First Nations Tax Commission
Commission de la fiscalité des premières nations

Property Assessment By-laws Policy

PART I. PREAMBLE

WHEREAS:

A. Section 83 (1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property tax;

B. A Memorandum of Understanding between the First Nations Tax Commission and the Minister of Indian 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 Memorandum of Understanding, 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 assessment by-laws enacted under section 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 section 1.2 of the Memorandum of Understanding (MOU) between the FNTC and the Minister of Indian Affairs and Northern Development.

PART IV. APPLICATION

This policy applies to every property assessment 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 a property assessment by-law enacted under section 83(1)(a) of the Act;

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

“assessment review tribunal” means an independent body established by a First Nation to hear and determine assessment appeals (e.g., Assessment Review Committee, Board of Revision);

“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 section 83 (1) of the Act;

“Chair” means a chair of an assessment review tribunal;

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

“complainant” means a person who commences an appeal of an assessment of assessable property;

“Council” means same a Council as defined under 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, license 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;

“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 a property 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.

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 sections 1.1 to 1.4.

1.1 Early Notification of First Nation Jurisdiction

In order to ensure that procedural fairness is respected, FNTC 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 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 bases. 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 60 days before making its initial property assessment or property taxation by-law, shall:
    i. publish notice of the proposed by-law in a local newspaper;
    ii. post the notice in a public place on its reserve lands; or
    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 60 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* (Bill 64) requires that other taxing authorities vacate the field once a First Nation asserts taxation jurisdiction. In order for Bill 64 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 submitted prior to March 1st taxation may commence in that calendar year; if on or after March 1st taxes may be imposed for the following year. (Note: In order to facilitate an orderly transition, the FNTC establishes a June 30th 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, Section 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 sections 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 Indian 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 60 days before making a significant amendment to its existing by-law, shall:
    i. publish notice of the proposed by-law in a local newspaper;
    ii. post the notice in a public place on its reserve lands; and
    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 60 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 Assessment By-laws Requirements

Typically, First Nation property assessment by-laws should contain similar assessment provisions used by local governments in the Province of which the reserve is situated. All property assessment by-laws should meet the requirements outlined in 3.1 to 3.11.

3.1 Appointment of Assessor

All property assessment by-laws must provide for the appointment by resolution of an assessor to undertake assessments of assessable property in accordance with the by-law and such other duties as set out in the by-law. Assessors appointed by Council must be qualified to assess real property for taxation purposes in the Province.

3.2 Assessment Dates

For those aspects of the assessment process that are set out in Schedule 1 to this policy, property assessment by-laws must incorporate the corresponding dates in Schedule 1.

3.3 Assessment Classification

Property assessment by-laws must establish property classes for the purposes of assessment that are the same as those property classes established in the Province, as set out in Schedule 2 to this policy.

3.4 Assessment Method

For the purposes of assessing interests in land, property assessment by-laws must establish the:

a) valuation methods, rates, rules and formulas to be applied by the assessor; and

b) assessment practices to be used by the assessor that are used in the Province to conduct assessments off the Reserve.

3.5 Assessment Roll

Property assessment by-laws must provide for the completion of an annual assessment roll that contains a list of every interest in land liable to taxation or for which grants-in-lieu may be accepted by the Council. The property assessment by-law must require the assessment roll to contain at least the following information:

a) the name and address of the holder of the property;
b) a description of the property;
c) the classification of the land and the improvements;
d) the assessed value by classification of the land and the improvements;
e) the total assessed value of the property; and
f) the total assessed value of the property liable to taxation.

Property assessment by-laws will also provide for:

g) certification of the assessment roll by the assessor that the assessment roll was completed in accordance with the by-law;
h) delivery of the certified assessment roll by the assessor to the Council;
i) inspection of the assessment roll by any person;
j) limitations on the use of information contained in the assessment roll to assessment purposes;
k) a requirement that persons inspecting the assessment roll complete a declaration that the information in the assessment roll will not be used for other purposes; and
l) a procedure where holders can apply to have their name, address or other information about the holder omitted or obscured from the assessment roll for reasons of safety or the mental or physical health of the holder or a member of the holder's household.

3.6 Correction of Errors and Omissions

Property assessment by-laws must provide procedures for the correction by the assessor of errors and omissions in the assessment roll through the use of one or more of revised, amended or supplementary assessment rolls.

