

**FIRST NATION SERVICE AND LOCAL IMPROVEMENT  
TAX BY-LAWS POLICY**

**PART I  
PREAMBLE**

WHEREAS:

- A. Section 83 (1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property tax;
- B. Memorandum of Understanding (MOU) between the First Nations Tax Commission and the Minister of Indian Affairs and Northern Development (signed in July 2007) provides for the FNTC to review and recommend section 83 by-laws for ministerial approval; and
- C. Policies are established by the Commission to further the objectives expressed in the MOU, 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.

**PART II  
PURPOSE**

This policy sets out the requirements that should be met for First Nation taxation for the provision of local service or improvement tax by-laws enacted under Section 83(1) of the Act. This policy is used by the Commission in its review and recommendation for approval of First Nations' local service or improvement tax by-laws, pursuant the MOU between the First Nations Tax Commission (FNTC) and the Minister of Indian Affairs and Northern Development.

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 AND PUBLICATION**

This policy is established pursuant to section 1.2 of the MOU between the FNTC and the Minister of Indian Affairs and Northern Development.

**PART IV  
APPLICATION**

This policy applies to every local service or improvement tax by-law submitted to the Commission for review and recommendation for Ministerial approval pursuant to the MOU.

This policy may apply in part, where consistent, in the instance where a self-governing First Nation entity establishes a local service or improvement tax.

**PART V  
DEFINITIONS**

In this Policy:

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

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

“assessment review board” means an independent appeal body established by a First Nation under its property taxation and assessment by-law or assessment by-law to hear and determine assessment appeals;

“By-law” means a service or local improvement tax by-law enacted under paragraph 83 of the Act;

“chair” means the chair of a Review Panel;

“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 a local service or improvement tax;

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

“First Nation” means a band as defined in the Act;

“holder” means a person in 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;

“local service area” means a defined area of a reserve to which a service is provided under a local service or improvement tax by law;

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

“registered professional” means an individual qualified and licensed as a professional engineer or architect in the Province;

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

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

“review panel” means an independent appeal body established under a By-law to hear and determine service tax appeals;

“service” means a work provided by or on behalf of a First Nation for which a service or local improvement tax will be levied under a By-law;

“service or local improvement tax” means a tax levied under a By-law in respect of the provision of a service;

“service tax roll” means a list of persons liable to pay a or tax under a By-law;

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

“taxation by-law” means an assessment and taxation or assessment by-law enacted under section 83 of the Act; and

“taxes” includes all taxes imposed, levied, assessed or assessable under a By-law pursuant to section 83(1)(a) of the Act including all penalties, interests and costs added to those taxes.

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

## **PART VI POLICY**

### **1. Description of Service**

- 1.1 The By-law must describe the service to be provided.
- 1.2 The By-law must levy a service tax only for the provision of a service that is within the categories of services listed in the Schedule to this policy.

### **2. Estimated Costs of Service**

- 2.1 The By-law must set out the total estimated cost of the service and the proportion of that estimated cost that the First Nation will recover through the service or local improvement tax.
- 2.2 In calculating the total estimated cost of the service for the purposes of subsection 2.1, the First Nation must include only the following costs:
  - (a) property acquisition costs;
  - (b) capital costs;
  - (c) professional services costs;
  - (d) debt servicing costs; and
  - (e) other costs that will be directly incurred in undertaking and financing the service.
- 2.3 A registered professional must review the total estimated cost of the service set out in the By-law and certify that the amount
  - (a) includes only those costs permitted under subsection 2.2; and
  - (b) provides a complete and accurate estimate of the total costs of the service.

### **3. Basis of Service or Local Improvement Tax**

- 3.1 The By-law must state the basis on which the service or local improvement tax will be levied.
- 3.2 The service or local improvement tax set out in the By-law must be based on one or more of the following:
  - (a) a property value tax based on the assessed value of the property as determined under the First Nation's assessment and taxation or assessment by-law;
  - (b) a single amount for each property;
  - (c) the taxable area of the property; or
  - (d) the taxable frontage of the property.

3.3 Where a By-law levies a tax on the basis of the taxable area or taxable frontage of a property, the By-law must establish how the taxable area or taxable frontage, as the case may be, will be determined based on the physical characteristics of the property.

### **4. Establishing Service or Local Improvement Tax Rates and Prepayment**

- 4.1 Where the By-law imposes a tax based on a property value tax, the By-law must establish the rate to be paid per unit of assessed value of a property as determined under the First Nation's assessment taxation or assessment by-law.
- 4.2 Where the By-law imposes a service or local improvement tax based on a single rate for each property, the By-law must establish the rate to be paid in each year of the tax.

4.3 Where the By-law imposes a tax based on the taxable area or taxable frontage of a property, the By-law must establish either

- (a) the rate to be paid per unit of taxable area or taxable frontage, or
- (b) the rates of tax to be paid for different ranges of taxable areas or taxable frontages.

