

CLEARING THE PATH

First Nations Tax Commission

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FSMA Review Proposes Improvements

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.

Over the next several months, the FNTC will be 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).

A number of studies and projects are currently underway and will feed into the seven year review process including:

- FSMA Evaluation (a separate evaluation, being completed by AANDC, of the implementation of the FSMA);
- Performance Measurement Strategy (an umbrella performance measurement strategy currently being developed by and for the FSMA institutions with AANDC officials); and
- Legislative amendments proposed by AANDC with each institution.

Departmental officials met with the FSMA institutions in early June, 2011, to begin discussions regarding the review and possible amendments to the legislation.

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Supreme Court of Canada Sets Date for Appeal about Property Tax Rates

As reported in the January 2011 edition of *Clearing the Path*, the Supreme Court of Canada will be hearing a significant property tax case later this fall.

A British Columbia Company, Catalyst Energy, claims that the tax rates set by the District of North Cowichan, BC, were unreasonable. This is premised on its assertion that these rates bear no relationship to the municipal services the company actually uses or consumes.

The Supreme Court of Canada has set a hearing date for October 17, 2011 at 9:30 am. The FNTC continues to follow the case closely and will keep readers apprised of any outcome.

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Message from the Chief Commissioner

Welcome to the summer edition of *Clearing the Path*. While it is holiday time for some, we are in the busiest time of the year for First Nation tax authorities across the country.

The Throne Speech of the new majority government signaled a renewed political willingness to work with First Nations to promote education and governance while breaking down barriers to investment on reserve lands. This is welcome news for the tax collecting First Nations who want to expand their economies.

Breaking down barriers to investment is our business. First Nations are working with FNTC to develop the revenues that build business grade infrastructure. Through our education program, at the Tulo Centre of Indigenous Economics, we are working together to develop the skills necessary to get the most out of this investment. Most importantly, working with the tools in the FSMA, First Nations are ensured that they have the regulatory framework to manage sophisticated governments that can compete for investment in the market.

This approach is based on three tenets. First, recognizing that removing First Nation disparities requires a private sector solution. In other words, we need private investment. Second, getting private investment by providing government that is responsive to the needs of investors. In other words, we need local authority. Third, our governments need resources to support their capacity needs. Simply said, like other governments, First Nations can't do everything "in house". Our institutions can help by continuing to provide sample laws, standards, and training, along with a credible system of checks and balances that promote accountability, confidence and transparency. The fiscal institutions help to ensure that our governments evolve in a way that doesn't compromise the principles of the national union because, ultimately, we all rely on that.

This approach has worked. Many First Nations have assumed property tax and local revenue jurisdiction over their own lands. When they did so, they created revenues where land and resources were formerly idle. They improved services and improved infrastructure from what existed before. They developed important administrative capacities and, most importantly, helped restore a culture of self reliance.

The work being done by First Nations who are taking advantage of the FSMA is a good news story. I think it's important that we tell this story now, because this year's federal budget is telling us that Canada is entering into a period of fiscal restraint. This means government will be searching for new ways to conduct itself, and that this search will be driven by the twin mantras of cutting costs and improving productivity. I believe that fiscal restraint will challenge Canadians and First Nations to think about government in non-traditional ways. We may end up paying more attention to basic questions like, "does a policy or program work?" and less attention to, "is there precedent for this?"

In this regard, we have been working with First Nations, Canada and the other institutions on the seven year review of the FSMA. Over the past year we have identified and discussed a number of possible amendments to make this landmark legislation more effective and more efficient. Throughout this summer and fall we will continue to consider these proposed amendments with tax collecting First Nations, taxpayers and other interested groups.

The FSMA is a model that works. And we look forward to working with tax collecting First Nations, stakeholders and Canada to build on its success.

Sincerely,

C.T. (Manny) Jules
Chief Commissioner

TAS: Supporting Administrative Efficiency



Since 2008, the FNTC, along with tax administrators, has supported the development and promotion of the TAS software. With the launch of the improved software this year, *Clearing the Path* sat down with Mr. Derek Zienowicz, the TAS program developer, to discuss the software, its evolution and the assistance it

can provide to First Nation tax administrators.

