

Changes to Standards for Tax Rates Laws Proposed

FNTC is proposing improvements to standards for tax rates laws. In October 2007, the FNTC developed standards respecting the form and content of First Nation Tax Rates Laws made under subparagraph 5 (1)(a)(ii) and paragraph 10(a) of the Act. These Standards reflect best practices and are consistent with the FNTC Policy Objectives. The Tax Rates Laws Standards have been amended several times to achieve greater clarification, efficiency, and consistency.

In June 2011, the FNTC approved proposed amendments to the Standards for First Nation Tax Rates Laws. These changes include provisions to:

- facilitate the practice of First Nations matching their tax rates to the annual rates established by adjacent jurisdictions; and
- require notice of annual rates laws before they are submitted to the FNTC for review and approval.

The FNTC is seeking public input in respect of the proposed amendments. Your input will assist in developing standards that are acceptable and effective for participating First Nations and their taxpayers. Electronic versions of the proposed standards are available at www.fntc.ca.

Please direct your written comments on or before September 30, 2011 to FNTC Head Office (address below) or mail@fntc.ca.

Supreme Court Affirms Indian Status Rights in Tax Ruling

On July 22, 2011, the Supreme Court upheld an appeal by the estate of Mr. Roland Bastien, a member of the Huron-Wendat Nation. Mr. Bastien died six years ago.

For 27 years, he ran a small moccasin business on the Wendake Reserve outside Quebec City. Mr. Bastien made investments from that business – both during its operation and after it was sold - with the Caisse populaire Desjardins du Village Huron, which is a credit union located on the reserve. The investments were in the form of term deposits. Interest from these investments was held in a savings account in the

credit union. The Canada Revenue Agency disagreed with Mr. Bastien's belief that this interest income was exempt from taxation pursuant to section 87 of the *Indian Act* and, in 2001, added the investment income to Mr. Bastien's income for that tax year.

Mr. Bastien's estate challenged this ruling to the Tax Court of Canada and the Federal Court of Appeal, and lost each time. In each case, the court ruled that the revenues generated by the Village Huron Caisse were done so outside the reserve and, accordingly, the interest paid to Mr. Bastien was not tax exempt.

However, the Supreme Court of Canada disagreed, rejecting the position taken by the lower courts that the revenues produced by the Village Huron Caisse were done so in the "commercial mainstream" off-reserve. In its unanimous decision, the Supreme Court said the question is the location of Mr. Bastien's interest income, and not where the caisse earns its profits to pay its contractual obligation to Mr. Bastien. "The exemption from taxation protects an Indian's personal property situated on reserve. Therefore, where the investment vehicle is, as in this case, a contractual debt obligation, the focus should be on the investment activity of the Indian investor and not on that of the debtor financial institution."

The Supreme Court's clear affirmation of Indian status rights over earned investment income will not only benefit individuals, it will also improve the business and investment climate on reserve, making it one of the most significant decisions in the last 25 years.



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FNTC Seeks Improvements to FSMA: Access and Efficiency Seen as Key Changes Sought

Since May 2011, the FNTC has been engaged in a multi-lateral process to advance legislative changes to improve the accessibility and efficiency of the *First Nations Fiscal and Statistical Management Act* (FSMA).

Under s.146 of the FSMA, the Minister of Aboriginal Affairs and Northern Development Canada (AANDC) is required to review the provisions of the FSMA and the operations of the institutions, and submit a report to each House of Parliament on that review, including any changes that the Minister recommends relating to the evolution of the mandate and operation of the institutions.

AANDC officials have held a series of meetings with the FSMA institutions regarding the review and possible amendments to the legislation.

The Commission has advanced a number of amendments aimed at facilitating the exercise of First Nations' law-making authorities under the FSMA.

These proposed amendments are based on the experience of First Nations and the FNTC:

- One example is notice of laws – currently 60 days notice of every property tax law must be delivered to every member and every taxpayer. The Commission has proposed a more nuanced approach that better balances the interest of taxpayers with the interest of First Nation governments.
- A second example is the timing for making annual laws and building in flexibility and

consistency with the provincial off-reserve practice across Canada.

- The FNTC has also proposed changes that would clarify that grants in lieu of taxes are included within the local revenue account and to streamline the assessment appeal procedures.
- In addition, the FNTC is seeking to improve the accessibility to the legislation so that s.83 *Indian Act* systems can make the transition to the FSMA more easily.

The Minister must present the final report on the seven year legislative review of the FSMA by March 23rd, 2012. It is anticipated that amendments may follow this report.

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Message from the Chief Commissioner

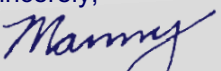
Welcome to the fall edition of *Clearing the Path*. I want to begin by drawing your attention to an important process that is underway. Over the past few months, we have reported on the progression of the seven year review of the FSMA. The review is an opportunity for us to improve upon the FSMA making it more efficient and responsive to the needs of First Nations and their taxpayers. FNTC is incorporating suggestions for change, that we have received, and best practices in our proposals to Canada and we look forward to the Minister's report to Parliament before the end of the fiscal year. The Commission will continue to report on the progress as this important process evolves.

The summer of 2011 was marked by two events. The first was the downgrading of the credit ratings for several European countries and the United States. The second was the untimely death of Jack Layton. Credit ratings reflect how trustworthy a government is. They reflect what the market thinks is our ability to repay our debts. Fifteen years ago, we set out to create a regulatory framework under the FSMA so that our governments would be viewed as trust and credit worthy by lenders and investors. Soon the First Nations Finance Authority will be seeking a credit rating on behalf of the original First Nations, initially added to the FSMA schedule, to use the borrowing powers of the FSMA. I expect them to be impressed by the standards that the FNTC and Financial Management Board have established and the participating First Nations have implemented.

