First Nations Tax Commission

Commission de la fiscalité des premières nations

April 11, 2016

BULLETIN

2016 Annual By-laws

The Annual By-laws Bulletin is issued by the First Nations Tax Commission (FNTC) to assist First Nations and their tax administrators in the development of annual by-laws made under s.83 of the *Indian Act*.

In 2016, there are a number of changes to the annual by-law process, specifically with respect to all aspects of rate setting, as well as to the calculation of the average tax bill. These changes were made following a series of public consultation processes, between November 2, 2015 and January 8, 2016.

The changes to the Rates By-law Policy are intended to respond to several emerging issues, including: establishing property tax in certain jurisdictions; establishing tax districts; adopting reference jurisdictions; setting a minimum tax; determining the average tax bill; and the justification of additional rate increases.

General Requirements

Timing for the making of rates and expenditure by-laws

In preparation for your tax rates and expenditure by-laws, please confirm the date when tax notices are to be provided and ensure that the signed by-laws and all supporting materials are filed with the s.83 Registrar as soon as practical. This allows for sufficient time for the review and approval of your First Nation's annual by-laws and to ensure compliance with the timelines established in your First Nation's taxation by-law.

FNTC Technical Comments

First Nations are encouraged to consult as early as possible with an FNTC advisor for the purpose of obtaining technical comments on the draft by-laws. These comments can help minimize errors in the by-laws before they are submitted for Council approval.

FNTC Information Requirements for the Review of Rates By-laws

FNTC requires sufficient information to review and approve by-laws. The FNTC may request some or all of the following information to accompany the First Nation's annual by-laws:

- the summary assessment roll for the two previous years and current taxation year;
- the number of property occurrences within each property class (this usually appears on the summary assessment rolls provided by the First Nation's assessor);
- the tax rates from the previous two years;
- the amount of new construction reflected in the current assessment roll, as determined by comparing the folio counts in this year to last year;
- the nearest or adjacent jurisdiction to be considered as a tax reference jurisdiction, along with that jurisdiction's tax rates for the previous and current taxation year; and
- confirmation that the First Nation has met the requirements of section 10 of the Rates By-law Policy.

This information supports proper decisions, ensures the First Nation property tax system remains transparent, and maintains taxpayer confidence.

Annual Rates By-laws

Setting Tax Rates in the First Year of Taxation (Section 6 of the Tax Rates By-law Policy)

First Nations entering into their first year of taxation must establish tax rates that are identical to rates established by the former taxing authority in the *current* year; or where there was no former taxing authority, the same rates as the reference jurisdiction in the *current* year. The reference jurisdiction is an adjacent government jurisdiction. For assistance in determining the appropriate reference jurisdiction, please contact an FNTC advisor.

As an exception to rate setting provisions above, where a First Nation has included transition provisions in its taxation by-law in accordance with section 3.4 of the Property Taxation By-law Policy, in each year of the transition period the By-law must establish tax rates for the applicable property classes that are consistent with those transition provisions.

Setting Tax Rates in Subsequent Years (Section 6 of the Tax Rates By-law Policy)

In the second and all subsequent years that a First Nation exercises property taxation, tax rate setting must meet the requirements of section 7 of the Policy. The By-law must establish tax rates based on the First Nation's budget for the expenditure of local revenues that can meet section 7 Policy requirements in one of three ways:

1. National inflation rate method - The proposed rates when applied to each property class will result in an average tax bill for each property class that has not increased from the previous year by more than the annual rate of national inflation from the previous year. **Please note that for the 2016 tax year, the annual rate of inflation is 1.6%.**

2. Average tax bill comparison method - The proposed rates when applied to each property class will result in an average tax bill change not exceeding the average tax bill change in the reference jurisdiction from the previous year (First Nations using this method must

use the same assessment practice as the reference jurisdiction and submit assessment data and tax rate information for the reference jurisdiction).

