



**First Nations Tax Commission**  
**Commission de la fiscalité des premières nations**

**April 9, 2019**

## **2019 ANNUAL BY-LAWS BULLETIN**

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 and submission of annual by-laws made under section 83 of the *Indian Act* (IA).

The FNTC encourages First Nations to consult as early as possible with an FNTC advisor for an update on the changes for 2019, and to obtain technical comments on draft annual by-laws. These comments can help ensure the by-laws are consistent with FNTC policy requirements and can help prevent errors in the by-laws before they are submitted for Council approval.

### **Important Changes for 2019**

- National rate of inflation for the 2019 Taxation Year is 2.0%;
- Contingency amount calculation now excludes certain types of revenue; and
- *Policy for First Nations Tax Rates By-laws, 2018* and the *Policy for First Nations Expenditure By-laws, 2018* came into effect June 29, 2018.

### **Annual Tax Rates By-laws**

#### **Timing for the Making of Annual Tax Rates By-laws**

The FNTC *Policy for First Nations Tax Rates By-laws, 2018* requires that the annual by-laws be enacted on or before **July 31<sup>st</sup> of the taxation year. For First Nations in Saskatchewan the deadline is August 31<sup>st</sup>.**

It is important to note that each First Nation's property taxation by-law sets its own date when its annual rates by-laws must be made. **Please refer to this date when developing your First Nation's annual rates by-law.** Two other important dates set by the property taxation by-law are the date when tax notices are to be sent and the tax due date.

Having these dates in mind, tax administrators should ensure that the signed by-laws and all supporting materials are submitted to the Section 83 By-law Registrar as soon as practicable. To allow 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 property taxation by-law,

the FNTC recommends that First Nations submit their annual by-laws at least 15 days in advance of the date tax notices are to be issued.

***Tax Rate Setting in the First Year of Taxation  
(Section 6 of the Policy for First Nation Tax Rates By-laws, 2018)***

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 is no former taxing authority, identical rates as the reference jurisdiction in the *current* year. (The reference jurisdiction is an adjacent local government jurisdiction. For assistance in determining the appropriate reference jurisdiction, please contact an FNTC advisor.)

***Tax Rate Setting in Subsequent Years  
(Sections 7-9 of the Policy for First Nation Tax Rates By-laws, 2018)***

In the second and all subsequent years that a First Nation exercises property taxation, tax rate setting must meet the requirements of section 7, 8, or 9 of the Policy.

***Average Tax Bill Comparison (Section 7.1(a))***

Tax rates can meet the requirements in section 7.1(a) of the *Policy for First Nation Tax Rates By-law, 2018* in one of two ways:

1. National inflation rate method - The proposed rates in each class will lead to an average tax bill change not exceeding the national rate of inflation. **Please note that for the 2019 tax year, the national rate of inflation is 2.0%.**
2. Reference Jurisdiction comparison method - The proposed rates in each class will lead to an average tax bill change not exceeding the average tax bill change in the same class of the reference jurisdiction. (First Nations using this method must submit assessment data and tax rate information for the reference jurisdiction.)

In using the average tax bill methods described in 1 and 2 above, new properties must be excluded and the “average” tax bill can be expressed in one of two ways:

1. Mean Tax Bill: Divide the total number of folios (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation.), into the total revenue 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 of a Representative Taxpayer: Place all tax bills in order (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation), from the lowest to the highest in each property class, and then find the tax bill of the representative taxpayer 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.

### ***Reference Jurisdiction Rate-Setting (Section 7.1(b))***

Reference jurisdiction rate-setting involves the First Nation setting tax rates in each class that are identical to the reference jurisdiction's rates in the current and previous year, and also requires the First Nation to use the same assessment practices as the reference jurisdiction. First Nations wishing to move from using the average tax bill comparison method to using the reference jurisdiction method, should review section 9 of the *Policy for First Nation Tax Rates By-law, 2018* and consult with an FNTC advisor.

