



First Nations Tax Commission

Commission de la fiscalité des premières nations

April 14, 2020

2020 ANNUAL LAWS BULLETIN

The Annual Laws Bulletin is issued by the First Nations Tax Commission (FNTC) to assist First Nations tax administrators in the development and submission of annual laws made under the *First Nations Fiscal Management Act* (FMA).

Special COVID-19 Statement

Over the last several weeks, the FNTC has been contacting taxing First Nations to better understand how the pandemic is impacting First Nation operations and their taxpayers. Through our conversations and email correspondence we learned a great deal on how the pandemic is impacting taxing First Nations on several fronts: tax administration, economic/fiscal conditions, and remedial measures.

Most First Nation offices are either closed or under limited access to promote physical distancing, some have limited community access to members. However, offices are functioning, and administrators are examining changes in business practices to mitigate the spread of COVID-19. This includes how laws are developed and approved, assessment appeals, meetings with taxpayers, submission of laws, and tax collection/payment procedures.

The economic and fiscal impacts have been immediate. First Nations have experienced reduced commercial activity, and in many cases outright closures. Further, it is likely many residential taxpayers have suffered job loss or reduced income. In response, First Nations are considering temporary tax relief measures, similar to measures adopted by adjacent jurisdictions. However, this presents added costs and a difficult challenge for First Nations with service agreements because service payments are often due when taxes are typically due. Other challenges include evolving provincial government measures like the B.C. government's decision to reduce the school tax rate by 50% for three property classes: major industry, light industry, and business. This will impact First Nations who have historically used reference jurisdiction rates to set their tax rates.

It is critical that First Nations have the greatest degree of flexibility in responding to the pandemic. In support of that objective, FNTC is reviewing its policies, procedures, and Standards. It is also working with other governments to find ways to assist First Nations to mitigate the economic and fiscal challenges that First Nations and taxpayers are facing. Finally, we will continue to monitor and advise on evolving policy responses as they emerge.

At the First Nations Tax Commission, the health and safety of our staff and First Nation communities are of utmost importance. The FNTC continues to be committed to offering high quality support and services to you and your First Nation. We are available via phone, email, and video conference to assist you. We believe in the power of communities to pull together and help each other.

What's New for 2020

- National rate of inflation for the 2020 Taxation Year is 2.2%
- Deadline for the making of annual laws changed to November 30
- FNG account-based submissions will no longer be required after May 31
- For BC First Nations, over the past couple years BC Assessment has changed their approach to valuing mobile home assessments on reserve. As a result, there have been significant assessment increases (ranging from 50% to 100% in value) for several First Nations throughout the Province. BC Assessment and affected First Nations are communicating these changes with the property occupiers.

Annual Tax Rates Laws

Timing for the Making of Annual Tax Rates Laws (Section 1 of the Standards for the Timing of First Nation Annual Tax Rates and Expenditure Laws, 2017)

As a result of the recent changes to the Standards, the annual laws must be enacted on or before November 30 of the taxation year.

It is important to note that each First Nation's property taxation law sets its own date when its annual tax rates laws must be made, when tax notices are to be sent and when taxes are due. When developing your First Nation's annual tax rates law please refer to these dates to ensure compliance with the timelines established in your First Nation's property taxation law.

The FNTC recommends that First Nations submit their annual laws at least 15 days in advance of the date tax notices are to be issued to allow sufficient time for the review and approval of your First Nation's annual laws. Tax administrators should submit signed laws and all supporting materials to the FMA Registrar as soon as practicable.

Tax Rate Setting in the First Year of Taxation (Section 6 of the Standards for First Nation Annual Tax Rates Laws, 2017)

In the first year that a First Nation exercises property taxation, tax rate setting must meet the requirements of section 6 of the Standards.

The First Nation must set tax rates that do not exceed those set by the former taxing authority in the *current* year; or where there is no former taxing authority, set tax rates that do not exceed those set by the reference jurisdiction in the *current* year. Note – the reference jurisdiction is an adjacent local government jurisdiction. For assistance in determining the appropriate reference jurisdiction, please contact an FNTC advisor.

Tax Rate Setting in Subsequent Years (Sections 7 – 10 of the Standards)

In the second and all subsequent years that a First Nation exercises property taxation, tax rate setting must meet the requirements of section 7, 8, 9, or 10 of the Standards.