How did TAS originate?

TAS (Tax Administration Software) has been created by FNTC to help the very people who were instrumental in creating TAS: tax administrators. It is through on-going interaction between tax administrators and the TAS development team that resulted in the streamlined, full featured product which is TAS today. The key motivation behind the creation of TAS was to provide a user-friendly tool for all taxing First Nations.

Can any First Nation use TAS?

TAS can be used to manage a large tax base with thousands of folios but it is the First Nations with a small tax base that will benefit from TAS the most. Because property taxation happens only once per year, smaller First Nations do not have dedicated staff to handle the taxation process. When utilizing TAS, all the key steps, from submitting a budget to printing tax notices, are outlined for the user. To put it simply, TAS will provide you with all law/by-law submission documents, reports and tools required to complete your First Nation's tax year.

This function alone makes TAS invaluable to taxing First Nations. But in addition, TAS will record payments, keep track of outstanding accounts, charge penalties and interest (in accordance to your laws/by-laws), send out delinquent notices and schedule enforcement processes.

All this functionality sounds expensive. How much does TAS cost?

The FNTC provides TAS free of charge to all taxing First Nations in regions where TAS has been developed to support tax administrations. There is an annual maintenance agreement that is pro-rated in accordance with total property assessment value. For details, please contact Sarah Jules at sarah@tulo.ca

or call her directly at 250-828-9881.

Is TAS easy to use?

Yes, it is extremely easy to use. TAS has been designed with the main focus being ease of use. All features, settings and information are plainly displayed and it is always accessible to the user from any module. There are no hidden menus, multi-level drill downs or convoluted reference points. All information is linked to customer roll number and fiscal year. This allows TAS to be very user-friendly and easy to learn.

TAS is always upgrading, and there have been a number of changes to TAS recently. Can you elaborate on the key upgrades?

As with any software, it is always a work in progress. FNTC is a dynamic organization and their mandate is to provide First Nations the highest level of expertise and service that is available. TAS needs to keep up with progress and, therefore, it is constantly evolving. New features and processes are added on a monthly basis. We compile all changes, test and implement new versions of TAS twice per year.

In this release of TAS, there are a number of key features. The most notable are:

1. Laws/By-Laws Submission Process – TAS is now the law/by-law submission toolkit. All the current documents, reports and tools have been incorporated into the software. In addition, the most current requirements have been included to assist in the submission and review process. This guide will assist in maintaining accuracy and document integrity for both the First Nation and FNTC. TAS will generate the appropriate documents in the correct format, at the specific time.
2. Alberta TAS – All features from B.C. TAS are now available to Alberta First Nations. Data import routines, rate setting, reporting, folio management and submission process has been built in.
3. Class sub-categories – Numerous First Nations have been facing the dilemma of dealing with rates which are split from the total class rate. Provincial models call for fraction of total class rates to apply to either land or improvements portion of the property assessment value. TAS is now equipped to deal with this problem.

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Important Changes to FNTC Website

In the last year, the FNTC has been making improvements to the website in order to provide better resources for visitors. The website has been redesigned to include such items as a Property Tax Toolkit, which takes you through the different steps in the process of implementing property taxation and provides all the required documentation to do so.

A Document Resource Kit has also been added to the website and houses all documents to assist you through various property taxation requirements.

Bulletins and Notices are now much more predominant on the site and will alert tax administrators to new requirements, changes, or important news in the field.



The Commission unveiled its revamped website in April 2011. The FNTC website (home page shown above) has many easy-to-see and easy-to-use features. Besides the new look, the Property Tax Toolkit, and the Document Resource Kit, other key features available straight from the home page are:

- Immediate access to questions and answers at the bottom of the page;
- Instant access to facts about taxing First Nations across Canada from the interactive map on the right hand side of the page;

- Direct link to the *First Nations Gazette*;
- Direct link to the Tulo Centre of Indigenous Economics; and
- Direct link to the current edition of *Clearing the Path* newsletter from the image at the top of the right column.

