

**STANDARDS FOR
FIRST NATION SERVICE TAX LAWS, 2016**

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 taxation for the provision of services laws enacted under subparagraph 5(1)(a)(iii) of the Act. These Standards are used by the Commission in its review and approval of First Nations' service 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 every service tax law submitted to the Commission for approval under the Act.

PART V

DEFINITIONS

In these Standards:

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

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

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

“chair” means the chair of a review panel;

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

“complainant” means a person who commences an appeal of a service tax;

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

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

“Law” means a service tax law enacted under subparagraph 5(1)(a)(iii) of the Act;

“local service area” means a defined area of a reserve to which a service is provided under a service tax 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 Law to hear and determine service tax appeals;

“service” means an activity or work provided by or on behalf of a First Nation for which a service tax will be levied under a Law;

“service tax” means a tax levied under a Law in respect of the provision of a service;

“service tax roll” means a list of persons liable to pay a service tax under a Law;

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

“tax roll” means a tax roll prepared under a First Nation’s taxation law;

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

“taxes” includes all taxes imposed, levied, assessed or assessable under a local revenue law, and all penalties, interest and costs added to those taxes.

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

PART VI STANDARDS

1. Description and Type of Service

- 1.1 The Law must describe the service to be paid for by the service tax.
- 1.2 The Law must impose a service tax only to recover all or a portion of the costs relating to the design and construction of infrastructure for the provision of a service.
- 1.3 The Law must impose a service tax only for a service that is within the categories of services listed in

the Schedule to these Standards.

2. Appointment of Tax Administrator

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

3. Service Tax Liability and Exemptions

3.1 The Law must provide that all property in the reserve or within a local service area is subject to the service tax unless

- (a) exempted from the service tax in accordance with the Law;
- (b) the First Nation waives or reduces the service tax in accordance with the Law; or
- (c) the property will not have the opportunity to benefit from the service.

3.2 Where a First Nation wishes to provide for exemptions from a service tax, those exemptions must be set out in the Law.

3.3 Where a Law exempts a property from a service tax on the basis that the property 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 Law must require the First Nation to pay from its general revenues the service taxes that would have been levied on the exempted property.

4. Revenues

4.1 The Law must provide that all revenue collected by the First Nation from the service tax, and interest earned on it, is used only for the provision of the service.

4.2 The Law must require the tax administrator to account separately for the service tax revenues.

5. Estimated Costs of Service

5.1 The 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 tax.

5.2 In calculating the total estimated cost of the service for the purposes of subsection 5.1, the First Nation must include only the following costs:

- (a) property acquisition costs;
- (b) capital costs;
- (c) professional services costs, including engineering and legal fees;
- (d) debt servicing costs;
- (e) administration costs, including costs of the review panel; and
- (f) other costs that will be directly incurred in undertaking and financing the service.

5.3 The total estimated cost of the service set out in the Law must be reviewed by a registered professional who must certify that the amount

- (a) includes only those costs permitted under subsection 5.2; and
- (b) provides a complete and accurate estimate of the total costs of the service.

6. Basis of Service Tax

6.1 The Law must state the basis on which the service tax will be levied, which must be 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 law;

- (b) a single amount for each property;
- (c) the taxable area of the property; or
- (d) the taxable frontage of the property.

6.2 Where a Law levies a service tax on the basis of the taxable area or taxable frontage of a property, the 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.

7. Establishing Service Tax Rates and Prepayment

7.1 The Law must establish the service tax rate to determine the service tax payable in each year the service tax is imposed.

7.2 Where the Law imposes a service tax based on

- (a) a property value tax, the Law must establish the rate to be paid per unit of assessed value of a property as determined under the First Nation's assessment law; or
- (b) a single rate for each property, the Law must establish the rate to be paid in each year of the service tax.

7.3 Where the Law imposes a service tax based on the taxable area or taxable frontage of a property, the 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.

7.4 In establishing a tax rate, the Law

- (a) may provide for different rates for different property classes established in the First Nation's assessment law; and
- (b) must provide for the equal application of tax rates within a property class.

7.5 Where the Law allows a holder to prepay the service tax amount, the Law must set out the prepayment amount or the formula that will be used to calculate the prepayment amount.

8. Duration of Service Tax

The Law must set out the number of years that the service 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.