### ***Rate Setting and Transition Provisions (Section 7.2)***

Section 7.2 of the *Policy for First Nation Tax Rates By-law, 2018* applies only to First Nations who have included a property tax transition provision in their property tax by-laws. The section enables First Nations to set rates in accordance with their transition process rather than in accordance with sections 6 and 7. **Note – In February 2019, section 8.2 was slightly revised to clarify that a First Nation does not need to justify a variation with the tax rate transition provisions, where a First Nation sets a lower tax rate than originally planned.**

### ***Justification for Rates Exceeding Section 7***

Where tax rates fail to meet the requirements of section 7, First Nations can justify tax rate increases on the basis of any of the following three rationales:

1. There is a significant increase to the cost of local services (i.e., water, sewer, waste collection, fire protection, and road maintenance);
2. The proposed rates are consistent with a First Nation's reference jurisdiction transition plan; or
3. There is taxpayer support within the affected class.

**Cost Increases** - First Nations citing significant increases in the cost of services as a justification (rationale #1) will have to provide evidence to the FNTC in the form of a signed service agreement showing cost increases, or written evidence provided by the First Nation's chief financial officer.

**Reference Jurisdiction Transition Plan** - First Nations may seek to justify their tax rates on the basis that the rates are consistent with a transition plan to reference jurisdiction rate-setting (rationale #2). Transition planning must be initiated in the previous year.

**Taxpayer Support** - First Nations citing taxpayer support (rationale #3) must provide letters of support from individual taxpayers or their associations representing at least 50% of the taxpayers in the property class, holding at least 50% of the total assessed value in the class.

**First Nation tax administrators should contact the FNTC as early as possible if the First Nation intends to provide justification for exceeding section 7 of the *Policy for First Nation Tax Rates By-laws, 2018*.**

**In justifying its proposed rates under rationale #1 or #2, a First Nation must give prior notice to its taxpayers of the proposed rates and the reason(s) for the increase.** Notice can be given by using the First Nation's website, the *First Nations Gazette's* (FNG) website, or by holding a public meeting (see section 10 of the *Policy for First Nation Tax Rates By-laws, 2018*).

## ***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 is 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 tax rates by-law. The *Policy for First Nation Tax Rates By-laws, 2018* provide 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 with lower assessed values exceeds one hundred dollars (\$100).

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

## ***FNTC Information Requirements for the Review of Tax 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 previous year 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 amount of new construction reflected in the current assessment roll, as determined by comparing the folio counts in this year to last year;
- the reference jurisdiction's tax rates for the previous and current taxation year; and
- confirmation that the First Nation has met the requirements of section 11 of the *Policy for First Nation Tax Rates By-laws, 2018*.

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

## ***Tax Notices***

**NOTE: Tax notices can only be issued after the Minister of Indigenous Services approves the annual tax rates by-law.** Confirmation of approval is sent to First Nations by the Section 83 By-law Registrar. The Registrar can be reached at (613) 789-5000 or by email at [Irishards@fntc.ca](mailto:Irishards@fntc.ca).

## **Annual Expenditure By-laws**

### ***Timing for the Making of Annual Expenditure By-laws***

The FNTC *Policy for First Nation Expenditure By-laws, 2018* requires that the annual by-laws be enacted on or before **July 31<sup>st</sup> of the taxation year. For First Nations in Saskatchewan the deadline is August 31st.**

First Nations typically enact their annual expenditure by-law at the same time that they enact their annual rates by-law. As each First Nation's property taxation by-law sets the date when its

annual rates by-laws must be made, **please refer to this date when developing your First Nation's annual expenditure by-law.**

Tax administrators should ensure that both signed annual by-laws and all supporting materials are submitted to the Section 83 By-law Registrar as soon as practicable. To allow 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 property taxation by-law, **the FNTC recommends that First Nations submit their annual by-laws at least 15 days in advance of the date tax notices are to be issued.**

## **Annual Budget**

### ***Accumulated Surpluses/Deficits***

The accumulated surplus or deficit from the prior year is carried forward to the current budget year and reported in the accumulated surplus/deficit section of the annual budget.

### ***Payments in Lieu of Tax***

A Payment-in-Lieu of Tax (PILT) is typically made by other governments or government entities like Crown corporations that occupy interests on reserve. PILT amounts should be included under PART 1, section 1 of the Budget Schedule.

### ***Expenditure Categories***

Local revenue budgets must identify planned expenditures using the appropriate expenditure categories and sub-categories. FNTC has developed explanatory notes for each expenditure category and sub-category included in the sample expenditure by-law (see attached).