4.4 In establishing a tax rate, the By-law may provide for a uniform rate for all properties, or different rates for different property classes established in the First Nation's assessment by-law.

4.5 Where the By-law allows a holder to prepay the tax amount, the By-law must set out the prepayment amount or the formula that will be used to calculate the prepayment amount.

## **5. Duration**

The By-law must set out the number of years that the tax will be imposed, which must not exceed the lesser of

- (a) thirty (30) years; and
- (b) the reasonable life expectancy of the work constructed as part of the service.

## **6. Construction Schedule**

6.1 The By-law must

- (a) set out a construction schedule that includes the proposed dates for the commencement and completion of all design and construction components of the service;
- (b) require the First Nation to commence and complete the construction in accordance with the construction schedule; and
- (c) require the First Nation to commence the construction within one (1) year of the date the tax is due and payable in the first year that it is levied.

6.2 A registered professional must review the construction schedule required under subsection 6.1 and certify that the construction schedule

- (a) includes all necessary design and construction components of the service; and
- (b) provides a reasonable and achievable timeframe for the completion of the service.

## **7. Service to Local Service Area**

Where the By-law provides for the service to benefit or be provided to a local service area, the By-law must

- (a) define the boundaries of the local service area to which the service will be provided and the tax levied;
- (b) set out the portion of the costs of the service that will be recovered by the tax; and
- (c) include a statement indicating the proportion of holders of taxable property within the local service area who support the tax, and how the First Nation determined the level of support.

## **8. Service or Local Improvement Tax Liability and Exemptions**

8.1 The By-law must provide that all interests in land in the reserve or within a local service area are subject to the tax unless

- (a) exempted from the tax in accordance with the By-law;
- (b) the First Nation waives or reduces the tax in accordance with the By-law; or
- (c) the interest in land will not have the opportunity to benefit from the service or local improvement.

8.2 Where a First Nation wishes to provide for exemptions from the tax, those exemptions must be set out in the By-law.

8.3 Where a By-law exempts interests in land from the tax on the basis that the interest in land is held by the First Nation, a member of the First Nation, or a corporation in which shares are held by or on behalf of the First Nation or a member of the First Nation, the By-law must require the First Nation to pay from its general revenues the taxes that would have been levied on the exempted property.

8.4 The By-law may permit the First Nation to waive or reduce the amount of the tax in respect of an interest in land only where the holder or a previous holder of that interest in land has

- (a) provided all or part of the service or local improvement at the holder's expense, or
- (b) already paid towards the costs of the service or local improvement,

on terms and conditions specified in the By-law.

## **9. Service or Local Improvement Tax Roll**

9.1 The By-law must provide for the tax administrator to create a service tax roll in the first year that a tax is levied.

9.2 The By-law must require the service tax roll to include the following information:

- (a) the name and last known address of the holder of the interest in land;
- (b) a short description of the interest in land;
- (c) where the tax is imposed on the basis of the assessed value of the interest in land, the total assessed value of the interest in land as shown on the First Nation's assessment roll;
- (d) where the tax is imposed on the basis of taxable area or taxable frontage, the taxable area or taxable frontage of the interest in land, as applicable;
- (e) the tax imposed on the interest in land in the current taxation year;
- (f) any unpaid taxes, penalties, interest and arrears in respect of the interest in land; and
- (g) if the name of a holder of a charge is included on the First Nation's assessment roll for an interest in land, the name and address of that person.

9.3 Where the tax is levied on the basis of taxable area or taxable frontage, the By-law must require the service tax roll to be reviewed by a registered professional who must certify that the calculation of the taxable area or taxable frontage of each property is correctly shown on the service tax roll.

9.4 The By-law must provide a process for the service tax roll to be certified that it was completed in accordance with the requirements of the By-law.

9.5 The By-law must require the service tax roll to be available for public inspection at the office of the First Nation during regular office hours.

9.6 The By-law must include a process for updating the service tax roll in each year that the tax is levied under the By-law.

## **10. Tax Notice and Payment**

10.1 The By-law must

- (a) set the date on which the tax is due and payable; and
- (b) set out where tax payments must be made and the acceptable forms of payment.

10.2 The By-law must require the tax administrator to mail a tax notice in each year to

- (a) each holder of an interest in land subject to the tax, and

(b) each person whose name appears on the service tax roll in respect of a property, by a date set out in the By-law, which date must be at least thirty (30) days before the date that the tax is due.

10.3 The By-law must require the tax notice to include

- (a) the information shown on the service tax roll in respect of the property;
- (b) if the holder may prepay the tax amount, the amount of the prepayment and the date by which the prepayment must be made; and
- (c) where payment must be made, the manner of payment and the date the service or local improvement tax is due.

10.4 The By-law may provide for a tax notice under a By-law to be combined with a tax notice under the First Nation's taxation by-law.

## **11. Revenues**

11.1 The By-law must provide that all revenue collected by the First Nation from the tax, and interest earned on it, must only be used for the provision of the service.

