

**POLICY FOR
FIRST NATION PROPERTY ASSESSMENT BY-LAWS, 2021**

**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 between the First Nations Tax Commission and the Minister of Indian Affairs and Northern Development (now the Minister of Indigenous Services) (the “Memorandum of Understanding”) provides for the Commission 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 Nation property taxation systems 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 must be met for First Nation property assessment by-laws enacted under subsection 83(1) of the Act. This Policy is used by the Commission in its review and recommendation for approval of First Nation property assessment by-laws, pursuant to subsection 2.1 of the Memorandum of Understanding.

The Commission recognizes that each First Nation’s property taxation system operates within the broader context of its fiscal relationships with other governments. This Policy is intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY**

This Policy is established pursuant to subsection 1.2 of the Memorandum of Understanding.

**PART IV
APPLICATION**

This Policy applies to every property assessment by-law, including a by-law amending or repealing such a by-law, submitted to the Commission for review and recommendation pursuant to the Memorandum of Understanding.

**PART V
CITATION**

This Policy may be cited as the *Policy for First Nation Property Assessment By-laws, 2021*.

**PART VI
DEFINITIONS**

In this Policy:

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

“agricultural property” means, in Saskatchewan, an interest in land classified as “non-arable (range)” or “other agricultural”;

“assessable property” means property that is subject to assessment under a By-law;

“assessed value” means the value of an interest in land for assessment purposes, as determined under a By-law;

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

“Assessment Review Board” means an independent appeal body established by a First Nation to hear and determine assessment appeals;

“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;

“business day” means a day other than a Saturday or a holiday as that term is defined in the *Interpretation Act*, R.S.C. 1985, c I-21;

“By-law” means a property assessment by-law enacted under paragraph 83(1)(a) of the Act or a combined property assessment and taxation by-law enacted under paragraph 83(1)(a) of the Act;

“chair” means a chair of an Assessment Review Board;

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

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

“Council” has the same meaning as “council of the band” in subsection 2(1) of the Act;

“First Nation” means a band as defined in subsection 2(1) of 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;

“property class” means a category of interests in land established for the purposes of assessment and taxation;

“Province” refers to the province in which a First Nation’s reserve lands are situated;

“reserve” means any land set apart for the use and benefit of a First Nation within the meaning of the Act; and

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting.

Except as otherwise provided in this Policy, words and expressions used in this Policy have the same meaning as in the Act.

PART VII

PROCEDURAL AND GENERAL REQUIREMENTS

1. Notice of Proposed By-law

1.1 A First Nation must follow the procedures set out in sections 1 to 7 before enacting a By-law, including a by-law repealing or amending a By-law.

1.2 Subject to section 5, the Council must, at least thirty (30) days before making a By-law,

- (a) publish notice of the proposed By-law in the *First Nations Gazette*;
- (b) post the notice in a public place on its reserve lands; and
- (c) send a copy of the notice to the Commission.

2. Exemption

The Commission may exempt a First Nation from the requirements in subsection 1.2 in respect of an amendment of a By-law if the Commission determines that the amendment is not significant.

3. Content of Notice

The notice referenced in subsection 1.2 must

- (a) describe the proposed By-law;
- (b) state where a copy of the proposed By-law and any related documents may be obtained;
- (c) invite representations regarding the proposed By-law to be made, in writing, to the Council within thirty (30) days after the date stated in the notice; and
- (d) if the Council is to review the By-law at a public meeting, state the time and place of the meeting.

4. Representations

Before enacting the By-law, the Council must consider any representations that were made in accordance with paragraph 3(c) or at a meeting referred to in paragraph 3(d).

5. Notice in First Year of Taxation

Where a First Nation is implementing real property taxation for the first time, the notice period under subsection 1.2 must be extended to at least forty-five (45) days.

6. Additional Requirements for British Columbia First Nations

A First Nation located in British Columbia that is undertaking property taxation for the first time must provide a certificate of taxation issued by the Province of British Columbia under the *Indian Self Government Enabling Act*, R.S.B.C. 1996, c. 219.

