

**STANDARDS FOR
FIRST NATION PROPERTY TAXATION LAWS, 2016**

[Consolidated to 2020-06-25]

**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 First Nation property taxation laws enacted under paragraphs 5(1)(a) and (e) of the Act. These Standards are used by the Commission in its review and approval of First Nations' property taxation 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 every property taxation law submitted to the Commission for approval under the Act.

**PART V
CITATION**

These Standards may be cited as the *Standards for First Nation Property Taxation Laws, 2016*.

PART VI DEFINITIONS

In these Standards:

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

“annual rates law” means a law enacted under subparagraph 5(1)(a)(ii) of the Act, as required under subsection 10(1) of the Act;

“assessed value” means the value of an interest or right in reserve lands for assessment purposes, as determined under an assessment law;

“assessment law” means a law of a First Nation enacted under subparagraph 5(1)(a)(i) of the Act;

“child” includes a child for whom a person stands in the place of a parent;

“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 or holds, 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;

“holder”, in relation to an interest in reserve lands in Canada elsewhere than in Quebec, means a person

- (a) in possession of the interest,
- (b) entitled through a lease, licence or other legal means to the interest,
- (c) in actual occupation of the interest, or
- (d) who is a trustee of the interest;

“holder”, in relation to a right in reserve lands in Quebec, means a person

- (a) in possession of the right,
- (b) entitled through a lease, licence or other legal or contractual means to the right,
- (c) in de facto occupation of reserve lands, or any other immovable situated on reserve lands, or
- (d) who is a trustee of the right;

“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 taxation law enacted under paragraphs 5(1)(a) and (e) of the Act, but does not include a property transfer tax law;

“property class” means a property class established in a First Nation’s assessment law;

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

“reference jurisdiction” means a taxing jurisdiction, located adjacent to a First Nation, that is identified for the purpose of comparing a First Nation’s tax rates;

“related individual” means, in respect of a member of the First Nation,

(a) that member’s spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent or guardian,

(b) the spouse of that member’s parent, grandparent, great-grandparent, child, grandchild or great-grandchild, or

(c) the child, grandchild, great-grandchild, parent, grandparent or great-grandparent of that member’s spouse;

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

“reserve fund” in this Standard does not include a reserve fund established for development cost charges purposes or a debt reserve fund established by a borrowing member;

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

“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;

“spouse” includes a common law partner;

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

“tax district” means a geographically defined area comprising all or portions of one or more reserves that is established for the purpose of setting tax rates;

“tax notice” means a notice of taxes owing sent to a holder of taxable property under a Law;

“tax roll” means a list of persons liable to pay tax on taxable property;

“taxable property” means an interest or right in reserve lands that is subject to tax under a 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 or rights in reserve lands imposed, levied, assessed or assessable under a local revenue law, and all penalties, interest and costs added to taxes under a Law; and

(b) for the purposes of collection and enforcement, all taxes on interests or rights in reserve lands imposed, levied, assessed or assessable under any local revenue law of the First Nation, and all penalties, interest and costs added to taxes under such a Law;

“taxpayer” means a person liable for taxes in respect of taxable property; and

“transition period” means the first five (5) years during which a First Nation implements taxation under a Law.

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 2018-06-25; 2018-12-12; 2019-02-13; 2020-06-25.]

PART VII STANDARDS

1. Appointment of Tax Administrator

1.1 The Law must provide for the appointment by Council, by resolution, of a tax administrator to oversee the administration and enforcement of the Law.

1.2 The Law must provide that the tax administrator is responsible for the day-to-day management of the First Nation's local revenue account.

2. Tax Liability

2.1 The Law must provide that

- (a) for reserve lands elsewhere than in Quebec, the Law applies to all interests in reserve lands;
- (b) for reserve lands in Quebec, the Law applies to all rights in reserve lands; and
- (c) all interests or rights in reserve lands are subject to taxation unless exempted from taxation in accordance with the Law.

2.2 The Law must provide that taxes must be levied on each interest or right in reserve lands by applying the applicable tax rate against the assessed value of the interest or right, except as provided in subsection 2.3.

2.3 If a First Nation wishes to establish a minimum amount of tax to be levied on taxable property in a property class, the Law must provide that the First Nation may set a minimum tax in one or more property classes in its annual rates law each year.

[am. FNTC Resolution 2019-02-13.]

3. Tax Districts

3.1 Where a First Nation wishes to have one (1) or more tax districts, the Law must

- (a) establish each tax district; and
- (b) describe the reserves and parts of reserves included in each district, using either a map or written description that clearly defines the geographical boundaries of the tax district.

3.2 A First Nation may only establish a tax district where necessary to create a fair taxation regime because the First Nation

- (a) has multiple reserves and one (1) or more of the reserves or parts of reserves have differing levels of servicing requirements or different reference jurisdictions; or
- (b) has a single reserve and one or more parts of the reserve has differing levels of servicing requirements or different reference jurisdictions.

