i.e., persons added under subsection 13(5)). Tax notices must contain the information set out in Schedule II to the law, as required by the Taxation Law Standards.

Subsection 14(1) sets out certain circumstances where the tax administrator may correct the tax roll, and cancel or reduce taxes. These include where the assessor advises that the property is entitled to an exemption, or there has been a change in the physical condition or classification of the property. Under subsection 14(2), the tax administrator may correct the tax roll and impose taxes, interest and penalties where an error or omission in the tax roll resulted from a taxpayer knowingly providing false information to the assessor.

Section 15 requires the tax administrator to correct the tax roll and impose supplementary taxes where the assessor has created a supplementary assessment under the assessment law.

Where amendments are made to the roll under sections 14 or 15, the tax administrator must send an amended tax notice to all persons entitled to tax notices in respect of the affected property. Subsection 16(3) requires the tax administrator to refund excess taxes paid where an amended tax notice indicates a reduction in taxes owing. Subsection 16(4) gives taxpayers thirty (30) days to pay additional taxes before interest and penalties are assessed by the First Nation.

Section 17 allows the tax administrator to request information respecting taxable property for any purpose related to the administration of the taxation law. A form of request is set out in Schedule I.

PART IX
PERIODIC PAYMENTS

This Part provides for taxes on leased lands to be expressed as a percentage of rent and paid with rental payments.

PART X
PAYMENT RECEIPTS AND TAX CERTIFICATES

This Part provides for the issuance of receipts for taxes paid, as well as the issuance of tax certificates upon request and payment of the fee specified in the law. A First Nation can decide whether it will collect a fee for the issuance of tax certificates.

PART XI
PENALTIES AND INTEREST

The assessment of penalties and interest for unpaid taxes is subject to the conditions and procedures set out in the Enforcement Regulations and the requirements set out in the Taxation Law Standards.

Section 21 provides for the automatic levy of a penalty where taxes are not paid in full on the due date. Under the Enforcement Regulations, the amount of the penalty (which cannot exceed ten percent (10%) of the unpaid taxes) and when it will be imposed must be specified in the law. A First Nation can decide whether to impose a penalty and how and when a penalty is imposed. It could choose a lesser percentage, or impose an initial penalty and then a further penalty if taxes remain unpaid at a later date, provided the total penalty does not exceed ten percent (10%).

Section 22 provides for interest of 1% per month to accrue on unpaid taxes. The Enforcement Regulations provide that interest cannot exceed fifteen percent (15%) per year and require the rate of interest to be specified in the taxation law.

PART XII
REVENUES AND EXPENDITURES

Section 24 provides for the receipt and expenditure of revenues collected under the law. Subsection 13(1) of the FMA requires a First Nation to place all revenues collected under a local revenue law in a local revenue account, separate from other moneys of the First Nation. Subsection 13(2) provides that local revenues can only be expended under the authority of an expenditure law. Paragraph 10(b) of the FMA requires the First Nation to establish an annual budget for the expenditure of these revenues. This means that no expenditures can be authorized under the taxation law. All expenditures must be authorized by an expenditure law.

Section 25 provides for the use of reserve funds. The Taxation Law Standards require certain provisions in a taxation law where a First Nation wishes to establish reserve funds. These include the use of money in a reserve fund and interest earned on it; the transfer and borrowing of reserve funds; authorizations required for expenditures from a reserve fund; and authorized investments for reserve funds.

The Standards for First Nation Expenditure Laws provide that reserve funds must be established in an expenditure law and may only be established for one or more of the following purposes:

- capital infrastructure replacement, provided its purposes are supported by a capital development plan;
- capital infrastructure improvement, provided its purposes are supported by a capital development plan; and
- other purposes, provided those purposes are supported by a capital development plan, contingent liability plan, land management plan or long-term economic plan.

PART XIII
COLLECTION AND ENFORCEMENT

This Part provides general provisions respecting the collection of unpaid taxes and enforcement of local revenue laws. Specific enforcement measures are set out in subsequent Parts. The Enforcement Regulations set out detailed conditions and procedures respecting a number of enforcement measures that may be used by First Nations. Including the full spectrum of enforcement mechanisms in the taxation law will give a First Nation the option to choose the most effective mechanism for each enforcement situation.

Section 26 contains general provisions respecting tax collection, including allowing recovery by one or more methods set out in the law.

Section 27 requires the issuance of a tax arrears certificate to every person named on the tax roll in respect of a property on which there are unpaid taxes. The Enforcement Regulations require this certificate to be delivered before certain enforcement measures or proceedings are commenced. Subsection 27(2) provides that a tax arrears certificate cannot be issued for at least six (6) months after the day that the taxes became due. A form of certificate is set out in Schedule V to the sample law.

Section 28 provides for the creation, recording and discharging of liens. A First Nation may, but is not required, to create liens as part of its enforcement scheme. The tax administrator is required to maintain a list of all liens created and must register a discharge of a lien without delay on payment of outstanding amounts.

Section 29 sets out the document delivery provisions required under the Enforcement Regulations for all enforcement matters.

PART XIV

SEIZURE AND SALE OF PERSONAL PROPERTY

This Part reflects the detailed provisions governing the seizure and sale of personal property belonging to a tax debtor. These provisions are set out in the Enforcement Regulations. This enforcement measure can be taken where taxes remain unpaid thirty (30) days after a tax arrears certificate is issued (i.e., seven (7) months after taxes became due). The First Nation must first deliver a notice of seizure and sale, after which the debtor has seven (7) days to pay the outstanding taxes. If unpaid, the First Nation can seize the property without further notice. A further notice is given prior to the sale of the seized property, which notice cannot be given until at least sixty (60) days after the property was seized. This notice must be published in two (2) consecutive issues of a newspaper.