### ***Contingency Amounts***

The *Policy for First Nation Expenditure By-laws, 2018* 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 or payments made in lieu of property tax) **excluding**:

- any amounts transferred from the current year's local revenues into a reserve fund; and
- any amounts transferred from a capital reserve fund into the current year's revenues.

### ***Reserve Fund Purposes Statement***

The *Policy for First Nation Expenditure By-laws, 2018* requires that where a First Nation is establishing a reserve fund, the expenditure by-law must contain a statement establishing the new reserve fund and stating 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 *Policy for First Nation Expenditure By-laws, 2018*. Reserve funds must also meet the criteria set out in section 5 and 6 of the *Policy for First Nation Expenditure By-laws, 2018*,

including the requirement for capital plans. Reserve fund balances are reported in an appendix to the annual budget.

### ***Contingency Reserve Funds***

Contingency reserve funds are used by governments to cover unforeseen expenditures, or to stabilize the temporary impacts of cyclical local revenue decreases. First Nations who wish to establish these reserve funds must be mindful of the following requirements (see section 7 of the *Policy for First Nation Expenditure By-laws, 2018*):

- New contingency reserve funds must be established in the expenditure by-law.
- 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 can never exceed 50% of the current budget year's local revenues.
- Contingency reserve fund balances are reported in an appendix to the annual budget.

### ***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 by amending 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 and submit the by-law for FNTC review and ministerial approval.

### ***Annual Budget and Service Agreements***

Where a First Nation has service agreements 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 service provided. These expenditure amounts are also included in the appropriate budget expenditure category.

### ***Required Reserve Funds***

Where a First Nation has enacted a local improvement tax by-law, the First Nation's annual expenditure by-law must establish an associated reserve fund in the first year of the local improvement tax.

### ***Policies for First Nations Tax Rates and Expenditure By-laws***

On June 29, 2018 the FNTC *Policy for First Nations Tax Rates By-laws, 2018* and the *Policy for First Nations Expenditure By-laws, 2018* came into effect. These Policies create new requirements for annual by-laws. Changes include:

## Notification of Annual Tax Rates By-laws

First Nations with property tax systems under section 83 of the *Indian Act* give notice of their proposed annual tax rates by:

- posting their proposed rates on their website,
- posting on the *First Nations Gazette* (FNG) website, or
- meeting with their taxpayers.

Giving notice of the entire by-law is consistent with best practices in property tax administration and will enable stakeholders to view provisions like the minimum tax before a by-law is approved.

The *Policy for First Nations Tax Rates By-laws, 2018* also require a justification description in the notification when a First Nation seeks to provide justification for a tax rate under paragraph 8.1(a) or (b) of the policy.

## Notification of Annual Expenditure By-laws

Similar to notification of the annual tax rates by-laws, the *Policy* requires notification of the entire annual expenditure by-law, including the budget and appendices (if applicable), prior to by-law submission. The notice requirement is the same as for the annual tax rates by-law, and can be met by:

- posting the by-law on the *First Nations Gazette* or on the First Nation's website;
- holding a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed by-law.

First Nations wishing to use the FNG website to post their annual rates and expenditure by-laws can do so in one of two ways:

### **Online** (fastest and easiest method)

Sign up and submit directly on the FNG website:  
<http://www.fng.ca/index.php?mod=register>

### **By email**

Email a Word version of the proposed *By-law* and a *Request to Post* form to  
[editor@fng.ca](mailto:editor@fng.ca)

## Notice of Transition to Reference Jurisdiction Rate Setting

The *Policy for First Nations Tax Rates By-laws, 2018* incorporates the notification provisions concerning justification of an increase in tax rates under section 11. Section 11 enables First Nations to transition to tax rates that are equivalent to the tax rates of an adjacent tax jurisdiction also known as a "reference jurisdiction".