Average Tax Bill Comparison (Section 7 of the Standards)

Tax rates can meet the requirements in section 7 of the Standards in one of two ways:

1. National inflation rate method – the proposed rates in each class will lead to an average tax bill change not exceeding the national rate of inflation. **(Please note, the national rate of inflation for the 2020 tax year is 2.2%);** or
2. Reference Jurisdiction comparison method – the proposed rates in each class will lead to an average tax bill change not exceeding the average tax bill change in the same class of the reference jurisdiction. First Nations using this method must submit assessment data and tax rate information for the reference jurisdiction.

In using the average tax bill methods described in 1 and 2 above, new properties must be excluded, and the “average” tax bill can be expressed in one of two ways:

1. Mean Tax Bill: divide the total number of folios (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation) into the total revenue collected from that property class. For example, if \$100,000 in taxes were collected from 100 residential properties, the average tax bill would be \$1,000 per residential property; or
2. Median Tax Bill of a Representative Taxpayer: place all tax bills in order (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation) from the lowest to the highest in each property class, and then find the tax bill of the representative taxpayer that is exactly in the middle. For example, the median of the following string of numbers is 45: (2, 32, 33, 45, 60, 62, and 70). If there is an even number of folios, the median is the average of the middle two values.

Reference Jurisdiction Rate-Setting (Section 8 of the Standards)

Reference jurisdiction rate-setting involves the First Nation setting tax rates in each class that are identical to the reference jurisdiction’s rates in the current and previous year, and also requires the First Nation to use the same assessment practices as the reference jurisdiction. First Nations wishing to move from using average tax bill comparison to using this method should review section 11 of the Standards and consult with an FNTC advisor.

**Rate Setting and Transition Provisions
(Section 9 of the Standards)**

Section 9 of the Standards applies only where First Nations who have included property tax transition provisions in their property tax law. The section enables First Nations to set rates in accordance with their transition process, rather than in accordance with sections 7 and 8. The 2019 changes to section 9 of the Standards clarify that a First Nation does not need to justify a variation with the tax rate transition provisions, where a First Nation sets a lower tax rate than originally planned.

**Justification for Rates Exceeding Sections 7, 8, 9
(Section 10 of the Standards)**

Where tax rates fail to meet the requirements of sections 7, 8, or 9, First Nations can seek to justify tax rate increases on one (1) or more of the following bases:

1. there is a significant increase to the cost of local services such as water, sewer, waste collection, fire protection, and roads;
2. the proposed rates are consistent with a First Nation's reference jurisdiction transition plan; and
3. there is taxpayer support within the affected class.

Cost Increases – First Nations citing significant increases in the cost of services as a justification (rationale #1) will have to provide information to the FNTC in the form of a signed service agreement showing cost increases, or a letter provided by the First Nation's chief financial officer.

Reference Jurisdiction Transition Plan – First Nations may justify their tax rates on the basis that the rates are consistent with a transition plan to reference jurisdiction rate-setting. Transition planning must be initiated in the previous tax year.

Taxpayer Support – First Nations citing taxpayer support must provide letters of support from individual taxpayers or their associations representing at least 50% of the taxpayers in the property class and holding at least 50% of the total assessed value in the class.

First Nation tax administrators should contact the FNTC as early as possible if the First Nation intends to provide justification for exceeding sections 7 – 9 of the Standards.

In justifying its proposed rates under rationale #1 or #2, a First Nation must give prior notice to its taxpayers of the proposed rates and the reason(s) for the increase. Section 1.2 of the *Standards Respecting Notices Relating Local Revenue Laws, 2018*, requires a justification description in the notice; and notification by using the First Nation's website, the *First Nations Gazette* (FNG) website, in accordance with a taxpayer representation to council law, or by holding a public meeting.

**Minimum Tax
(Section 1 of Standards)**

Most First Nations have provisions in their property tax laws that enable the use of a minimum tax. A minimum tax means that a minimum amount of tax is levied on a property, even though its assessed value would result in a lower amount of tax. The minimum tax, if any, must be set each year within the First Nation's tax rates law. The Standards 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:

1. the First Nation had established a higher minimum tax amount in its taxation regime existing at the time of being scheduled under the FMA;
2. to harmonize with minimum tax amounts established in the relevant province or the reference jurisdiction; and
3. the First Nation's cost of providing services to properties with lower assessed values exceeds one hundred dollars (\$100).

First Nations may have additional provisions governing the setting of minimum taxes in their property tax law.

**Borrowing Member First Nations and Tax Rates Laws
(*Subsection 5(6) of the FMA, repealed, 2018)**

As a result of the 2018 amendments to the FMA, First Nations who are Borrowing Members with the First Nations Finance Authority for property tax borrowing are no longer required to have a *special levy* provision in their annual tax rates law.