3. Reference jurisdiction rate setting method – The proposed rates for each property class are identical to the reference jurisdiction's rates in the current and the immediately preceding year, including by establishing the same number of tax rates where the reference jurisdiction establishes multiple tax rates within a property class. First Nation uses the same assessment practices as the reference jurisdiction and submit assessment data and tax rate information for the reference jurisdiction)

As an exception to the rate setting provisions above, where a First Nation has included transition provisions in its taxation by-law in accordance with section 3.4 of the Property Taxation By-law Policy, in each year of the transition period the By-law must establish tax rates for the applicable property classes that are consistent with those transition provisions.

In using the average tax bill methods described in 1 and 2 above, tax administrators can use one of two ways of expressing the "average" tax bill:

1. Mean Tax Bill: Divide the total number of folios (i.e., taxable interests) into the total revenues collected from that property class. For example, if $100,000 in taxes were collected from 100 residential properties, the average tax bill would be $1,000 per residential property; or
2. Median Tax Bill: Place each tax bill in order, from the lowest to the highest by property class, and then find the tax bill that is exactly in the middle. For example the median of the following string of numbers is 45: (2, 32, 33, 45, 60, 62, and 70). If there is an even number of folios, the median is the average of the middle two values (the FNTC can provide a spreadsheet application to assist in these calculations).

For the purposes of calculating the average tax bill, where

1. The taxes of a representative taxpayer are used to determine the average tax bill, that taxpayer must have been a taxpayer in the previous and must be a taxpayer in the current year;
2. the representative taxpayer holds property that has experienced a change in assessed value attributable to new construction or to the addition of lands to the property, that change in assessed value must be excluded when determining the average tax bill increase; and
3. the mean of the tax bills of all taxpayers is used to determine the average tax bill, any changes in assessed values to properties in that property class that are attributable to new construction or to the addition of lands to properties, must be excluded when determining the average tax bill increase.

For the purposes of calculating the average tax bill, where the assessed value of a property is determined using a rate set by regulation,

1. that property may be excluded when determining the average tax bill increase in a property class; or
2. the average tax bill may be calculated by excluding any increases or decreases in the assessed value of that property from the previous year to the current year.

Justification for Increased Tax Bills not Meeting Section 7 of the Tax Rates By-law Policy

In situations where a First Nation proposes tax rates that do not meet the requirements in section 7, a First Nation may seek FNTC approval on the basis of section 8 of the Tax Rates By-law Policy. Where a proposed tax rate does not meet the criteria set out in subsection 7, the First Nation may provide justification of the rate for Commission consideration, on one (1) or more of the following bases:

1. the First Nation's costs of providing local services, such as water, sewer, waste collection, fire protection and roads has increased significantly from the previous year;
2. the rate is consistent with the First Nation's reference jurisdiction transition plan; or
3. the taxpayers in the affected property class support the proposed rate.

Where a First Nation proposes a tax rate that is not consistent with the transition provisions in the First Nation's taxation by-law, the First Nation may provide justification of the rate for Commission consideration on the basis of taxpayer support as set out in subparagraph 3 above.

Where a First Nation proposes to justify a tax rate based on significant increases in the costs of providing local services, 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.

Where a First Nation proposes to justify a tax rate based on taxpayer support, the First Nation must provide to the Commission letters of support from individual taxpayers or taxpayer associations representing

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

A First Nation should contact the FNTC as early as possible in the event the First Nation intends to provide justification for exceeding section 7 of the Tax Rates By-law Policy. In justifying its proposed rates, a First Nation must give prior notice to taxpayers of the tax bill increase and the reasons for the increase. Notice can be given by using the First Nation's website, the FNG website, or by holding a public meeting (see section 10 of the Tax Rates By-law Policy).

Tax Districts and Multiple Reference Jurisdictions

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

1. the First Nation may establish a tax rate for each property class in each tax district; and
2. the requirements in the Rates By-law Policy respecting setting tax rates must be interpreted to apply separately within each tax district.

Where a First Nation has multiple reserves and has more than one (1) reference jurisdiction in respect of its reserves, the By-law may establish 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.