Please direct inquiries or comments regarding the 2019 Annual By-laws Bulletin to Lilian Richards, Registrar s.83 / Records Manager ([lrichards@fntc.ca](mailto:lrichards@fntc.ca)) or by contacting us at:

**First Nations Tax Commission**  
190 O'Connor Street  
**OTTAWA ON K2P 2R3**

**Telephone: (613) 789-5000 ext. 204**

**Email: [mail@fntc.ca](mailto:mail@fntc.ca)**

## Expenditure Categories for the Annual Expenditure By-law Budget

Categories/Subcategories	Explanation
<b>1. General Government Expenditures</b>	
<b>a. Executive and Legislature</b>	This subcategory of expenditures includes identifiable expenditures for the political and law-enactment aspects of the First Nation. This subcategory also includes all corresponding expenditure items for elected and appointed officials and their staff.
<b>b. General Administrative</b>	This subcategory includes all expenditures relating to the administration of local revenue account that cannot be allocated to more specific functions. It would include outlays for accounting, auditing, budgeting, and staffing; tax administration and collection; memberships in associations; and administrative costs of servicing the local revenue account debt.
<b>c. Other General Government</b>	This subcategory includes expenditures of a general nature that cannot be allocated to the other sub-categories and typically includes property assessment services, intergovernmental services, conferences, public open house events; general accident and damage claims; fire and public liability insurance; and court litigations.
<b>2. Protection Services</b>	
<b>a. Policing</b>	<p>The policing subcategory includes expenditures for the maintenance of law and order, for the establishment, training, operation, maintenance, and equipment of police forces.</p> <p>It also includes expenditures for the purchase of police services from other governments.</p>

<b>Categories/Subcategories</b>	<b>Explanation</b>
<b>b. Firefighting</b>	This subcategory includes expenditures for the prevention, protection, suppression, and investigation and extinction of fire; fire investigation officers; firefighting forces; specialized training establishments; and fire trucks and other firefighting equipment. It also includes expenditures for the purchase of firefighting services from other governments or from non-government sources.
<b>c. Regulatory Measures</b>	Regulatory measures subcategory includes expenditures for a wide array of services provided to ensure that public interest objectives are achieved. It includes expenditures for inspection of buildings, electrical systems, plumbing and gas installations, and other systems likely to create safety problems.
<b>d. Other Protective Services</b>	This subcategory includes expenditures for special actions taken to cope with emergency situations and expenditures for permanent organizations established to deal with such contingencies. It also includes expenditures on animal and pest control services and activities of a protection nature not covered by other subcategories.
<b>3. Transportation</b>	
<b>a. Roads and Streets</b>	<p>Roads and streets subcategory includes expenditures made on highways, secondary roads, roads to resource areas, boulevards, avenues, streets, and related storm sewers (where separated from sanitary sewers).</p> <p>It also includes expenditures on bridges, overpasses, underpasses, tunnels, and on ferries, usually operated by highway departments, that form integral parts of road systems and the cost of removing debris, leaves, and other deposits, street lighting, flushing, and expenses pertaining to traffic control.</p>
<b>b. Snow and Ice Removal</b>	This subcategory includes the costs of removing snow and ice and surface sanding.
<b>c. Parking</b>	This subcategory includes the planning, maintaining, constructing, and operating parking facilities.

<b>Categories/Subcategories</b>	<b>Explanation</b>
<b>d. Public Transit</b>	This subcategory includes expenditures on planning and research related to public transit systems and includes capital and operating subsidies to public transit systems, including rail systems.
<b>e. Other Transportation</b>	This subcategory includes transportation outlays that cannot be further identified regarding subcategories or that overlap several subcategories.
<b>4. Recreation and Culture</b>	
<b>a. Recreation</b>	This subcategory includes expenditures for sporting and recreational services, such as those for community centres, swimming pools, beaches, marinas, golf courses, skating rinks and arenas, amusement parks, exhibition grounds, parks, and playgrounds. While expenditures on parks can be a “Resource Conservation” function, they are classified as “Recreation” because of the association with leisure activities.
<b>b. Culture</b>	This subcategory covers expenditures on archives, art galleries, museums, libraries, and centres for the performing arts, zoos, aquariums, aviaries, and planetariums.
<b>c. Heritage Protection</b>	This subcategory includes expenditures on the research, management, identification, and protection of First Nation heritage sites.
<b>d. Other Recreation and Culture</b>	This subcategory includes administrative expenditures of departments and agencies with activities spanning both recreation and culture and expenditures on cinematography, amateur sport, and miscellaneous services related to recreation and culture.
<b>5. Community Development</b>	
<b>a. Housing</b>	This subcategory includes government expenditures on housing, with the exception of transfers to individuals made to help alleviate their current rental costs (rent supplements/subsidies).