**Information Requirements for the Review of Tax Rates Laws
(Section 8 of the FMA and Section 9 of Standards for the
Submission of Information Required under Section 8 of the Act, 2018)**

The FMA and the Standards requires information to be submitted to review and approve laws. This information supports proper decisions, ensures the First Nation property tax system remains transparent, and maintains taxpayer confidence.

The FNTC may request the following information to accompany the First Nation's annual laws:

- the summary assessment roll for the previous year and current taxation year;
- the number of property occurrences within each property class (this usually appears on the summary assessment rolls provided by the First Nation's assessor);
- the amount of new construction reflected in the current assessment roll, as determined by comparing the folio counts in this year to last year;
- the reference jurisdiction's tax rates for the previous and current taxation year; and
- confirmation that the First Nation has met the requirements of section 1.2 of the *Standards Respecting Notices Relating Local Revenue Laws, 2018*

Tax Notices

First Nation's property taxation law sets its own date tax notices are to be sent, and tax notices can only be issued after the FNTC approves the annual tax rates law. Confirmation of law approval is sent to First Nations by the FMA Registrar after each Commission meeting. The FMA Registrar can be reached at (250) 828-9895 or (250) 828-9857 ext. 114, or by email at tsimon@fntc.ca.

Annual Expenditure Laws

Timing for the Making of Annual Expenditure Laws (Section 1 of the Standards for the Timing of First Nation Annual Tax Rates and Expenditure Laws, 2017)

As a result of the recent changes to the Standards, the annual laws must be enacted on or before November 30 of the taxation year.

First Nations typically pass their annual expenditure law at the same time as their annual tax rates law. As each First Nation's property taxation law sets the date when its annual tax rates laws must be made, please refer to this date when developing your First Nation's annual expenditure law to ensure compliance with the timelines established in your First Nation's property taxation law.

The FNTC recommends that First Nations submit their annual laws at least 15 days in advance of the date tax notices are to be issued to allow sufficient time for the review and approval of your First Nation's annual laws. Tax administrators should submit signed annual laws and all supporting materials the FMA Registrar as soon as practicable.

Annual Budget (Standards for First Nation Expenditure Laws, 2017)

Accumulated Surpluses/Deficits

The accumulated surplus or deficit from the prior year is carried forward to the current budget year and reported in the accumulated surplus/deficit section of the annual budget.

Payments in Lieu of Taxation

The FMA and Standards definition of "local revenue" includes payments in lieu of taxation (PILT). A PILT is typically made by other governments or government entities like Crown corporations that occupy interests on reserve. PILT amounts should be included under PART 1, section 1 of the Budget Schedule. Examples of PILTs include payments from BC Hydro's Community Development Fund or grants payments made in lieu of railway taxation.

Expenditure Categories
(Schedule to the Standards)

Local revenue budgets must identify planned expenditures using the appropriate expenditure categories and sub-categories. FNTC has developed “Expenditure Categories for the Annual Expenditure Law Budget” which include explanatory notes for each expenditure category and sub-category.

Contingency Amounts
(Section 6 of the Standards)

The Standards require First Nations laws to establish contingency amounts between 1% and 10% of the total local revenues (i.e., revenues raised under a subsection 5(1) law or payments made in lieu of property tax) **excluding**:

- Any amounts transferred from local revenue to a reserve fund or DCC reserve fund in the current year;
- Any amounts transferred from a capital reserve fund or a DCC fund into current year’s revenues;
- Any revenues from a service tax;
- Any revenues from a fee law; and
- Any proceeds of a borrowing from the First Nations Finance Authority.

Reserve Fund Purposes Statement
(Section 4 of the Standards)

The Standards require that where a First Nation is establishing a reserve fund, the expenditure law must contain a provision which establishes the new reserve fund and states the purposes of the new reserve fund.

Establishing Reserve Funds
(Section 4 of the Standards)

Reserve funds must be established in the annual expenditure law and must comply with reserve fund usage provisions in the First Nation’s property taxation law and the restrictions in section 8 of the Standards. Reserve funds must also meet the criteria set out in section 5 and 6 of the Standards, including the requirement for capital development plan. Section 2 of the Standards requires the reserve fund balances are reported in an appendix to the annual budget.

Contingency Reserve Funds
(Section 6 of the Standards)

Contingency reserve funds are used by governments to cover unforeseen expenditures, or to stabilize the temporary impacts of cyclical local revenue decreases. First Nations who established contingency reserve funds prior to participating in the FMA, or who wish to establish these reserve funds, must meet the requirements of the Standards.

- New contingency reserve funds must be established in the expenditure law.