3.7 Assessment Notice

Property assessment by-laws require that assessment notices be delivered to all persons named on the assessment roll in respect of an assessable property. At a minimum, assessment notices must contain the following information:

a) the name and address of the holder of the property;
b) a short legal description of the property;
c) the assessed value by classification of the land and improvements;

d) the total assessed value of the property liable to taxation;
e) the opportunity to make a request for reconsideration of the assessment by the assessor and the deadline for making such a request; and
f) the right to appeal an assessment review tribunal (sometimes called "Assessment Review Board, Assessment Review Committee, Board of Revision) how to appeal and the deadline for an appeal.

3.8 Reconsideration

The First Nations Tax Commission encourages the use of a reconsideration process. If a by-law provides for the reconsideration process, taxpayers should be given 30 days from the time the assessment notices are mailed to make a request for reconsideration. Typically, a request for reconsideration will deal with valuation; however, reconsiderations can also concern classification, errors, omissions, or use of exemptions.

3.9 Assessment Appeals

A fundamental element of the assessment process is the right to appeal. Pursuant to section 83(3) of the *Indian Act*, all property assessment by-laws must contain assessment appeal provisions. These provisions must provide for, at a minimum, the complainant, the assessor and the holder of the assessable property (if other than the complainant) to be parties to an appeal. In addition, the by-law must set out, at a minimum, the following grounds for appeal to an assessment review tribunal:

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

If the by-law provides for an administration fee for the filing of an assessment appeal, the fee must not exceed $30.

3.10 Assessment Review Tribunals

Every property assessment by-law must provide for the creation of an assessment review tribunal. Sometimes called a Board of Revision or an Assessment Review Board, these tribunals offer the first level of formal appeal of assessment. A property assessment by-law must provide for the establishment of the tribunal including: the powers, duties and functions of the Chair; the appointment of members of an assessment review tribunal by Council resolution and for a term of appointment of those members of not less than two years; and when and how members of the assessment review tribunal may be removed from office. Furthermore, property assessment by-laws must provide for the following:

a) The assessment review tribunal must consist of not less than three members, including:

   i) at least one member who is a member of the law society of the Province; and

   ii) at least one member who has experience in assessment appeals in the Province.

b) A person must not serve as a member of an assessment review tribunal if the person:

   i) has a personal or financial interest in the assessable property that is the subject of an appeal;

   ii) is the Chief of the First Nation or a member of Council;

   iii) is an employee of the First Nation; or

   iv) has financial dealings with the First Nation which might reasonably give rise to a conflict of interest or impair that person's ability to deal fairly and impartially with an appeal as required under the terms of a by-law.

c) The rate of remuneration should be consistent with the rate paid to members of similar assessment review tribunals regulated by the Province in which the reserve is located.

In addition, the FNTC requires that a property assessment by-law establish the practices and procedures for the conduct of assessment review tribunal's hearings, including a party's right to be heard, have representation, present evidence and call witnesses; the manner by which an assessment review tribunal may conduct a hearing; and the evidentiary rules that apply during a hearing.

In establishing practices and procedures, the property assessment by-law may provide for additional practices and procedures to be established in a practice and procedures manual approved by Council resolution; and permit the assessment review tribunal to determine its own procedure during a hearing to the extent not inconsistent with the by-law.

Each property assessment by-law must set out procedures for updating the assessment roll to reflect decisions of the assessment review tribunal.

3.11 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 September 6, 2007.

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

SCHEDULE 1

Assessment Timelines

British Columbia

Assessment valuation date:	July 1 of year before taxation year
Physical condition and use date:	October 31 of year before taxation year
Assessment roll and notices date:	December 31 of year before taxation year

Alberta

Assessment valuation date:	July 1 of year before taxation year
Physical condition and use date:	December 31 of year before taxation year
Assessment roll date:	a date set by the First Nation in its Law
Assessment notice date:	a date set by the First Nation in its Law

Saskatchewan

Base date for valuation:	as established by Assessment Management Agency from time to time
Physical condition and use date:	January 1 of taxation year
Assessment roll date:	April 1 of taxation year
Assessment notice date:	within 15 days of completion of assessment roll

Manitoba

Reference year for valuation:	as set by Province from time to time
Assessment roll date:	December 31 of year before taxation year
Assessment notice date:	a date set by the First Nation in its Law