Minimum Tax

Most First Nations have provisions in their property tax by-laws that enable the use of a minimum tax. A minimum tax means that a minimum amount of tax will be levied on a property, even though its assessed value would result in a lower amount of tax. The minimum tax, if any, must be set each year within the First Nation's rates by-law. The Tax Rates By-law Policy provides that a minimum tax must not exceed one hundred dollars ($100) except where required to create a fair taxation regime because of one or more of the following circumstances:

a. to harmonize with minimum tax amounts established in the relevant province or the reference jurisdiction; and
b. the First Nation's cost of providing services to properties where lower assessed values exceeds one hundred dollars ($100).

As an exception to the circumstances in a. and b. above, where a First Nation has included transition provisions in its taxation by-law in accordance with section 3.4 of the Property Taxation By-law Policy, in each year of the transition period the By-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.

Some First Nations may also have additional provisions governing the use of minimum taxes in their property tax by-law.

Transition to Reference Jurisdiction Rate-Setting

In the first year that a First Nation proposes to justify its tax rates consistent with the First Nation's reference jurisdiction transition plan, the First Nation must provide to the Commission, at the time of submitting its by-law for approval consideration,

1. a reference jurisdiction transition plan that meets the requirements set out in this section;
2. confirmation that the First Nation, in the previous taxation year and before the notice referenced directly below, delivered an individual, written notice to each taxpayer that the First Nation intends to develop a reference jurisdiction transition plan in order to transition to establishing tax rates that are identical to the reference jurisdiction; and
3. confirmation that the First Nation, in the previous taxation year,
    a. gave notice to its taxpayers of the reference jurisdiction transition plan and the date, time and location of a taxpayer meeting to review and discuss the plan, and
    b. held at least one (1) taxpayer information meeting where it reviewed the plan with taxpayers.

The notice of the reference jurisdiction transition plan, referenced in sub-paragraph 3.a directly above, must be delivered to any taxpayers associations, and posted on the First Nation's website, in the *First Nations Gazette* (FNG), in the First Nation's administrative offices, and in at least two (2) other locations on the reserve, at least 14 days before the date of the taxpayer meeting.

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

1. 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
2. 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.

Policy for Agricultural Properties in the Province of Saskatchewan

These policy provisions apply to the setting of tax rates for agricultural property where a First Nation's property taxation by-law provides for taxation on the basis of the taxable area of the agricultural property. Where these provisions apply to the setting of tax rates in a property class, the rate setting provisions above do not apply to the setting of tax rates in that property class. Rather, the by-law must establish 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. 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. A by-law must not establish a minimum tax in a property class to which these provisions apply.

Public Notification of Proposed Tax Rates

The Tax Rates By-law Policy requires notice of proposed tax rates prior to the rates by-law being submitted to the Commission for review. First Nations can satisfy these requirements by posting their proposed rates on their website, posting the rates on the FNG website, or by holding a public meeting. Alternatively, First Nations with Taxpayer Representation to Council By-laws can use their by-laws' notification procedures.

1. First Nations can use one of two approaches for notification: give written notice of its proposed tax rates by setting out the tax rate or rates for each property class and posting the notice on the First Nation's website or on the First Nations Gazette website; or
2. Hold a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed tax rates.

Where a First Nation proposes to justify a tax rate either based on significant increases in the costs of providing local services, or based on taxpayer support, the First Nation must provide a description of the justification as part of the notice required under subsection 10.1 of the Rates By-law Policy.

First Nations wishing to use the FNG website to post their rates can do so in one of two ways:

1. **Online** (fastest and easiest method)
   Sign up and submit directly on the FNG website:
   http://www.fng.ca/index.php?mod=register

2. **By email**
   Email a **WORD** version of the proposed *Rates By-law Schedule* and a *Request to Post* form to notice@fng.ca

Issuance of Tax Notices

Tax notices must only be issued once by-laws have been approved by the Minister of Indigenous and Northern Affairs Canada and you have received notice of the approved by-law(s) from the s.83 Registrar, Ms. Lilian Richards. Ms. Richards can be reached at (613) 789-5000 ext. 204 or by email at lrichards@fntc.ca.