<b>Categories/Subcategories</b>	<b>Explanation</b>
<b>b. Planning and Zoning</b>	This subcategory includes expenditures of planning boards, research and planning, official plans, and the operations of departments and agencies entrusted with matters relating to planning and zoning.
<b>c. Community Planning</b>	This subcategory includes expenditures of departments and agencies engaged in community renewal projects, general land assembly, and other expenditures specifically related to community and regional development and assistance.
<b>d. Economic Development Program</b>	This subcategory includes expenditures on actions taken to provide economic opportunities.
<b>e. Tourism</b>	This subcategory includes expenditures in respect of tourist bureaus and the promotion of tourism.
<b>f. Trade and Industry</b>	This subcategory includes expenditures for the promotion, protection and development of general industrial and commercial activities.
<b>g. Land Rehabilitation and Beautification</b>	This subcategory includes expenditures in respect of land rehabilitation, and beautification.
<b>h. Other regional Planning and Development</b>	This subcategory includes all community development expenditures which cannot be identified with any specific community development subcategory.
<b>6. Environment Health Services</b>	
<b>a. Water Purification and Supply</b>	This subcategory includes outlays for the construction, operation and maintenance of water acquisition, treatment and distribution facilities.
<b>b. Sewage Collection and Disposal</b>	This subcategory includes outlays for the construction, operation and maintenance of sewage removal and treatment facilities.

<b>Categories/Subcategories</b>	<b>Explanation</b>
<b>c. Garbage, Waste Collection, and Disposal</b>	This subcategory includes outlays for garbage, waste collection, and disposal and expenditures for incinerators, nuisance grounds, dumps for garbage and waste disposal.
<b>d. Recycling</b>	This subcategory includes expenditures for the construction, maintenance, operation, and management of recycling facilities and programs.
<b>e. Other Environmental Services</b>	This subcategory includes miscellaneous expenditures relating to the "Environment" function that cannot be identified with any specific subcategory or which applies to several subcategories (e.g., the administrative expenditures of a department of the environment or a government agency engaged in environment activities).
<b>7. Fiscal Services</b>	
<b>a. Interest Payments</b>	This subcategory includes interest paid in respect of borrowings for local revenue expenditures and other charges pertaining to the servicing of the public debt, excluding administrative costs.
<b>b. Other Debt Charges</b>	This subcategory includes all other debt charges in respect of borrowings for local revenue expenditures.
<b>c. Other Fiscal Services</b>	This subcategory includes expenditures relating to fiscal services which cannot be identified with any specific fiscal services subcategory.
<b>8. Other Services</b>	
<b>a. Health</b>	This subcategory includes expenditures made to ensure that health services are available to citizens.

<b>Categories/Subcategories</b>	<b>Explanation</b>
<b>b. Social Programs and Assistance</b>	This subcategory includes expenditures relating to actions taken by a First Nation government, either alone or in co-operation with the citizenry, to offset or to forestall situations where the well-being of individuals or families is threatened by circumstances beyond their control. This includes community service programs such as those directed at the youth, elders, or the disabled.
<b>c. Agriculture</b>	This subcategory includes outlays for drainage and irrigation of farm land; agricultural research and development; agricultural protection and quality control; weed and agricultural product pest control; control, regulation, promotion and marketing of farm production, and soil survey and conservation.
<b>d. Education</b>	This subcategory includes the costs of developing, improving, and operating educational systems and of specific education services.
<b>e. Other Services</b>	This subcategory provides for expenditures which cannot be directly identifiable with another subcategory.
<b>9. Grants</b>	This category includes amounts granted under any granting programs established by the First Nation.
<b>10. Contingency Amounts</b>	This category includes amounts allocated for contingencies. Contingency amounts are amounts set aside in an expenditure budget to address budgetary shortfalls. Contingency amounts must be for an amount between one and ten percent (1% and 10%) of total local revenue (excluding local revenue amounts transferred to reserve funds).
<b>11. Transfers into reserve funds</b>	This category includes transfers to established reserve funds. Transfers into reserve funds should also be reflected in the amounts disclosed in the Reserve Fund Balances schedule included in Appendix A of the Annual Expenditure By-law.

<b>Categories/Subcategories</b>	<b>Explanation</b>
<b>12. Repayment of moneys borrowed from reserve funds</b>	This category includes repayment of moneys borrowed from reserve funds including interest and should be reflected in the amounts disclosed in the Reserve Fund Balances schedule included in Appendix A of the Annual Expenditure By-law.