Subsection 30(3) allows the First Nation to recover its costs of enforcement in accordance with Schedule III. A First Nation wishing to collect its costs of enforcement must set out in Schedule III the costs it will recover.

Unless there is a court challenge, the seized property can be sold by auction and the proceeds used to pay the taxes. However, where there are registered security interests on property the First Nation wishes to seize, the seizure and sale is subject to any provincial laws regarding the seizure and sale of property. This is reflected in section 34 of the sample law. As well, where there are registered security interests against the property, section 20 of the Enforcement Regulations provides, in part, that the proceeds must be paid to the "holders of any registered security interests in the property and to the first nation in order of their priority under the laws applicable in the province in which the property was seized." This means that a First Nation may be required to pay out other registered security holders from the sale proceeds, before it can retain any of the proceeds for payment of the tax debt. First Nations may wish to seek legal advice in each case in order to assess the registered security interests (if any) in property it is considering for seizure.

PART XV

SEIZURE AND ASSIGNMENT OF TAXABLE PROPERTY

This Part reflects the detailed provisions governing the seizure and assignment of taxable property set out in the Enforcement Regulations. This enforcement measure can be taken where the taxes remain unpaid for nine (9) months after a tax arrears certificate is issued (i.e., fifteen (15) months after taxes became due). Under this process, the First Nation seizes the taxable property on which the unpaid taxes are owing and auctions or tenders the right to an assignment of the property to persons eligible to hold the interest in land. After the auction or tender, the debtor is given three (3) months to redeem the property by paying the upset price, plus an additional three percent (3%).

Subsection 36(2) provides for the required notice of seizure and assignment and includes a form of notice set out in Schedule VIII. Under the Enforcement Regulations, the notice must describe the proceedings referred to in the Regulations.

Subsection 36(3) allows the tax administrator to proceed with the sale where the taxes have not been paid after six (6) months from the notice of seizure and assignment.

The Enforcement Regulations allow the sale to be by public tender or auction. The First Nation may wish to provide for one of these methods within the law itself and set out the procedures that will be followed. Alternatively, subsection 36(4) provides for Council to proceed by resolution.

Section 37 requires the tax administrator to set an upset price for the purchase of the property at auction or tender. The upset price must be at least the amount of unpaid taxes, penalties and interest, calculated to the *end* of the redemption period, plus five percent (5%) of that amount. The addition of five percent (5%) is intended to cover the First Nation's costs of undertaking this enforcement method. The property cannot be sold for less than the upset price.

Subsections 38(1) and 38(2) provide for the notice of the auction or tender and set out provisions respecting the conduct of the auction or tender. Under subsection 38(3), property not sold is deemed to be purchased by the First Nation.

Section 39 requires the tax administrator to give notice to the Minister of every purchase under this Part.

Section 40 sets out the rights retained by the holder after the sale and during the redemption period. These include the right of the holder to continue to occupy the property during the redemption period. The holder must not permit the property to deteriorate during this period (referred to as "waste") and the purchaser has the right to enter the property in order to maintain it. If the property is not redeemed before the end of the redemption period, the property transfers to the purchaser free and clear of charges other than covenants, building schemes and rights-of-ways registered against the land. The holder is then required to vacate the property.

Section 16 of the Enforcement Regulations requires the proceeds of sale to be paid to the holders of registered interests in the property in order of their priority at law. Section 43 provides for an order of payment first to the First Nation and then to other registered security holders, with any remaining moneys to the debtor.

Section 44 allows the First Nation to sell property that it acquires as the deemed purchaser at a sale (under subsection 38(3)), provided it is sold for not less than the upset price. Under subsection 44(2), a sale by the First Nation does not affect the redemption period and the debtor's ability to redeem the property during the redemption period.

PART XVI
DISCONTINUANCE OF SERVICES

This Part reflects the requirements and limitations for a First Nation to discontinue services to a holder for failure to pay taxes. This enforcement measure can be taken where the taxes remain unpaid for thirty (30) days after a tax arrears certificate is issued (i.e., seven (7) months after taxes became due). A First Nation's ability to discontinue services is limited by the Enforcement Regulations. A First Nation may not discontinue fire or police services to any property, and may not discontinue water or garbage service to a residential dwelling. Electrical and natural gas services cannot be discontinued to a residential dwelling from November 1 to March 31. A form of notice of discontinuance is set out in Schedule X to the sample law.

PART XVII
GENERAL PROVISIONS

Section 46 provides the circumstances under which information or records obtained or created under the law can be disclosed. Section 47 provides for the disclosure of information for research purposes. A decision to disclose information for research purposes must be made by Council and Council must take steps to protect the confidentiality of the information. These provisions are required by the Taxation Law Standards.

Section 49 limits a person's ability to challenge a payment made under the taxation law. A person cannot challenge a payment after the expiration of six (6) months from making the payment.

Section 50 sets out notice provisions that apply under the law unless otherwise specified. For example, there are specific notice provisions that apply to the enforcement provisions.

Section 52 provides for the repeal of the First Nation's existing property taxation law. If the First Nation does not have existing taxation laws then this section is not required.

Section 53 provides for when the law will come into force. This can be either on the day after the approval by the Commission or a later date as specified by Council.