Annual Expenditure By-laws

Interim Budget

First Nations are encouraged to establish two budgets: an annual budget for the current year (2016) and an interim budget for the following budget year (2017). This change was brought about to bring greater clarity to the First Nation's authority to make expenditures during the first part of the next taxation year, before a new annual expenditure by-law is enacted. When the new expenditure by-law is enacted, the new annual budget will replace the interim budget, and make the necessary changes to both the revenues and expenditures. The FNTC sample First Nation Expenditure By-law has been designed to provide for the interim budget using one Schedule. However, First Nations have the option to make a separate interim budget and attach that budget as Schedule B to the by-law.

Budget Components

New for 2016, the Budget Schedule in the Sample First Nation Expenditure By-law has been changed to incorporate a third component: accumulated surplus/deficit. Previously the accumulated surplus or deficit from the previous year was carried forward to the current budget year and reported in the revenue section of the annual budget. The accumulated surplus or deficit from the prior year continues to be carried forward to the current budget year, however the amount is now reported in the accumulated surplus/deficit section of the annual budget. This change is consistent with reporting standards for local governments.

The revised Budget Schedule is attached as Annex A to this Bulletin.

Contingency Amounts

The Expenditure By-law Policy requires First Nations by-laws to establish contingency amounts between 1% and 10% of the *total local revenues* (i.e., revenues raised under a section 83 by-law) **excluding** revenues transferred to reserve funds in the fiscal year.

Contingency Reserve Funds

Contingency reserve funds are used by local governments to cover unforeseen expenditures, or to stabilize the temporary impacts of cyclical local revenue decreases. First Nations that have established contingency reserve or wish to establish these reserve funds must be mindful of the following requirements:

- Contingency reserve funds must be established in the expenditure by-law;
- Only unexpended contingency amounts from the previous budget year may be transferred into the reserve fund;
- A maximum of 10% of local revenue in the current budget year can be transferred into the contingency reserve fund;
- Contingency reserve funds can grow over time but it can never exceed more than 50% of the current budget year's local revenues; and
- Contingency reserve fund balances are reported in an appendix to the Annual Expenditure By-law.

Reserve Fund Purposes Statement

The Section 83 Expenditure By-law Policy requires that where a First Nation is establishing a reserve fund, the expenditure by-law must contain a statement of the purposes of the new reserve fund.

Establishing Reserve Funds

Reserve funds must be established in the annual expenditure by-law and must comply with reserve fund usage provisions in the First Nation's taxation by-law and the requirements in section 8 of the Expenditure By-law Policy. Reserve funds must also meet the criteria set out in section 5 and 6 of the Expenditure By-law Policy, including the requirement for capital plans. Reserve fund balances are reported in an appendix to the Annual Expenditure By-law.

Amendments to the Annual Budget during the Tax Year

First Nations wishing to amend their local revenue budgets are reminded that any changes to the budget must be made with an amendment to the Annual Expenditure By-law. This means that if the First Nation wishes to make an expenditure that isn't included in the budget, or wishes to change an expenditure amount, it must amend its annual expenditure by-law.

Annual Budget and Service Agreements

Where a First Nation has a service agreement with third-party service providers, and amounts from the local revenue account are used to pay for services under the agreement, the Annual Budget must list each service agreement, the amount payable, and a brief description of the services. These expenditure amounts should be included in the appropriate budget expenditure category.

For more information, please contact:

Lilian Richards, s.83 By-law Registrar
Phone: (613) 789-5000 ext. 204
FAX (613) 789-5008
e-mail: lrichards@fntc.ca

Mailing Address:
First Nations Tax Commission
Suite 202, 190 O'Connor Street
OTTAWA ON K2P 2R3

ANNEX A

SCHEDULE

ANNUAL BUDGET AND INTERIM BUDGET

[Note to First Nation: Delete categories of revenues and expenditures that are not applicable.]