To visit the new FNTC website and take a complete tour of these and other improvements, go to www.fntc.ca.

FNTC Facilitating Assessment Services for First Nations

A cornerstone of the FNTC's mandate is to help First Nation governments build and maintain fair and efficient First Nation property tax regimes, and to ensure those First Nation communities, and their taxpayers alike, receive the maximum benefit from those systems. The foundation of an equitable, effective and efficient property taxation regime is an authoritative, reliable and cost-effective property assessment service. Together, the FTNC (in keeping with its mandate) and First Nation governments, as property tax authorities, must ensure that the required property valuations for taxation purposes are sound, defensible and above reproach.

A growing number of First Nations across the country are preparing to exercise their property taxation jurisdiction pursuant to the *First Nation Fiscal and Statistical Management Act*. These First Nation property tax systems, in the interest of maintaining property tax harmony, will adopt provincial assessment provisions and practices. As such, these First Nations would require the full gamut of assessment services including real property valuation and assessment roll preparation, certification and defense. Further, access to provincial assessment appeal bodies, on a regional basis, would also be desired.

The Commission has opened discussions with provincial officials in Alberta, Manitoba, Ontario and New Brunswick. The FNTC objective in these jurisdictions would be to establish working relationships with the provincial assessment authorities to facilitate the provision of assessment services to taxing First Nations.

The FNTC will continue to pursue this objective throughout the summer with a view of developing framework agreements in the fall of 2011.

What's New at Tulo?

In addition to the regular class delivery, Tulo has been involved in community events, including the Williams Lake Indian Band Career Fair, Chawathil Career Fair and Boston Bar Career Fair. Tulo also recently participated in the *Summit on Leadership in Aboriginal Education* at Thompson Rivers University which was attended by First Nation education coordinators and related professionals.

The Tulo website now houses the archive of Dr. Robert L. Bish research papers related to First Nation property taxation. Dr. Robert L. Bish, who currently serves on the Tulo Board of Directors, is Professor Emeritus from the University of Victoria. Topics of the papers include "First Nation/Local Government Service Contracting" and "Debt Financing for First Nations." This archive can be found at: <http://tulo.ca/resources.htm>

Tulo will be attending the 32nd Annual Assembly of First Nations Conference in Moncton, New Brunswick in July 2011. Look for our booth! We will have great give-aways and prizes and will be talking about our Certificate in First Nation Tax Administration, Certificate in First Nation Applied Economics and our plans for expanding our education programs. Please visit the Tulo website for updated course schedules and registration forms: www.tulo.ca

Tulo Contest

The word "Tulo" means "earned profit" in what language? *Hint: the answer can be found on www.tulo.ca.* Submit your answer to info@tulo.ca to enter your name in the draw to win a fantastic Tulo prize. Big congratulations to Nicole Casimel, Tax Clerk for the Little Shuswap Indian Band, who won the last draw!



The Tulo Centre and First Nations Tax Commission booths are shown at the Williams Lake Indian Band Career Fair.

BC AFN Releases Governance Toolkit

In June 2011, BC Assembly of First Nations Regional Chief Jody Wilson-Raybould released the BCAFN Governance Toolkit Part One: The Governance Report.

The Toolkit is a comprehensive examination of First Nation governance options, canvassing 33 different jurisdictional powers. Drawing knowledge from a host of First Nation academics, practitioners, and leaders, the Toolkit is intended to assist BC First Nations by providing a compendium of current initiatives and offering practical "how-to" information for First Nation governments.

The taxation chapter provides exceptional guidance on various forms of First Nation taxation including property taxation, consumption taxes, commodity taxes, and taxation under Treaty. The FNTC was pleased to provide technical assistance in the development of the chapter.

Clearly, the BCAFN Governance Toolkit will prove to be an indispensable resource for First Nation decision-makers and their governments.

For more information or to download a copy of the Toolkit, visit www.bcafn.ca.

Did you know...?