7. By-law Submission Requirements

When submitting a By-law for approval recommendation, a First Nation must provide the Commission with the following documentation:

- (a) a description of the interests in land subject to the By-law;
- (b) a description of the assessment practices to be applied to each property class and interest in land;
- (c) a description of the notices that were given and any consultation undertaken by the Council before enacting the By-law;
- (d) information regarding services to be provided from tax revenues, existing service agreements and any service agreement negotiations underway at the time the By-law was enacted;

- (e) evidence that the By-law was duly enacted by the Council;
- (f) a copy of the certificate referred to in section 6, where applicable; and
- (g) any other information a First Nation considers relevant or that is requested by the Commission.

PART VIII

FORM AND CONTENT OF BY-LAWS

8. Appointment of Assessor

The By-law must

- (a) provide for the appointment of an assessor to conduct assessments of assessable property in accordance with the By-law and such other duties as set out in the By-law; and
- (b) provide that any person carrying out valuations of assessable property must be qualified to assess real property for taxation purposes in the Province.

9. Assessment Dates

9.1 For those aspects of the assessment process that are set out in the Schedule to this Policy, the By-law must incorporate the corresponding dates or time frames, if any.

9.2 Where the Schedule does not provide a date or time frame but allows a First Nation to select a date to be set out in its By-law, the By-law must set a fixed date for that aspect of the assessment process.

9.3 The By-law must set a date for mailing assessment notices that is on or before the date for mailing tax notices set out in a First Nation's taxation by-law.

10. Assessment Classification

10.1 The By-law must

- (a) establish property classes for the purposes of assessment that are the same as those property classes established in the Province; and
- (b) require the assessor to classify assessable properties by using the provincial classification rules for each property class.

10.2 As an exception to subsection 10.1, a By-law of a First Nation located in British Columbia is not required to establish property class 3, supportive housing, or property class 7, managed forest land.

10.3 As an exception to subsection 10.1, a By-laws of a First Nation located in Ontario is not required to establish the managed forests property class.

11. Assessment Method

11.1 For the purposes of assessing interests in land, the By-law must

- (a) determine the assessed value of the interest in land as if the land or improvements are held in fee simple off the reserve; and
- (b) require the use of the provincial assessment practices and the provincial valuation methods, rates, rules and formulas for conducting assessments off reserve, except where otherwise provided in the By-law.

11.2 Without limiting subsection 11.1,

- (a) the By-law of a First Nation located in Manitoba must establish percentages of assessed value for each property class for which such a value is established by the Province, and must require the assessor to determine the portioned value of each assessable property using the applicable percentages of assessed values established in the By-law; and

(b) the By-law of a First Nation located in Saskatchewan must establish percentages of assessed value for each property class for which such a value is established by the Province, and must require the assessor to determine the taxable assessment of each assessable property by multiplying the fair value assessment by the applicable percentage of value established in the By-law.

11.3 Despite subsection 11.1, the By-law of a First Nation located in Saskatchewan must, for agricultural property taxed on the basis of the taxable area,

- (a) direct the assessor to determine the taxable area; and
- (b) provide that no valuation is required for the interest in land.

12. Assessment Inspection

The By-law must include procedures for the inspection of assessable property that are consistent with procedures set out in the laws governing assessment inspections in the Province.

13. Assessment Roll

13.1 The By-law 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 payments in lieu of taxes may be accepted by the Council.

13.2 As an exception to subsection 13.1, the By-law of a First Nation located in Quebec may provide for the completion of an assessment roll every three (3) years, or such other time frame as established or permitted by the Province.

