

**STANDARDS FOR
FIRST NATION ANNUAL TAX RATES LAWS, 2017**

[Consolidated to 2019-02-13]

**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 tax rates laws enacted under subparagraph 5(1)(a)(ii) and subsection 10(1) of the Act. These Standards are used by the Commission in its review and approval of First Nations' tax rates 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 tax rates law submitted to the Commission for approval under the Act.

**PART V
CITATION**

These Standards may be cited as the *Standards for First Nation Annual Tax Rates Laws, 2017*.

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;
- “agricultural property” means an interest in reserve lands classified as “non-arable (range)” or “other agricultural” in Saskatchewan;
- “annual rate of national inflation” means the change in the Annual Average Consumer Price Index for Canada, All-Items, maintained by Statistics Canada;
- “assessable property” means an interest or right in reserve lands that is subject to assessment under a First Nation’s assessment law;
- “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 enacted by a First Nation under subparagraph 5(1)(a)(i) of the Act;
- “average tax bill” means either
- (a) the mean of the tax bills of all taxpayers in a property class, net of all grants; or
 - (b) the median tax bill of a representative taxpayer in a property class, net of all grants;
- “Commission” means the First Nations Tax Commission established under the Act;
- “First Nation” means a band named in the schedule to the Act;
- “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 tax rates law enacted under subparagraph 5(1)(a)(ii) of the Act;
- “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 the First Nation, that is identified for the purpose of comparing a First Nation’s tax rates;
- “reference jurisdiction transition plan” means a plan that meets the requirements of section 11;
- “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 district” means a tax district established in a First Nation’s taxation law;
- “taxable area” means the total area of the interest in reserve lands or portion of the interest in reserve lands, rounded to the nearest acre;
- “taxable property” has the meaning given to that term in the Taxation Law Standards;
- “taxation law” means a law enacted under paragraphs 5(1)(a) and (e) of the Act, but does not include a property transfer tax law;
- “Taxation Law Standards” means the Commission *Standards for First Nation Property Taxation Laws, 2016*; and

“transition period” has the meaning given to that term in the Taxation Law Standards.

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 2019-02-13.]

PART VII STANDARDS

1. Setting Tax Rates

1.1 Except as provided in subsection 1.2 and section 3, the Law must set a single tax rate for each property class.

1.2 The Law may set multiple tax rates in a property class where multiple tax rates are set in the First Nation’s reference jurisdiction, provided the Law

(a) sets the same number of tax rates in each property class that are set in the reference jurisdiction; and

(b) uses the same criteria that are used in the reference jurisdiction for the application of those tax rates in each property class.

1.3 The Law must set for each property class a tax rate as

(a) a rate for each dollar (\$1) of assessed value;

(b) a rate for each one hundred dollars (\$100) of assessed value; or

(c) a mill rate for each one thousand dollars (\$1000) of assessed value.

1.4 As an exception to subsection 1.3, a Law may set a tax rate for a property class on a different basis where

(a) the First Nation set a tax rate within that property class on a different basis at the time of being scheduled under the Act; or

(b) the First Nation’s reference jurisdiction sets a tax rate on a different basis within that property class.

1.5 For clarity, the requirement to set a tax rate does not apply to a property class where there are no assessable properties in that class.

2. Application of Tax Rates

Except as provided in sections 3 and 4,

(a) the Law must provide that taxes must be levied on each taxable property by applying the applicable tax rate against the assessed value of the taxable property; and

(b) the Law must provide for the tax rate in each property class to be applied equally to all taxable property in that class.

3. Tax Districts and Multiple Reference Jurisdictions

3.1 Where a First Nation has established one (1) or more tax districts,

(a) the First Nation may set a tax rate for each property class in each tax district; and

(b) the requirements in these Standards respecting setting tax rates and establishing minimum tax must be interpreted to apply separately within each tax district.

3.2 Where a First Nation has multiple reserves and has more than one (1) reference jurisdiction in respect

of its reserves, the Law may set different tax rates for different reserves, provided that those reserves with the same reference jurisdiction must have the same tax rate in each property class.

4. Minimum Tax

Where a First Nation's taxation law provides that a minimum tax may be established in one or more property classes,

- (a) the Law may, despite section 2, establish a minimum amount of tax to be levied on taxable property within one or more property classes; and
- (b) the amount of the minimum tax must not exceed one hundred dollars (\$100), except as provided in section 5.

5. Exceptions to Minimum Tax Limit

5.1 The Law may establish a minimum tax in an amount greater than one hundred dollars (\$100) where required to create a fair taxation regime because of one or more of the following circumstances:

- (a) the First Nation had established a higher minimum tax amount in its taxation regime existing at the time of being scheduled under the Act;
- (b) the First Nation wishes to harmonize with minimum tax amounts established in the Province or the reference jurisdiction; and
- (c) the First Nation's costs of providing services to assessable properties with lower assessed values exceeds one hundred dollars (\$100).

5.2 As an exception to subsection 5.1, where a First Nation has included transition provisions in its taxation law in accordance with section 4 of the Taxation Law Standards, in each year of the transition period the Law must establish a minimum tax that is equal to the service fee charged by the First Nation in the year prior to its first taxation year.

6. Rate Setting in First Taxation Year

Where a First Nation is exercising property taxation jurisdiction for the first time, the First Nation must apply the same assessment practices as the former taxing authority, or the reference jurisdiction where there is no former taxing authority, and the Law must

- (a) set tax rates that do not exceed those set by the former taxing authority in the current year; or
- (b) set tax rates that do not exceed those set by the reference jurisdiction in the current year, where there is no former taxing authority.

