

**STANDARDS FOR FIRST NATION
ACCOMMODATION OPERATOR BUSINESS ACTIVITY TAX LAWS, 2017**

[Consolidated to 2019-03-27]

**PART I
PREAMBLE**

WHEREAS:

- A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;
- B. Standards are established by the Commission to further the policy objectives of the Commission and the Act, 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; and
- C. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

**PART II
PURPOSE**

These Standards set out the requirements that must be met for certain First Nation local revenue laws enacted under subparagraph 5(1)(a)(iv) of the Act. These Standards are used by the Commission in its review and approval of certain First Nations' business activity tax laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

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

**PART III
AUTHORITY AND PUBLICATION**

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

**PART IV
APPLICATION**

These Standards apply to business activity tax laws that provide for a tax on business operators providing accommodation on reserves.

**PART V
CITATION**

These Standards may be cited as the *Standards for First Nation Accommodation Operator Business Activity Tax Laws, 2017*.

**PART VI
DEFINITIONS**

In these Standards:

“accommodation” includes lodging in hotels, motels and resorts, and in other lodging establishments that are included in a First Nation’s Law;

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9 and the regulations enacted under that Act;

“business activity tax” or “tax” means a tax imposed, levied, assessed or assessable under a Law and all penalties, interest and costs added to taxes as provided in a Law;

“business operator” means a person, other than a tourism agent, who sells, provides or offers to sell accommodation on a reserve;

“Commission” means the First Nations Tax Commission established under the Act;

“Council” has the meaning given to that term in the Act;

“First Nation” means a band named in the schedule to the Act;

“First Nation Entity” means

- (a) a corporation in which the First Nation beneficially owns, directly or indirectly, shares
 - (i) having not less than fifty percent (50%) of the votes that could be cast at an annual meeting of the shareholders of the corporation, or
 - (ii) having not less than fifty percent (50%) of the fair market value of all of the issued shares of the capital stock of the corporation; or
- (b) a partnership in which the First Nation beneficially owns, directly or indirectly,
 - (i) not less than fifty percent (50%) of all voting rights of the partnership, or
 - (ii) interests in the partnership having not less than fifty percent (50%) of the fair market value of all of the interests in the partnership;

“gross revenues” means the total revenues derived from the sale of accommodation;

“interest”, in relation to reserve lands in Canada elsewhere than in Quebec, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“Law” means a business activity tax law enacted under subparagraph 5(1)(a)(iv) of the Act to which these Standards apply;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“Province” refers to the province in which the reserve is situated;

“reporting period” means a time period respecting which a business activity tax will be levied and collected;

“reserve” means a reserve of a First Nation within the meaning of the *Indian Act*;

“right”, in relation to reserve lands in Quebec, means any right of any nature in or to the lands, including any right to occupy, possess or use the lands and any right of a lessee, but does not include title to the lands that is held by Her Majesty;

“tax administrator” means the person appointed by Council to administer and enforce a Law;

“tax return” means a return completed and filed by a business operator in respect of business activity taxes owing under a Law;

“taxation law” means a law enacted under paragraph 5(1)(a) of the Act respecting the taxation of interests

or rights in reserve lands, but does not include a property transfer tax law; and
“tourism agent” means a person who

- (a) purchases accommodation from a business operator, and
- (b) for payment, makes all or any part of that accommodation available for use by one or more persons as part of a tourism service.

For greater certainty, an interest or right, in relation to reserve lands, includes improvements.

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

[am. FNTC Resolution 2019-03-27.]

PART VII STANDARDS

1. Administration and Enforcement of Law

The Law must provide for

- (a) the appointment, by resolution, of a tax administrator, or
- (b) the tax administrator appointed under the First Nation’s taxation law,

to oversee the administration and enforcement of the Law.

2. Tax Liability

2.1 The Law must provide that it applies to all business operators.

2.2 The Law must levy a business activity tax on the business operator’s use and occupation of the reserve for the provision of accommodation.

2.3 The Law must provide that the business activity tax is payable by the business operator.

3. Determination of Gross Revenues

3.1 The Law must set out how gross revenues are determined for the purposes of the business activity tax.

3.2 The Law must set out the types of accommodation taxable under the Law, which must include lodging in hotels, motels and resorts, and may include lodging in other establishments such as cabins, condominiums, hostels, boarding or rooming houses, bed and breakfast establishments, mobile homes, trailers and vacation homes.

3.3 The Law must include in the determination of gross revenues all revenues from the sale of accommodation, except as follows:

- (a) the Law must exclude revenues from accommodation that is occupied continuously by the same individual for a period of time set out in the Law that is not less than twenty-seven (27) days; and
- (b) the Law may exclude revenues from accommodation that is sold for an amount below an amount set out in the Law.

[am. FNTC Resolution 2019-03-27.]

4. Exemptions

4.1 The Law must not exempt any business operator from the business activity tax, except as provided in subsections 4.2 and 4.3.

4.2 The Law may provide for an exemption from the business activity tax where the business operator is

the First Nation or a First Nation Entity.