13.3 The By-law must require the assessment roll to contain at least the following information, as applicable:

- (a) the name and address of the holder of the property;
- (b) a description of the property;
- (c) the classification of the property;
- (d) the assessed value by classification of the property;
- (e) the total assessed value of the property;
- (f) the taxable area of agricultural property, where the property is taxed on the basis of taxable area;
- (g) for a First Nation located in Manitoba, the portioned value of the property;
- (h) for a First Nation located in Saskatchewan, the taxable assessment of the property; and
- (i) for a First Nation located in a province other than Manitoba or Saskatchewan, the total assessed value of the property liable to taxation.

13.4 The By-law must provide for

- (a) certification of the assessment roll by the assessor that the assessment roll was completed in accordance with the By-law;
- (b) delivery of the certified assessment roll by the assessor to the Council;
- (c) inspection of the assessment roll by any person;
- (d) a prohibition on using the information contained in the assessment roll for solicitation purposes; and
- (e) 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.

14. Correction of Errors and Omissions

The By-law must include procedures for the correction by the assessor of errors and omissions in the assessment roll through the use of one (1) or more of revised, amended or supplementary assessment rolls.

15. Assessment Notice

15.1 The By-law must provide for assessment notices to be delivered to all persons named on the assessment roll in respect of an assessable property.

15.2 The By-law must require an assessment notice 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 assessed value by classification of the property;
- (d) the taxable area of agricultural property, where indicated on the assessment roll for that property;
- (e) for a First Nation located in Manitoba, the portioned value of the property;
- (f) for a First Nation located in Saskatchewan, the taxable assessment of the property;
- (g) for a First Nation located in a province other than Manitoba or Saskatchewan, the total assessed value of the property liable to taxation;
- (h) the opportunity to make a request for reconsideration of the assessment by the assessor and the deadline for making such a request; and
- (i) the right to appeal the assessment to the Assessment Review Board, how to appeal and the deadline for an appeal.

16. Reconsideration

The By-law must include procedures for the reconsideration of an assessment by the assessor, which procedures must

- (a) allow a person named on the assessment roll in respect of an assessable property to request that the assessor reconsider the assessment of that assessable property;
- (b) provide for at least twenty-one (21) days after the date of delivery of an assessment notice for a person to request a reconsideration by the assessor;
- (c) set out the grounds for reconsideration;
- (d) require the assessor to complete the reconsideration within a time frame set out in the By-law, and
 - (i) notify the person who made the request that the assessment is confirmed, or
 - (ii) where the assessor determines that the property should have been assessed differently, offer to modify the assessment; and
- (e) where the person who made the request agrees to a modification, provide for the assessor
 - (i) to amend the assessment roll,
 - (ii) to give notice of the amendment to the tax administrator and to all other persons who received an assessment notice in respect of the assessable property, and
 - (iii) where a notice of appeal has been given in respect of an assessable property, to give notice of the amendment to the Assessment Review Board.

17. Assessment Appeals

17.1 The By-law must allow any person to appeal an assessment or a reconsideration of an assessment to the Assessment Review Board.

17.2 The By-law must set out, at a minimum, the following grounds for appeal to the Assessment Review Board:

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

17.3 If the By-law provides for an administration fee for the filing of an assessment appeal, the fee must not exceed thirty dollars (\$30).

18. Assessment Review Board

18.1 The By-law must

- (a) set out the powers, duties and functions of the chair;
- (b) provide for the appointment of members of the Assessment Review Board by Council resolution, fixed rates of remuneration and fixed terms of office of not less than two (2) years; and
- (c) set out when and how members of the Assessment Review Board may be removed from office.

18.2 The By-law must require that

- (a) the Assessment Review Board be composed of at least three (3) members, one (1) of whom must be designated as the chair;
- (b) at least one (1) member of the Assessment Review Board be a lawyer who is a practising or non-practising member in good standing of the law society of the Province and at least one (1) other member have experience in assessment appeals in the Province; and
- (c) a person not serve as a member of an Assessment Review Board if the person has a personal or financial interest in the assessable property that is the subject of the appeal, or if the person is a chief or a member of the Council.

18.3 The By-law must provide that, for the purposes of paragraph 18.2(c), membership in the First Nation does not in itself constitute a personal or financial interest in assessable property.