4. Transition Period for Certain Taxing First Nations

4.1 Where a First Nation is implementing taxation for the first time and, in the year prior to making the Law,

- (a) the interests or rights in reserve lands that will be subject to taxation under the Law were not subject to provincial taxation jurisdiction, and

(b) the First Nation charged a fee for the provision of local services to holders of interests or rights in reserve lands in all or certain property classes,

the Law must include requirements for establishing tax rates during the transition period for those property classes that were subject to the fee referenced in paragraph (b), which requirements must comply with subsections 4.2 and 4.3.

4.2 Where subsection 4.1 applies to a First Nation, the Law must require the First Nation to establish tax rates in each year of the transition period that

- (a) are based on annual budgeting for the provision of local services to taxpayers; or
- (b) will move incrementally towards establishing tax rates that are identical to the tax rates set by the reference jurisdiction.

4.3 Where a First Nation's Law

- (a) applies paragraph 4.2(a), the Law must include a list of the services to be provided, the estimated costs of the services, and the anticipated tax rates in each applicable property class in each year of the transition period; or
- (b) applies paragraph 4.2(b), the Law must include a list of the services to be provided and the anticipated tax rates in each applicable property class in each year of the transition period.

[am. FNTC Resolution 2019-02-13.]

5. Exemptions from Taxation

5.1 Where a First Nation wishes to provide for exemptions from property taxation under a Law, those exemptions must be set out in the Law.

5.2 Where exemptions from taxation are included in a Law, the exemptions must be in respect of interests or rights in reserve lands in one or more of the following categories:

- (a) an exemption for an interest or right held or occupied by the First Nation, a First Nation Entity, or a member of the First Nation;
- (b) an exemption for an interest or right occupied as a residence by one (1) or more members of the First Nation and related individuals of those members and by no other persons; or
- (c) an exemption in a class of exemption used by local governments in the Province.

5.3 Where a Law provides an exemption under paragraph 5.2(a), the Law must provide that where an interest or right in reserve lands is held by the First Nation, a First Nation Entity or a member of the First Nation and is wholly occupied by a person who is not the First Nation, a First Nation Entity or a member of the First Nation,

- (a) the exemption does not apply to the person who is not the First Nation, a First Nation Entity or a member of the First Nation;
- (b) that person is responsible for the taxes levied in respect of the interest or right; and
- (c) the taxes are a liability only on that person.

5.4 Where a Law provides an exemption under paragraph 5.2(a), the Law must provide that where an interest or right in reserve lands is occupied by the First Nation, a First Nation Entity or a member of the First Nation and is also occupied by a person who is not the First Nation, a First Nation Entity or a member of the First Nation,

- (a) the exemption does not apply to the person who is not the First Nation, a First Nation Entity or a

member of the First Nation;

(b) that person is responsible for the taxes levied in respect of that person's proportionate occupation of the interest or right; and

(c) the taxes are a liability only on that person.

[am. FNTC Resolution 2018-06-25; 2018-12-12; 2019-02-13.]

6. Grants and Tax Abatement

6.1 Where a Law provides for a granting program, the Law must

(a) set out the objectives of the program, which must relate to a community purpose or goal;

(b) set out the qualifying criteria for the program;

(c) provide that the grant

(i) may be given only to a holder of taxable property that is taxable in the current taxation year,

(ii) must be in an amount equal to or less than the taxes payable on the taxable property in the current taxation year, less any other grants, abatements or offsets, and

(iii) must be used only for the purposes of paying the taxes owing on the taxable property in the current taxation year; and

(d) provide that Council will in each taxation year determine all grants that will be given and authorize those grants in an expenditure law.

6.2 The Law may provide for a form of tax abatement only where it is the same type and the same amount or percentage amount of abatement that is provided by the Province.

6.3 Where a Law provides for tax abatement, the qualifying requirements must be set out in the Law, and the amount of abatements given must be shown annually in the annual expenditure law.

[am. FNTC Resolution 2019-02-13.]

7. Reserve Funds

7.1 If a First Nation wishes to establish a reserve fund or use a reserve fund existing at the time the First Nation was added to the schedule to the Act,

(a) the Law must include the provisions set out in this section; and

(b) each reserve fund must be established in an expenditure law.

7.2 The Law must include the following provisions respecting the use of reserve funds:

(a) except as authorized in the Law, money in a reserve fund and interest earned on it must be used only for the purpose for which the reserve fund was established;

(b) Council may, by expenditure law,

(i) transfer moneys in a capital purpose reserve fund to another reserve fund or account only where all projects for which the reserve fund was established have been completed,

(ii) transfer money in a non-capital purpose reserve fund to another reserve fund or account,

(iii) borrow money from a reserve fund where not immediately required, on condition that the First Nation repay the amount borrowed plus interest on that amount at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation, no later than the time when the money is needed for the purposes of that reserve fund, and

(iv) as an exception to subparagraph (iii), borrow money from a reserve fund where the First

Nations Financial Management Board has assumed third-party management of the First Nation's local revenue account and, acting in the place of the Council, has determined that moneys must be borrowed from a reserve fund to meet the financial obligations of the First Nation; and

(c) all payments into a reserve fund and all expenditures from a reserve fund must be authorized by expenditure law.