- A maximum of 10% of local revenue in the current budget year can be transferred into the contingency reserve fund.
- Contingency reserve funds can grow over time but can never exceed 50% of the current budget year's local revenues.
- Contingency reserve fund balances are reported in an appendix to the annual budget.

Property Transfer Taxes and the Annual Budget

In preparing the annual budget, First Nations collecting property transfer tax (PTT) must include an estimate of the PTT revenue expected in the budget year. FNTC recommends that First Nations prepare a revenue estimate based on a review of previous year's PTT revenue and current market conditions. Where the PTT is being established for the first time, estimates can be drawn from examining the previous year's leasehold transactions. The estimated total is to be included in the Annual Expenditure Law Schedule under Part I, section 1(c). As with property tax, First Nations can either expend in the current year or transfer PTT amounts into a reserve fund.

*Special Requirements for First Nations with
Development Cost Charges, Service Taxes or Fee Laws*

In preparing the annual budget, First Nations collecting development cost charges (DCC), service taxes or fees must separately set out the revenues and expenditures from DCCs, services taxes and fees, including transfers as required into reserve funds. Tax administrators should consult with their First Nation's lands department to determine expected building permits to be issued or planned developments.

The First Nation's Annual Expenditure Law must establish the associated reserve fund in the first year of a DCC, service tax, or fee law, and report reserve fund balances in an appendix to the annual budget.

*Service Agreements and the Annual Budget
(Section 2 of the Standards)*

Where a First Nation has service agreements with third-party service providers and amounts from the local revenue account are used to pay for services under the agreement, the Annual Budget must list each service agreement, the amount payable, and a brief description of the service provided. These expenditure amounts are also included in the appropriate budget expenditure category.

*Amendments to the Annual Budget during the Tax Year
(Section 13 of the Act)*

First Nations wishing to amend their local revenue budgets are reminded that any changes to the budget must be made by amending the Annual Expenditure Law. This means that if the First Nation wishes to make an expenditure that is not included in the budget, or wishes to change an expenditure amount, it must amend its annual expenditure law and submit the law for FNTC review and approval.

Annual Audit of the Local Revenue Account
(Section 14 of the Act)

The FMA requires local revenues to be reported on and accounted for separately from other moneys of the First Nation and audited on an annual basis. However, the First Nations Financial Management Board's *Local Revenue Account Financial Reporting Standards* enable First Nations with annual local revenue of less than \$400,000, an option to disclose this financial information in the form of a separate segment in the annual audited consolidated financial statements of the First Nation. This option was developed to accommodate the needs of those First Nations that are generating local revenues at a scale where the costs of preparing separate audited local revenue financial statements may be significant relative to the amount of revenue raised.

Notice of Annual Laws

Notification of Annual Tax Rates Laws
(Section 1 of Standards Respecting Notices Relating to Local Revenue Laws, 2018)

The FMA and the Standards requires First Nations to give notice of their entire proposed annual tax rates law, including its schedule(s), prior to the law submission.

The notice requirement can be met by:

- posting the proposed annual tax rates law on the First Nations Gazette (FNG) or on the First Nation's website;
- using procedures set out in their taxpayer representation to Council law; or
- holding a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed law.

Giving notice of the entire proposed annual tax rates law is consistent with best practices in property tax administration and will enable stakeholders to view provisions like the minimum tax before a law is approved.

Where a First Nation has provided justification for a tax rate under paragraph 10.1(a) or (b) of the *Standards for First Nation Annual Tax Rates Laws, 2017*, a description of the justification is required in the notice.

Notification of Annual Expenditure Laws
(Section 2 of Standards Respecting Notices Relating to Local Revenue Laws, 2018)

Similar to the notification for the annual tax rates laws, the Standards require First Nations to give notice of the entire annual expenditure law, including the budget and appendices (if applicable), prior to law submission.

The notice requirement is the same as for the annual tax rates law, and can be met by:

- posting the proposed annual expenditure law on the FNG, or on the First Nation's website;
- using procedures set out in their taxpayer representation to Council law, or
- holding a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed law.

First Nations who wish to use the FNG website to post their annual laws can do so in one of two ways:

****Online**

Sign up and submit directly on the First Nations Gazette (FNG) website:
<http://www.fng.ca/index.php?mod=register>

By email

Email final Word version of the proposed Annual Tax Rates Law and Annual Expenditure Law to editor@fng.ca

****NOTE** – After May 31st, the FNG website submission process will change when the FNG launches a new website. On the new website, submissions will be made using a form and will no longer require submitters to register for accounts.

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