19. Minimum Limitation Period

If a By-law establishes a period beyond which assessments are not to be appealed, that period must end not less than forty-five (45) days after the day on which the assessment notice is mailed to the person named on the assessment roll.

20. Notice of Appeal

20.1 The By-law must provide that an appeal is commenced by delivery of a notice of appeal to the assessor at the address set out in the assessment notice.

20.2 The By-law must require that the notice of appeal be accompanied by any fee required by the By-law, and that the notice include

- (a) the name and mailing address of the complainant and of any representative acting on behalf of the complainant;
- (b) the description of the assessable property, including any assessment roll number, set out in the assessment notice; and
- (c) the grounds for the appeal.

21. Scheduling and Notice of Hearing

21.1 The By-law must provide that on delivery of a notice of appeal to the assessor, the chair of the Assessment Review Board, in consultation with the assessor, must schedule a hearing of the appeal and, at least ten (10) days before the day on which the hearing is scheduled to begin, must deliver a written notice of the date, time and place of the hearing to the parties and to each person named on the assessment roll in respect of the assessable property.

21.2 The By-law must require the Assessment Review Board to commence the hearing within forty-five (45) days after the notice of appeal to the assessor is delivered, unless the parties consent to a later date.

22. Conduct of Hearings

22.1 The Bylaw must provide that the Assessment Review Board may conduct a single hearing of two (2) or more appeals related to the same assessment roll if the matters on appeal in each hearing are addressing the same assessable property or substantially the same issues.

22.2 The By-law must establish practices and procedures for the conduct of Assessment Review Board hearings, including respecting

- (a) a party's right to be heard, have representation, present evidence and call witnesses;
- (b) the manner by which the Assessment Review Board may conduct a hearing; and
- (c) the evidentiary rules that apply during a hearing.

22.3 In establishing practices and procedures, the By-law may

- (a) provide for additional practices and procedures to be established in a practices and procedures manual approved by Council resolution; and
- (b) permit the Assessment Review Board to determine its own procedures during a hearing to the extent the procedures are not inconsistent with the By-law.

22.4 The By-law 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 the appeal.

22.5 The By-law must require the chair without delay to deliver a copy of any document submitted by a party to all other parties.

23. Hearings Deferred

If a proceeding with respect to liability to pay taxes is brought before a court of competent jurisdiction,

- (a) before the hearing is to commence, the By-law must require the hearing to be deferred until the matter is decided by the court;
- (b) during the hearing, the By-law must require the hearing to be adjourned until the matter is decided by the court; or
- (c) after the hearing has concluded but before a decision on the appeal is given, the By-law must require the decision to be deferred until the matter is decided by the court.

24. Decisions

24.1 The By-law must provide that at the earliest opportunity after the day on which the hearing is completed, the Assessment Review Board must deliver a written decision on the appeal to all parties.

24.2 The By-law must set out procedures for updating the assessment roll to reflect decisions of the Assessment Review Board.

25. Delivery of Documents

25.1 The By-law must provide that delivery of a document may be made personally or by sending it by registered mail, fax or e-mail, and that personal delivery of a document is made

- (a) in the case of an individual, by leaving the document with that individual or with a person at least 18 years of age residing at that individual's place of residence;
- (b) in the case of a First Nation, by leaving the document with the person apparently in charge, at the time of delivery, of the First Nation's administrative office, or with the First Nation's legal counsel; and
- (c) in the case of a corporation, by leaving the document with the person apparently in charge, at the time of delivery, of the corporation's head office or branch office, or with an officer or director of the corporation, or with the corporation's legal counsel.

25.2 The By-law must provide that, subject to subsection 25.3, a document is considered to have been delivered

- (a) if delivered personally, at the time that personal delivery is made;
- (b) if sent by registered mail, on the fifth (5th) day after it is postmarked;
- (c) if sent by fax, at the time indicated on the confirmation of transmission; or
- (d) if sent by e-mail, at the time indicated in the electronic confirmation that the e-mail has been opened.