- First Nations have been collecting property tax revenues since the 1800s.
- First Nations are collecting property tax in nine provinces across Canada.
- Last year, the total estimated assessed values for properties on taxing First Nation lands was \$4.65 billion.
- Since January 2008, the FNTC has approved and published over 300 laws under the FSMA.
- Since January 2008, 31 out of 33 First Nations (93%) have chosen the FSMA over the *Indian Act* to establish property taxation.

Tsawwassen and Westbank First Nations Considering FSMA Benefits through Regulations

From the outset, the FSMA envisioned that First Nations who concluded land claims agreements, or treaties or self-government agreements, should also be able to participate in the benefits of the FSMA and the services of the FSMA institutions.

This participation would be made possible through a specific regulation made by the federal cabinet that would set out how the provisions of the FSMA line up with the specific provisions of the treaty or other agreement so that it all works in tandem.

Currently, work is underway on two possible regulations – one would adapt the FSMA so that the Tsawwassen First Nation (Tsawwassen) could participate, and the other would allow participation by the Westbank First Nation (Westbank).

Tsawwassen is the first Treaty First Nation to have concluded a modern treaty under the BC Treaty Commission process. Tsawwassen's treaty came into effect on April 3, 2009. The treaty recognizes the First Nation's jurisdiction over property taxation in respect of Tsawwassen members and provides for agreements with the Province of BC in order to pursue property taxation in respect of non-members.

For Westbank, federal legislation in May, 2004, gave effect to a self-government agreement concluded with Canada under the federal inherent right to self-government policy. At the present time, Westbank is exercising property taxation jurisdiction under s.83 of the *Indian Act*.

Once the regulations are in place, Tsawwassen and Westbank would be able to call on the support and assistance of the FSMA regulatory framework and institutions, and they would be eligible to apply to become borrowing members of the First Nations Finance Authority and have access to capital markets for long-term financing.

The vision contemplated within the FSMA and the work on these regulations demonstrates that the FSMA can go to work for all First Nations, including Treaty First Nations and self-governing First Nations.



First Nations Gazette Expands

The *First Nations Gazette* is continuing to expand. The *Gazette* has been approached by the Specific Claims Tribunal and the two organizations are now working together. The October 2011 publication of the *First Nations Gazette* will include the *Specific Claims Tribunal Rules of Practice and Procedures*.

The *Gazette* and the FNTC are also continuing discussions about future publications being a place for First Nations to give notice and, possibly, for s.81 (*Indian Act*) by-laws to be published. A concept paper is being developed for this work.

Local Revenue Account Requirements

We are entering into the time of year when First Nations begin to finalize their audits. Taxing First Nations must prepare for an audit of the local revenue account.

The local revenue account is a separate account where all of the First Nation's property tax revenue is placed. First Nations conduct a separate audit of the local revenue account annually. Given that auditors or the personnel involved in preparing the annual financial statements will change from time to time, tax administrators will typically meet with the auditor, annually, to familiarize the auditor with the local revenue account, and ensure revenue and expenditures in their local revenue account are reported properly.

While the audit of the local revenue account, and ensuring the audit report availability, are legal requirements for First Nations taxing under the *First Nations Fiscal and Statistical Management Act*, they are widely practiced by all taxing First Nations because they reflect sound financial management policy.

Members, taxpayers, and potential investors need to have confidence in the management of the First Nation tax system, and access to the audit of the local revenue account is a fundamental pillar in instilling that confidence.

Business Activity Taxes Under FSMA

Under the FSMA, First Nations have the ability to enact laws for the taxation of business activities on reserve lands. This type of taxation is distinct from ad valorem taxation and represents an important source of revenue for governments off reserve.

One such example of business activity taxation is the accommodation tax or hotel tax. You may be familiar with this tax, as you will often find an amount for the tax on your hotel bill. Sometimes it's 2% of the bill, other times it is higher.

The revenues generated by the tax are typically used to promote tourism and are often split between the municipality and the province. Increasingly, large accommodation providers are situating on First Nation reserves and this form of taxation can assist First Nations in financing culturally relevant tourism programs.

Other examples of business activity taxation include business occupancy taxation, amusement taxes, and well drilling taxes.