9. Service to Local Service Area

Where the Law provides for the service to benefit or be provided to a local service area, the Law must

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

10. Construction Schedule

10.1 The 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 service tax is due and payable in the first year that it is levied.

10.2 The construction schedule required by subsection 10.1 must be reviewed by a registered professional who must certify that the construction schedule

(a) includes all necessary design and construction components of the service; and

(b) provides a reasonable and achievable time frame for the completion of the work.

10.3 The Law may permit the First Nation to waive or reduce the amount of a service 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 at the holder's expense, or

(b) already paid towards the costs of the service,

in accordance with the terms and conditions specified in the Law.

11. Service Tax Roll

11.1 The Law must provide for the tax administrator to create a service tax roll in the first year that a service tax is levied.

11.2 The Law must require the service tax roll to include the following information:

(a) the name and last known address of the holder of the property;

(b) a short description of the property;

(c) where the tax is imposed on the basis of the assessed value of the property, the total assessed value of the property 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 property, as applicable;

(e) the service tax imposed on the property in the current taxation year;

(f) any unpaid service taxes, penalties, interest and arrears in respect of the property; and

(g) if the name of a holder of a charge is included on the First Nation's assessment roll for a property, the name and address of that person.

11.3 Where the service tax is levied on the basis of taxable area or taxable frontage, the 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.

11.4 The Law must

(a) provide a process for the service tax roll to be certified that it was completed in accordance with the requirements of the Law;

(b) require the service tax roll to be available for public inspection at the office of the First Nation during regular office hours; and

(c) include a process for updating the service tax roll in each year that the service tax is levied under the Law.

12. Tax Notice and Payment

12.1 The Law must

(a) set the date on which the service taxes are due and payable; and

(b) set out where tax payments must be made and the acceptable forms of payment.

12.2 The 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 service 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 Law, which date must be at least thirty (30) days before the date that the service tax is due.

12.3 The Law must require the tax notice to include

- (a) the information shown on the service tax roll in respect of the property; and
- (b) where payment must be made, the manner of payment and the date the service tax is due.

12.4 Where the Law provides that the service tax may be prepaid, the Law must require the tax notice that is given in the first year the service tax is levied to set out the amount of the prepayment and the date by which the prepayment must be made.

12.5 The Law may provide for a tax notice under a Law to be combined with a tax notice under the First Nation's taxation law.

13. Establishing a Review Panel

13.1 The Law must provide for Council to establish a review panel to hear and determine service tax appeals.

13.2 The 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 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.

13.3 In establishing practices and procedures of the review panel, the 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 Law.

13.4 Despite subsection 13.2, the Law may allow Council to establish a review panel by appointing the First Nation's assessment review board as the review panel.

14. Appeal to Review Panel

14.1 The Law must

- (a) provide an opportunity for holders to appeal a service 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 respecting the inclusion of a property,
 - (iii) where the service 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 Law provides for exemptions, that an exemption has been improperly allowed or disallowed;
- (b) provide an opportunity in each subsequent year that a service tax is levied for a holder of taxable property to appeal
 - (i) a change in the service tax levied against that holder's property, or
 - (ii) the tax administrator's refusal to make a change to the service tax roll respecting a matter referred to in paragraph (a) that is requested by the holder.

14.2 The Law must not impose a fee for appealing a service tax.

14.3 The Law must provide for the complainant, the tax administrator and the holder of the property (if other than the complainant) to be the parties to the appeal.

14.4 The Law must set out procedures for updating the service tax roll to reflect decisions of the review panel.

15. Penalties

Where the Law provides for a penalty to be imposed in respect of unpaid service taxes, the Law must set out the when the penalty will be imposed if the service taxes remain unpaid.

16. Confidentiality

The Law must provide for the confidentiality of information and documents obtained by the tax administrator, a review panel 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 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;
- (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.

PART VII

REVOCATION AND COMING INTO FORCE

Revocation

The *Standards for First Nation Service Tax Laws* that were established and effective on June 20, 2012, are revoked.

Coming into Force

These Standards are established and in effect as of September 14, 2016.

**PART VIII
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

SCHEDULE

CATEGORIES FOR SERVICE TAXES

The categories for service taxes are:

1. The design and construction of First Nation administrative buildings and related infrastructure.
2. The design and construction of facilities for police, fire and other protection services.
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 design and construction of communications infrastructure, including telephone and internet.
7. The design and construction of infrastructure for the supply of electricity or natural gas.
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.