Many Canadians were obviously inspired by Jack Layton's leadership. It made me reflect on the leaders who have inspired myself, including Chief Clarence Joe from Sechelt, Chief Forrest Walkem from Cook's Ferry, Chief Joe Mathias from Squamish and, of course, the leader I look to most, my father Clarence Jules Sr. They have provided me with the vision and strength to lead the recognition and implementation of our tax systems. I think of the future leaders in each of our tax collecting communities who will lead the next important changes. There are at least four communities who are creating development cost charge laws. There are three communities who are leading the development of business activity taxes. There are two communities who will soon pass taxation for the provision of services laws and two more communities who will soon implement FNGST systems. Their leadership, in seeking to expand the revenues for their First Nations, will not only inspire others but will help improve our credit ratings.

I would like to congratulate those tax administrators who will be graduating with a certificate in First Nation Tax Administration, jointly issued by the Tulo Centre of Indigenous Economics and Thompson Rivers University, on October 7th, 2011. This eight course and 17 credit certificate is the first of its kind in Canada. These graduates have the skills to maximize the benefits from the FSMA. They will be leaders of change in our communities. I hope you can join us in Kamloops to mark this important milestone for our common objective to build economically sustainable and self-sufficient communities.

Sincerely,


C.T. (Manny) Jules
Chief Commissioner



First Graduates from the Tulo Centre, Fall 2011

Many First Nations have a competitive advantage such as location, human resources, innovative strengths or access to natural resources. Implementing the legal and administrative framework is the key to opening the door for First Nation economic potential. Tulo's *Certificate in First Nation Tax Administration* program and its students are at the forefront of property taxation on First Nation lands. Graduates of the Tulo programs are prepared to administer high quality First Nation property taxation and

local revenue systems. Tulo staff are very excited as they await the graduation of 10 students on October 7, 2011. This will be Tulo's first class to graduate from the *Certificate in First Nation Tax Administration* program. The schedule for upcoming Tulo classes has been released and registration is open. Please visit the Tulo website (www.tulo.ca) for more information on the individual classes and to find application forms.

Tulo Contest

What is Tulo's "Vision"? Hint... the answer can be found on the Tulo website (www.tulo.ca). Please email your answer to info@tulo.ca and you could win a prize! Congratulations to Carlene George, Taxation Clerk for the Penticton Indian Band, who won the last contest!



A Capital Plan: An Important Tool for Tax Administrators

Meet Paul Ham, civil engineer. Since 1970, he has worked in the private and public sectors. For 20 years he worked for the City of Surrey, most notably as City Engineer. Now retired, Mr. Ham works part time for Urban Systems in Kamloops. At Urban Systems, he has been mainly in the field of municipal servicing and financial planning; including Neighbourhood Planning Studies, Development Cost Charge Studies and Municipal Utility Rate Studies.

Mr. Ham also teaches a course at the Tulo Centre of Indigenous Economics. *Clearing the Path* sat down for a conversation with Mr. Ham to discuss the Tulo course and find out what he feels every tax administrator should know.

What advice do you have for the tax administrators taking your infrastructure planning course at Tulo?

I think the most important thing for the Tax Administrators is to have a 5 or 10 Year Capital Plan for their community. A Capital Plan, which identifies the communities infrastructure and facility needs, including new capital needs, replacement, renovation, or upgrading items into the future, will allow Tax Administrators to know what financial needs to plan for, assist in pursuing funding, smooth out yearly cash flow requirements and help make decisions about any debt financing.

What is a DCC?

A DCC is a Development Cost Charge (which is the terminology used in BC) which has historically been used by cities and municipalities to pay for infrastructure and park land that is needed for new growth and development. They could be similarly used by First Nations on those portions of their land that are proposed for some form of development.

Why is a good capital plan important before proceeding with a DCC Law?

To determine what DCC should be charged, you must know the costs of the park land and works needed to service the projected growth and development. The best way is to have a longer term capital plan, say for the next 10 years, which identifies all the capital needs both for growth and the existing community. The DCC can then be based on the costs needed for growth divided by the number of new people or new leased lands anticipated over the next 10 years as a result of development.

When are DCCs best used by a First Nation?

DCCs are probably best used when a First Nation is planning on developing some of its land where servicing infrastructure is required and there may be a number of different clients/developers involved in development and taking leases on the land. Under the DCC approach all will pay the same rate of contribution and it is clear to everyone what they will be expected to pay.

What is greenfield development?

Greenfield development is development on lands that have never been previously used for development, i.e. previously just grass or trees. Redevelopment of previously developed lands is often referred to as brownfield development.

What other infrastructure financing options are there?

Financing options other than DCCs for growth and development related infrastructure would be partnering with a private developer and having them finance the necessary services, or the First Nation borrowing to debt finance the services with cost recovery in either case through a portion of the lease payments.

Property Tax and Jointly Held Indian Reserves

There are over 50 Indian reserves in Canada that are held for the benefit of more than one First Nation, and some of these jointly held reserves have significant commercial value. While Joint Management Agreements have been used to assist in the development of these lands, the issue of exercising property taxation authority here used to present a challenge for First Nations because of limitations in the *Indian Act*.

This changed with the introduction of the FSMA. Under the FSMA, participating First Nations have the clear ability to delegate their property taxation authority on joint reserves to another First Nation or some other body. The FNTC has been working on developing a sample law to facilitate this type of delegation, and is expected to release it in October 2011.

In addition to overcoming the legal hurdles of joint reserves, the delegation of authority law can be an option for First Nations interested in aggregating their jurisdiction with other First Nations to achieve economies of scale or to promote sectoral Nation-building.