7. Rate Setting in Subsequent Years Using Average Tax Bill

7.1 In the second and all subsequent years that a First Nation exercises property taxation powers, the Law must set tax rates based on the First Nation's budget for the expenditure of local revenues that, when applied, result in an average tax bill for each property class that has not increased from the previous year by more than

- (a) the annual rate of national inflation from the previous year; or
- (b) the average tax bill increase for each property class in the reference jurisdiction from the previous year.

7.2 For the purposes of subsection 7.1, where a representative taxpayer is used to determine the average tax bill,

- (a) that taxpayer must have been a taxpayer in the previous year and must be a taxpayer in the current year; and

(b) a change in the assessed value of the assessable property held by that taxpayer from the previous year that is attributable to new construction, to the addition of lands to the assessable property, or that results from an assessment appeal, must be excluded when determining the average tax bill increase.

7.3 For the purposes of subsection 7.1, where the mean of the tax bills of all taxpayers is used to determine the average tax bill,

(a) each taxpayer must have been a taxpayer in the previous year and must be a taxpayer in the current year; and

(b) any changes in assessed values to assessable properties in that property class that are attributable to new construction, to the addition of lands to assessable properties, or that result from assessment appeals, must be excluded when determining the average tax bill increase.

7.4 For the purposes of subsection 7.1, where the assessed value of an assessable property is determined using a rate set by reference to a provincial regulation,

(a) that assessable property may be excluded when determining the average tax bill increase in a property class; or

(b) the average tax bill may be calculated by excluding any increases or decreases in the assessed value of that assessable property from the previous year to the current year.

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

8. Rate Setting in Subsequent Years Using Reference Jurisdiction

8.1 As an alternative to the approach set out in subsection 7.1, the Law may set tax rates that are identical to the tax rates set in the reference jurisdiction in the current year and the immediately preceding year, including by setting the same number of tax rates where the reference jurisdiction sets multiple tax rates within a property class.

8.2 Where a Law sets tax rates as provided in subsection 8.1, the First Nation must use assessment practices that are identical to the reference jurisdiction in the current year and the immediately preceding year.

9. Rate Setting Where First Nation Has Transition Provisions in Taxation Law

9.1 Where a First Nation has included transition provisions in its taxation law in accordance with section 4 of the Taxation Law Standards, in each year of the transition period the Law must set tax rates for the applicable property classes that are consistent with those transition provisions, and sections 6, 7 and 8 do not apply.

9.2 Where subsection 9.1 applies and a Law sets a tax rate that is higher than and not consistent with the transition provisions in the First Nation's taxation law, the First Nation may provide justification of the rate for Commission consideration on the basis set out in paragraph 10.1(c).

10. Justifications for Additional Rate Increases

10.1 Where a Law sets a tax rate that does not meet the criteria set out in subsection 7.1, the First Nation may provide justification of the rate for Commission consideration, on one (1) or more of the following bases:

(a) the First Nation's costs of providing local services, such as water, sewer, waste collection, fire protection and roads, have increased significantly from the previous year;

(b) the rate is consistent with the First Nation's reference jurisdiction transition plan; and

(c) the taxpayers in the affected property class support the proposed rate.

10.2 Where a First Nation proposes to justify a tax rate under paragraph 10.1(a), the First Nation must provide to the Commission a signed service agreement evidencing the increased costs, or written evidence of the increased costs signed by the First Nation's chief financial officer.

10.3 Where a First Nation proposes to justify a tax rate under paragraph 10.1(c), the First Nation must provide to the Commission letters of support from individual taxpayers or taxpayer associations representing

- (a) at least fifty percent (50%) of the taxpayers in that property class; and
- (b) taxpayers holding at least fifty percent (50%) of the total assessed values in that property class.

11. Justification on the Basis of Transition to Reference Jurisdiction Rate-Setting

A First Nation that proposes to justify an increase in its tax rates in one or more property classes in order to transition to setting tax rates that are identical to the reference jurisdiction must develop a reference jurisdiction transition plan that

- (a) provides a justification for the proposed increases in tax rates that relates either to providing a higher level of local services to the taxpayers, or to building new or replacement local service infrastructure; and
- (b) sets out how tax rates will increase incrementally in one (1) or more property classes over a period of not more than five (5) years in order to match the reference jurisdiction rates in all property classes.

[am. FNTC Resolution 2018-06-25.]

12. [am. FNTC Resolution 2018-06-25.]

PART VIII

STANDARDS FOR AGRICULTURAL PROPERTIES IN THE PROVINCE OF SASKATCHEWAN

13. Application of This Part

13.1 This Part applies to the setting of tax rates for agricultural property where a First Nation's property taxation law provides for taxation on the basis of the taxable area of the agricultural property.

13.2 Where this Part applies to the setting of tax rates in a property class, Part VII does not apply to the setting of tax rates in that property class.

14. Rate Setting Per Acre

14.1 The Law must set a single tax rate in a property class that is equal to or less than the amount levied per acre in the same property class in the reference jurisdiction.

14.2 For the purposes of subsection 14.1, the amount levied per acre in the reference jurisdiction must be determined by dividing the total property tax revenues within the property class by the total number of acres of property within that property class.

15. No Minimum Tax

A Law must not establish a minimum tax in a property class to which this Part applies.

PART IX

REVOCATION AND COMING INTO FORCE

Revocation

The *Standards for First Nation Tax Rates Laws, 2016* that were established and effective as of April 1, 2016, are revoked.

Coming Into Force

These Standards are established and in effect as of June 28, 2017.

PART X 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