

EXPLANATORY NOTES

SAMPLE FIRST NATION ANNUAL EXPENDITURE LAW

The *First Nations Fiscal and Statistical Management Act* (“FSMA”) provides a framework for First Nation real property taxation on reserve. First Nation fiscal powers are set out in Part 1 of the FSMA 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 FSMA 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 FSMA sets the requirement that there be a balanced budget (i.e., that expenditures may not exceed revenues).

Laws enacted under the FSMA must comply with all statutory requirements, any regulations made under paragraph 36(1)(d) of the FSMA and any standards established by the First Nations Tax Commission (“Commission”) under section 35 of the FSMA. 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 FSMA 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 FSMA 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 two versions of recital B. The First Nation should choose the first version if it has made new laws under the FSMA. The second version should be used where the First Nation is operating under section 83 by-laws that have transitioned to laws under the FSMA. The version that is not used should be deleted.

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 12

The definitions used are the same as set out in the *Indian Act*, the FSMA and the Regulations. Section 12 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 references 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. The development cost charge revenues are 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 shown in the appendix to the budget as a transfer into the applicable development cost charge reserve fund. Reserve fund revenues are those amounts taken out of existing reserve funds to be expended in the budget year. These amounts are then shown as expenditures in the appropriate budget category.

The Expenditure Law Standards require the budget to use the categories of expenditures that are shown in the Schedule. Because subsection 13(3) of the FSMA requires the budget to be balanced in each year, 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 service expenditures. 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 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.

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.

SECTIONS 4, 10 AND 11

Section 4 of the sample law authorizes the specific expenditures that are set out in the budget, and section 10 prohibits expenditures that are not set out in the annual budget. If a First Nation needs to authorize further expenditures or make changes to the budget during the year, it must adopt a new expenditure law or an amending expenditure law as set out in section 11.

SECTION 5

This section approves as expenditures the grants shown in the budget. The budget details each grant category and the total amounts granted within each category.

SECTIONS 6, 7 AND 8

A First Nation may establish certain types of reserve funds in accordance with the parameters set out in the Standards. Further, the Standards for First Nation Property Taxation Laws require certain provisions to be included in a First Nation's taxation law that will apply to the use of its reserve funds.

The Standards provide that reserve funds must be established in an expenditure law. Section 6 provides wording for establishing any reserve fund the First Nation wishes to establish in the current budget year. This section should be deleted if no reserve funds are being established. Note that a reserve fund cannot be established for the contingency amounts required in the annual budget.

Sections 7 and 8, respectively, provide for transfers of money into and out of reserve funds. A transfer of money into a reserve fund is shown in the budget as an expenditure, while a transfer of money out of a reserve fund is shown in the budget as revenue, and then as an expenditure in the appropriate budget category where it will be used in that budget year. These sections should be deleted if there are no transfers into or out of reserve funds in the budget year.

SECTION 9

This section authorizes the expenditure of monies 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.

SECTION 16

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.