Currently, the FNTC is developing Standards and sample laws for First Nations interested in enacting these laws, and expects to have them completed by this fall.

Well Drilling Taxes: Revenue Potential

Local governments in Saskatchewan and Alberta have long collected a unique tax on well drilling. In the 1940's, Alberta municipalities were given the authority to pass by-laws authorizing a tax on well drilling equipment to provide funds to deal with the problem of road damage as a result of heavy oil drilling equipment travelling on rural roads.

Alberta local governments collect a variable amount of tax, depending on the depth of the well. For example, a five kilometer well can bring about \$40,000. The Alberta provincial government sets the rates annually, and the one-time tax is paid each time a permit is issued for oil or natural gas exploration.

In Saskatchewan, the situation is a bit different. A special business license fee is paid to local

governments by companies involved with well drilling and exploration. This can entail oil, gas or mineral exploration. The tax is substantially lower, approximately \$500 to \$700 per drilling hole.

Given that approximately 170 oil wells alone are dug each year on First Nation lands, the revenue potential for this law is immediate and considerable for a number of First Nations in Alberta and Saskatchewan.

The FNTC is currently examining the well drilling tax and its potential application as a business activity tax under the FSMA.

TAS: Supporting Administrative Efficiency

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3. It allows users to define class rate split and assign sub-category title and value to said sub-category. What makes this feature unique is that TAS allows for multiple sub-categories in multiple classes to print on the tax notice, as well as define the assessment category (land or improvements or both) for each sub-category.

What is the new cloud portal?

There are a number of new features in TAS that are very exciting. However, the remote cloud server TAS hosting option is the most celebrated. This new cloud portal allows new and existing TAS users to utilize an on-line, remote access to TAS which guarantees virtually no down time as a direct result of hardware failure.

All organizations differ from one another, with some having advanced IT infrastructure and some being very basic. Remote TAS hosting levels the playing field for all users, as it allows us to provide the highest level of data security, data integrity and data access to everyone. It bypasses complicated network issues and gives remote access to users from virtually any device with an internet connection.

Additionally, all updates, maintenance and support are further simplified and streamlined, thanks to a singular architecture which drives all client access. The service is available now.

For more details about TAS, contact the Smart Consulting Group at 1-877-222-4488 or Derekz@smartgroupinc.ca.

Upcoming Meetings



FNTAA 18th Annual National Forum

The First Nations Tax Administrators Association will be holding its 18th Annual National Forum on **September 14, 15, and 16, 2011**. The meeting will be held in Little Shuswap Lake, BC.

The theme of the meeting will be "*Property Taxation in 2050: What will it look like and how do we get there from here?*" An opportunity for First Nation tax administrators to meet other professionals in the same field, it will also look at such things as FSMA implementation, training opportunities, community planning lands management issues, land tenure on First Nation land and economic development. The Annual General Meeting will be held at this time.



CPTA 45th Annual National Workshop

The Canadian Property Tax Association will be holding its 45th Annual National Workshop in Niagara Falls on **September 25-28, 2011**.

The theme of the meeting will be "*A Plethora of Property Tax and Assessment Issues*", taking into consideration the plentiful and diverse issues facing property taxation in Canada today.

Topics of discussion will include a cross Canada legal update, valuing special properties such as airports, seaports and railways, and exploring the ethics of property tax practice. The FNTC will also present an update.



FNTC Annual General Meeting

On **October 6, 2011**, the FNTC will be holding its fourth annual general meeting at the FNTC Head Office in Kamloops, BC.

The FNTC Annual Report and Audit will be presented at the meetings. The Annual Report can be found at www.fntc.ca.

FSMA Review Proposes Improvements

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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. In addition, the FNTC has 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.

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.

**New toll free number for the FNTC
1-855-682-3682**



First Nations Tax Commission
Commission de la fiscalité des premières nations

Head Office

321-345 Yellowhead Highway
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857
Fax: (250) 828-9858

National Capital Region Office

160 George St., Suite 200
Ottawa, ON K1N 9M2
Telephone: (613) 789-5000
Fax: (613) 789-5008

www.fntc.ca

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