7.3 Where a Law provides for the investing of moneys in a reserve fund that are not immediately required, it must allow for investment only in one or more of the following:

- (a) securities of Canada or of a province;
- (b) securities guaranteed for principal and interest by Canada or by a province;
- (c) securities of a municipal finance authority or the First Nations Finance Authority;
- (d) investments guaranteed by a bank, trust company or credit union; or
- (e) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

8. Tax Payments

8.1 The Law must

- (a) provide for the date on which taxes are due and payable; and
- (b) set out the acceptable forms of payment and where payment must be made, if applicable.

8.2 Where the Law provides for tax payments by instalments, the Law must set out

- (a) how a taxpayer may apply to pay taxes by instalments;
- (b) the due date for each instalment;
- (c) how each instalment amount will be calculated;
- (d) any consequences of failing to pay an instalment by the instalment due date; and
- (e) any penalties or interest that will be levied on unpaid instalment payments and when such charges will be imposed.

8.3 The Law may require taxpayers to make an interim tax payment before the First Nation establishes its annual tax rates, provided the Province permits interim tax levies in the provincial property taxation regime.

8.4 Where a Law requires an interim tax payment, the Law must set out

- (a) the date on which the interim payment is due and payable;
- (b) the calculation of the interim payment amount based on a specified percentage of the property value taxes levied on an interest or right in reserve lands in the previous taxation year;
- (c) the interim tax payment percentage for each property class;
- (d) that the interim tax payment will be applied towards the total taxes owing for that taxation year; and
- (e) any penalties or interest that will be levied on an unpaid interim tax payment and when such charges will be imposed.

8.5 The percentages required by paragraph 8.4(c) must not exceed the percentages permitted under the applicable legislation in the Province.

[am. FNTC Resolution 2019-02-13.]

9. Tax Roll and Tax Notices

- 9.1 The Law must provide for the tax administrator to create a tax roll each year by a date set out in the Law.
- 9.2 The Law must require the tax administrator to mail a tax notice in each year by a date set out in the Law that is at least thirty (30) days before the date that any taxes are due.
- 9.3 The Law must require the tax administrator to mail a tax notice to
- (a) each holder of taxable property subject to tax; and
 - (b) each person whose name appears on the tax roll in respect of a taxable property.
- 9.4 The Law must require a tax notice to contain at least the following information:
- (a) a description of the interest or right in reserve lands;
 - (b) the taxes imposed under the Law for the current taxation year, or the interim payment amount owing, as applicable;
 - (c) when penalties will be added if taxes are not paid;
 - (d) any unpaid taxes, penalties, interest and costs in respect of the interest or right in reserve lands; and
 - (e) where payment must be made, the manner of payment, and the date or dates the taxes are due, including due dates for any interim tax payments and instalment tax payments.
- 9.5 The Law must provide for the mailing of amended tax notices where the tax roll is amended to reflect an amended, revised or supplementary assessment roll.

[am. FNTC Resolution 2019-02-13.]

10. Tax Refunds

- 10.1 The Law must set out procedures for providing refunds to taxpayers and the circumstances under which refunds will be given, and must include at least the following provisions:
- (a) a refund of excess taxes paid where a change in the assessment results in a reduction of taxes for an interest or right in reserve lands;
 - (b) payment of interest 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.

10.2 Notwithstanding subsection 10.1, the Law may provide that excess taxes be applied as a credit on account of taxes or other unpaid amounts due to the First Nation.

[am. FNTC Resolution 2019-02-13.]

11. Penalties, Collection and Enforcement

- 11.1 Where the Law provides for a penalty to be imposed in respect of unpaid taxes, the Law must set out the date on which a penalty will be imposed if taxes remain unpaid.
- 11.2 The Law must set out the enforcement measures that may be taken by the First Nation to collect unpaid taxes.
- 11.3 If the First Nation wishes to recover its costs of enforcement, the Law must set out the types of costs and how the amounts are determined.

12. Confidentiality

The Law must provide for the confidentiality of information and documents obtained by the tax administrator, assessor, the Assessment Review Board 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 the Assessment Review Board, a tribunal having jurisdiction, or a court of law;
- (c) where a holder gives written authorization for his or her agent to obtain confidential information relating to an interest or right in reserve lands;
- (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 2019-02-13.]

PART VIII REVOCATION AND COMING INTO FORCE

Revocation

The *Standards for First Nation Property Taxation Laws* that were established and effective as of October 22, 2007, are revoked.

Coming Into Force

These Standards are established and in effect as of April 1, 2016.

PART IX ENQUIRIES

All enquiries respecting these Standards should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857