Ontario

Valuation date:	January 1 in preceding year, or as set by Provincial Regulation
Classification date:	June 30 of year before taxation year
Assessment roll date:	before 2nd Tuesday following December 1 of year before taxation year
Assessment notice date:	no later than 14 days before assessment roll is completed

Quebec

Valuation and condition date:	July 1 of 2nd fiscal year preceding 1st fiscal year for which assessment roll is made

Assessment roll date:	August 15 to September 15 of year before taxation year
Assessment notice date:	March 1 of taxation year

New Brunswick

Valuation date:	January 1 of year before taxation year
Assessment roll date:	December 31 of year before taxation year
Assessment notice date:	a date set by the First Nation in its Law

Nova Scotia

Valuation date:	as set by Province from time to time
Physical condition and use date:	December 1 of year before taxation year
Assessment roll date:	December 31 of year before taxation year
Assessment notice date:	on completion of assessment roll by a date set by the First Nation in its Law

Prince Edward Island

Valuation date:	as set by the First Nation in its Law
Assessment roll date:	as set by the First Nation in its Law
Assessment notice date:	5th business day in May

Newfoundland & Labrador

Base date for valuation:	January 1 of every 3rd year after 1996
Assessment roll date:	January 1 to September 30
Assessment notice date:	on completion and delivery of assessment roll by a date set by the First Nation in its Law

Yukon Territory

valuation date:	July 31 of year before taxation year
Assessment roll date:	November 15 of year before taxation year
Assessment notice:	immediately on return of corrected roll to Collector by a date set by the First Nation in its Law

Northwest Territories

Base year for valuation:	as set by territory from time to time
Assessment roll date:	October 31 of year before taxation year
Assessment notice date:	21 days after certified roll sent to taxing authority

Nunavut

Base year for valuation:	as set by territory from time to time
Assessment roll date:	October 31 of year before taxation year
Assessment notice date:	21 days after certified roll sent to taxing authority

SCHEDULE 2
Assessment Classifications

British Columbia

Class 1 – Residential.
Class 2 – Utilities.
Class 4 - Major industry.
Class 5 - Light industry.
Class 6 - Business and other.
Class 7 - Forest land.
Class 8 - Recreational property/non-profit organization.
Class 9 — farm.

Alberta

Class 1 – Residential
Class 2 – Non-residential
Class 3 – Farmland
Class 4 – Machinery and equipment

Saskatchewan

Non-Arable (Range) Land and Improvements
Other Agricultural Land and Improvements
Residential
Multi-Unit Residential
Seasonal Residential
Commercial and Industrial
Elevators
Railway Rights of Way and Pipeline

Manitoba

Residential 1
Residential 2
Residential 3: condominiums and cooperatives
Farm Property
Pipeline Property
Railway Property
Institutional Property
Designated Recreational Property
Other Property

Ontario

Residential
Multi-residential
Commercial
Industrial
Pipe line
Farm
Managed forests

[Optional classes:
New multi-residential
Office building
Shopping centre
Parking lots and vacant land
Large industrial
Professional sports facility
Resort condominium]

Quebec

industrial immovables
other non-residential immovables
immovables consisting of six or more dwellings
other residential immovables
serviced vacant land

New Brunswick

Residential
Non-Residential

Nova Scotia

Residential
Commercial
Resource property

Prince Edward Island

Non-Commercial
Commercial

Newfoundland & Labrador

Residential
Part Residential

Commercial
Part Commercial

Yukon

Residential
Non-residential
Agriculture and Grazing

NWT

Class 1 – Commercial
Class 2 - Industrial
Class 3 – Extraction and processing of hydrocarbons
Class 4 - Extraction and processing of minerals
Class 5 – Pipeline
Class 6 – Electrical, CCTV, Railway, Natural gas
Class 7 – Residential
Class 8 – Residential mobile home
Class 9 – Residential (low density multi)
Class 10 – Residential (mid density multi)
Class 11 – Residential (high density multi)
Class 12 – Non-profit institutional
Class 13 – Non- profit recreational
Class 14 – Agricultural
Class 15 – Classes 7-11 within 50 km of municipal taxation area with all-season road access
Class 16 – Classes 1-2 within 50 km of municipal taxation area with all-season road access

Nunavut

Class 1 – Commercial
Class 2 - Industrial
Class 3 – Extraction and processing of hydrocarbons
Class 4 - Extraction and processing of minerals
Class 5 – Pipeline
Class 6 – Electrical, CCTV, Railway, Natural gas
Class 7 – Residential
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