4.3 The Law may provide for an exemption from the business activity tax where a business operator

(a) offers fewer units of accommodation than a number set out in the Law, which number must not be more than four (4) units; or

(b) has annual gross revenues from the sale of accommodation below an amount set out in the Law.

[am. FNTC Resolution 2019-03-27.]

5. Tax Rate

5.1 Subject to subsection 5.2, the Law must establish a rate of business activity tax that is not more than

(a) the maximum percentage rate set from time to time by the province of British Columbia as the municipal and regional district tax on the purchase price of accommodation, for First Nations located in that province;

(b) the percentage rate set from time to time by the province of Alberta as a tourism levy on the purchase price of accommodation, for First Nations located in that province;

(c) the maximum percentage rate set from time to time by the province of Quebec as a hotel tax on the purchase price of accommodation units, for First Nations located in that province;

(d) the maximum percentage rate set from time to time by the province of Nova Scotia as a marketing levy on the purchase price of accommodation, for First Nations located in that province; or

(e) five percent (5%) for First Nations located in provinces not referenced in paragraphs (a) through (d).

5.2 Where a First Nation is located in a province referenced in any of paragraphs 5.1(a) through (d), the First Nation may, after the first year that the business activity tax is levied, amend the Law to increase the rate of business activity tax to not more than five percent (5%).

6. Tax Levy

6.1 The Law must provide for the business activity tax to be collected at least once in each year, and may

(a) establish one (1) or more reporting periods to apply in each year, or

(b) enable the tax administrator to establish one (1) or more reporting periods to apply in each year,

provided that each reporting period is at least three (3) consecutive months.

6.2 The Law must provide that the business activity tax is calculated by multiplying the rate of tax by the business operator's gross revenues during the reporting period.

7. Tax Return, Payment and Reassessment

7.1 The Law must require the business operator to, in respect of each reporting period,

(a) complete and deliver a tax return to the First Nation, and

(b) pay in full all taxes owing to the First Nation,

by a date or dates set out in the Law.

7.2 The Law must require a tax return to contain at least the following information:

(a) the name and address of the business operator;

(b) the business operator's gross revenues during the reporting period; and

(c) the total taxes payable by the business operator for the reporting period.

7.3 The Law must require the tax return to be certified as complete and correct by the business operator or, where the business operator is a corporation, by an individual with personal knowledge of the matters certified and actual authority to certify the tax return on behalf of the business operator.

7.4 The Law must set out where tax payments must be made, the manner of payment, and the dates when tax returns and payments are due.

7.5 The Law must provide procedures for the tax administrator to make tax reassessments and deliver a notice of tax reassessment in respect of the business activity tax where

- (a) the tax administrator determines there has been an error or omission in a tax return;
- (b) the tax administrator determines that a business operator has not paid the correct amount of tax; or
- (c) a business operator has not delivered a tax return in respect of the reporting period.

8. Tax Refunds

8.1 The Law must set out procedures for providing refunds to a business operator and the circumstances under which refunds will be given.

8.2 The Law must include at least the following provisions:

- (a) a refund of excess taxes paid where the tax administrator determines that the business operator made an overpayment of taxes in respect of a reporting period; and
- (b) payment of interest on refunds at a rate of two percent (2%) below the prime lending rate of the principal banker to the First Nation on the fifteenth day of the month immediately preceding the calculation of the interest for the following three (3) month period.

8.3 Despite subsection 8.2, the Law may provide for a refund of excess taxes paid to be applied as a credit on account of business activity taxes that are due or accruing due by the business operator to the First Nation, provided the First Nation gives notice to the business operator.

9. Complaints to Tax Administrator

The Law must provide for a complaints process that allows a business operator to make a complaint to the First Nation respecting an alleged error or omission in a notice of tax reassessment delivered by the tax administrator.

10. Records and Receipts

10.1 The Law must require the tax administrator to keep records of

- (a) all business activity taxes levied under the Law;
- (b) all tax returns received under the Law;
- (c) all tax payments made and receipts issued in respect of each business operator;
- (d) all refunds paid under the Law; and
- (e) all enforcement proceedings taken under the Law.

10.2 The Law must require the tax administrator to issue a receipt to a business operator for each payment made under the Law.

11. Penalties

Where the Law provides for a penalty to be imposed in respect of unpaid taxes, the Law must set out the date on which, or the time period after which, the penalty will be imposed if taxes are not paid.

12. Confidentiality

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

- (a) in the course of administering the Law or performing functions under it;
- (b) in proceedings before a tribunal having jurisdiction or a court of law;
- (c) where a person gives written authorization for his or her agent to obtain confidential information relating to a business or a property;
- (d) by the tax administrator to a third party for research (including statistical) purposes, provided the information or documents do not include any information that is in an individually identifiable form; or
- (e) by Council to a third party for research (including statistical) purposes.

[am. FNTC Resolution 2019-03-27.]

PART VIII COMING INTO FORCE

These Standards are established and in effect as of March 22, 2017.

PART IX ENQUIRIES

All enquiries respecting these Standards should be directed to:

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