25.3 The By-law must provide that a document delivered on a non-business day or after 17:00 local time on a business day must be considered to have been delivered at 09:00 on the next business day.

26. Appeal

The By-law must provide that an appeal lies to a court of competent jurisdiction from a decision of the Assessment Review Board on a question of law.

27. Confidentiality

The By-law must provide for the confidentiality of information and documents obtained by the tax administrator, the assessor, the Assessment Review Board and any other person who has custody or control of records obtained or created under the By-law, except that disclosure may be made

- (a) in the course of administering the By-law or performing functions under it;
- (b) in proceedings before the Assessment Review Board, a tribunal having jurisdiction, or a court of law;
- (c) where a holder gives written authorization for their agent to obtain confidential information relating to a property; or
- (d) by Council to a third party for research (including statistical) purposes.

PART IX

REVOCATION AND COMING INTO FORCE

28. Revocation

The *Policy for First Nation Property Assessment By-laws, 2018* established and effective as of August 1, 2018 is revoked.

29. Coming into Force

This Policy is established and in effect as of December 14, 2021.

PART X
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

or

First Nations Tax Commission
202 – 190 O’Connor Street
Ottawa, ON K2P 2R3
Telephone: (613) 789-5000

SCHEDULE
ASSESSMENT TIMELINES

British Columbia

Assessment valuation date:	July 1 of year before taxation year
Physical condition and permitted use date:	October 31 of year before taxation year
Assessment roll and notices date:	December 31 of year before taxation year, where the First Nation has appointed the BC Assessment Authority as the assessor, or January 31 of taxation year, where the First Nation has appointed an assessor other than the BC Assessment Authority

Alberta

Assessment valuation date:	July 1 of year before taxation year
Physical condition and use date (non-linear property):	December 31 of year before taxation year
Specifications and characteristics date (linear property):	October 31 of year before taxation year
Assessment roll date:	February 28 of taxation year
Assessment notice date:	July 1 of taxation year

Saskatchewan

Base date for valuation:	as established by Assessment Management Agency from time to time
Facts, conditions and circumstances:	January 1 of taxation year
Assessment roll date:	May 1 of taxation year
Assessment notice date:	within fifteen (15) days of completion of assessment roll

Manitoba

Reference date 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 By-law

Ontario

Valuation date:	January 1, 2016 for the years 2017–2021, and for each subsequent period consisting of four (4) consecutive taxation years, January 1 of the year that precedes the period by two (2) years, or such other date prescribed by the Ontario Minister of Finance from time to time
Classification date:	June 30 of year before taxation year
Assessment roll date:	not later than second Tuesday following December 1 of year before taxation year
Assessment notice date:	no later than fourteen (14) days before assessment roll is completed

Quebec

Valuation and condition date:	July 1 of second fiscal year preceding first fiscal year for which assessment roll is made
Assessment roll date:	a date set by the First Nation in its By-law that is between August 15 and September 15 of year before taxation year
Assessment notice date:	March 1 of taxation year

New Brunswick

Real and true value date:	January 1 of year before taxation year
Assessment roll date:	December 31 of year before taxation year
Assessment notice date:	December 31 of year before taxation year

Nova Scotia

Base date:	date prescribed by the Director of Assessment under the <i>Assessment Act</i> , R.S.N.S. 1989, c. 23 from time to time
State of property 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 By-law

Prince Edward Island

Valuation date:	date set by the First Nation in its By-law
Assessment roll date:	date set by the First Nation in its By-law that is between January 1 and December 31 of year before taxation year
Assessment notice date:	fifth (5th) business day in May

Newfoundland & Labrador

Base date for valuation:	January 1 of every second year after 2020
Assessment roll date:	date set by the First Nation in its By-law that is between January 1 and August 31 of taxation year
Assessment notice date:	on completion and delivery of assessment roll by a date set by the First Nation in its By-law