11.2 The By-law must require the tax administrator to establish a separate account for the tax revenues.

## **12. Penalties**

Where the By-law provides for a penalty to be imposed in respect of unpaid taxes, the By-law must set out the date on which a penalty will be imposed if the taxes remain unpaid.

## **13. Enforcement**

The By-law must set out the enforcement measures that may be taken by the First Nation to collect unpaid taxes.

## **14. Establishing a Review Panel**

14.1 The By-law must provide for Council to establish a review panel to hear and determine service or local tax appeals.

14.2 The By-law must

- (a) require the review panel to have at least three (3) members and provide for the appointment of those members by Council resolution;
- (b) provide for a term of appointment of members of the review panel of not less than two (2) years;
- (c) fix the remuneration for members of the review panel;
- (d) prohibit a person from serving on the review panel where the person
  - (i) has a personal or financial interest in the subject of the appeal,
  - (ii) is the chief or a member of Council, or
  - (iii) has financial dealings with the First Nation that could reasonably give rise to a conflict of interest or impair that person's ability to deal fairly or impartially with an appeal;
- (e) set out when and how members of the review panel may be removed from office;
- (f) provide for the appointment of a chair of the review panel and set out the powers, duties and functions of the chair;
- (g) establish practices and procedures for the conduct of review panel hearings, including respecting

- (i) a party's right to be heard, have representation, present evidence and call witnesses,
  - (ii) the manner by which the review panel may conduct a hearing, and
  - (iii) the evidentiary rules that apply during a hearing;
  - (h) require the review panel, within ten (10) days after completion of a hearing, to make a record of its decision and advise the tax administrator of the decision; and
  - (i) require the tax administrator to notify the holder of the property and the complainant of a decision of the review panel.
- 14.3 In establishing practices and procedures of the review panel, 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 review panel to determine its own procedure during a hearing to the extent not inconsistent with the By-law.
- 14.4 The By-law may allow Council, by resolution, to appoint the First Nation's assessment review board to be the review panel.

## **15. Appeal to Review Panel**

- 15.1 The By-law must
- (a) provide an opportunity for holders to appeal a tax before it is imposed for the first time, on one or more of the following grounds:
    - (i) there is an error or omission respecting a name or address on the service tax roll;
    - (ii) there is an error or omission in the inclusion of a property;
    - (iii) where the tax is levied on the basis of taxable area or taxable frontage, that there is an error or omission respecting the taxable area or taxable frontage of a property; and
    - (iv) where the By-law provides for exemptions, that an exemption has been improperly allowed or disallowed.
  - (b) provide an opportunity in each subsequent year that a tax is levied for a holder of taxable property to appeal
    - (i) a change in the tax levied against that holder's property, or
    - (ii) the tax administrator's refusal to change the tax levied against that holder's property.
- 15.2 The By-law must not impose a fee for appealing a service or local improvement tax.
- 15.3 The By-law must provide for the complainant, the tax administrator and the holder of the property (if other than the complainant) to be parties to the appeal.
- 15.4 The By-law must set out procedures for updating the service or local improvement tax roll to reflect decisions of the review panel.

## **16. Confidentiality**

The By-law must provide for the confidentiality of information and documents obtained by the tax administrator, the review panel 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 review panel or a court of law;

(c) where a holder gives written authorization for his or her agent to obtain confidential information relating to a property; or

(d) by Council to a third party for research (including statistical) purposes.

**PART VII**

**EFFECTIVE DATE**

This policy is established and in effect as of March 15, 2010.

**PART VIII**

**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  
National Capital Region  
Suite 202 – 190 O’Connor Street  
Ottawa, ON K2P 2R3



## **SCHEDULE**

### **SERVICE OR LOCAL IMPROVEMENT CATEGORIES**

- 1.** The design and construction of First Nation administrative buildings and related infrastructure.
- 2.** The provision of police and fire protection services, and other protection services, and the design and construction of associated facilities.
- 3.** The design and construction of community health buildings and related infrastructure.
- 4.** The design and construction of transportation infrastructure, including roads, boulevards, sidewalks, bridges, overpasses, curbs, traffic islands, lighting and ferries.
- 5.** The design and construction of parking infrastructure, including parkades, parking lots and parking meters.
- 6.** The provision of communications services, including telephone, internet and associated infrastructure.
- 7.** The supply of electricity or natural gas and associated infrastructure.
- 8.** The design and construction of recreation facilities, including arenas, ballparks, parks, playgrounds and swimming pools.
- 9.** The design and construction of cultural facilities, including museums, libraries, community halls and art galleries.
- 10.** The design and construction of water treatment and supply facilities, including water supply, purification, intake and storage facilities, treatment plants, pumping stations, and pipe systems.
- 11.** The design and construction of sewage collection, treatment and disposal facilities, including liquid waste disposal planning, collection systems, trunk systems, treatment plants, and discharge facilities.
- 12.** The design and construction of dikes, erosion control structures, retaining walls, drainage ditches, flood boxes, sea and harbour walls, waterfront walkways, and wharves and floats.