PART 1: REVENUES

1. Local revenues to be collected in budget year:
   a. Property Tax Revenues $

2. Moneys from Reserve Funds [Note to First Nation: List each reserve fund and amount taken out of fund to be expended in budget year. If none, delete this section.]
   a. $
   b. $

3. Moneys borrowed from Reserve Funds [Note to First Nation: List each fund and amount borrowed from a reserve fund to be expended in budget year. If none, delete this section.]
   a. $
   b. $

TOTAL REVENUES **$**

PART 2: EXPENDITURES

1. General Government Expenditures
   a. Executive and Legislature
   b. General Administrative
   c. Other General Government
2. Protection Services
   a. Policing
   b. Firefighting
   c. Regulatory Measures
   d. Other Protective Services
3. Transportation
   a. Roads and Streets
   b. Snow and Ice Removal
   c. Parking
   d. Public Transit
   e. Other Transportation
4. Recreation and Culture
   a. Recreation
   b. Culture
   c. Heritage Protection

d. Other Recreation and Culture

5. Community Development
   a. Housing
   b. Planning and Zoning
   c. Community Planning
   d. Economic Development Program
   e. Tourism
   f. Trade and Industry
   g. Land Rehabilitation and Beautification
   h. Other Regional Planning and Development
6. Environment Health Services
   a. Water Purification and Supply
   b. Sewage Collection and Disposal
   c. Garbage, Waste Collection, and Disposal
   d. Recycling
   e. Other Environmental Services
7. Fiscal Services
   a. Other Interest Payments
   b. Other Debt Charges
   c. Other Fiscal Services
8. Other Services
   a. Health
   b. Social Programs and Assistance
   c. Agriculture
   d. Education
   e. Other Services
9. Grants:
   a. Home owner grant equivalents:
   b. Other grants: **[Note to First Nation: List each grant category and total amount granted]**
      i. $
      ii. $
      iii. $
10. Contingency Amounts $
11. Transfers into reserve funds **[Note to First Nation: List each reserve fund and amount to be transferred into the reserve fund in budget year]**
   a. $
   b. $
   c. $

12. Repayment of moneys borrowed from reserve funds **[Note to First Nation: List each reserve fund and amount to be paid back into the reserve fund in budget year]**

a.	$
b.	$
c.	$
TOTAL EXPENDITURES	**$**

PART 3: ACCUMULATED SURPLUS/DEFICIT

1. Accumulated Surplus – Local revenues carried forward from the previous budget year	$
2. Accumulated Deficit – Local revenue expenditures carried forward from the previous budget year	$

BALANCE	**$**

[Note to First Nation: Total revenues less total expenditures should be zero.]

Note: The First Nation has the following service agreements with third-party service providers, and the amounts indicated are the amounts payable by the First Nation under each agreement during the budget period: **[Note to First Nation: List each service agreement and the amount payable. These expenditure amounts should be included in the appropriate budget expenditure category above.]**

a. **[insert name of service provider and services provided]**	$
b.	$

Note: This Budget includes an attached Appendix.

Appendix A

Reserve Fund Balances

[Note to First Nation: List every reserve fund funded by local revenues. Beginning balance is the first day of the budget year (either calendar or fiscal) and ending balance is the last day of the budget year.]

1. [Name of reserve fund]

Beginning balance as of ______ 1, 20__ :	$
Transfers out	
a. to local revenue account:	$
b. to _________ reserve fund:	$
Transfers in	
a. from local revenue account:	$
b. from _________ reserve fund:	$
Interest earned in current year:	$
Ending balance as of ________ 31, 20__:	$

2. [Name of reserve fund]

Beginning balance as of _______ 1, 20__:	$
Transfers out	
a. to local revenue account:	$
b. to _________ reserve fund:	$
Transfers in	
a. from local revenue account:	$
b. from _________ reserve fund:	$
Interest earned in current year:	$
Ending balance as of _________31, 20__:	$