



PROPERTY ASSESSMENT BY-LAW POLICY

PART I

PREAMBLE

WHEREAS:

- A. Subsection 83(1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property tax;
- B. A Memorandum of Understanding (MOU) between the First Nations Tax Commission (FNTC or Commission) and the Minister of Indian Affairs and Northern Development provides for the FNTC to review and recommend section 83 by-laws for ministerial approval; and
- C. Policies are established by the Commission to further the policy objectives expressed in the MOU, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues.

PART II

PURPOSE

This Policy sets out the requirements that should be met for First Nation property assessment by-laws enacted under subsection 83(1) of the Act. This Policy is used by the Commission in its review and recommendation of First Nation by-laws.

PART III

AUTHORITY AND PUBLICATION

This Policy is established pursuant to subsection 1.2 of the MOU between the FNTC and the Minister of Indian Affairs and Northern Development.

PART IV

APPLICATION

This Policy applies to every property assessment by-law submitted to the Commission for review and recommendation pursuant to the MOU.

PART V

DEFINITIONS

In this Policy:

“Act” means the *Indian Act*, R.S.C. 1985, c. I-5, and the regulations enacted under that Act;

“agricultural properties” means an interest in land classified as “non-arable (range)” or “other agricultural” in Saskatchewan;

“assessable property” means property that is subject to assessment under a by-law;

“assessment” means a valuation and classification of interests in land;

“Assessment Review Board” means an independent appeal body established by a First Nation to hear and determine assessment appeals and assessor recommendations;

“assessment roll” means a list setting out interests in land and their assessed values for the purposes of taxation and includes a supplementary assessment roll and any amendments to the assessment roll;

“by-law” means an assessment by-law enacted under subsections 83(1) and (3) of the Act;

“chair” means a chair of the Assessment Review Board;

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

“complainant” means a person who commences an appeal of an assessment of assessable property;

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

“First Nation” means a band as defined under the Act;

“holder” means a person in lawful possession of an interest in land or a person who

- (a) is entitled, through a lease, licence or other legal means, to possess or occupy the interest in land,
- (b) is in actual occupation of the interest in land,
- (c) has any right, title, estate or interest in the interest in land, or
- (d) is a trustee of the interest in land;

“interest in land” or “property” means land or improvements, or both, in a reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

“Province” refers to the province in which the assessable property is situated;

“reserve” means any land set apart for the use and benefit of a First Nation within the meaning of the Act; and

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting.

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

PART VI POLICY

1. Pre-By-law Requirements

1.1 Prior to entering into their initial year of property taxation, First Nations must meet the requirements outlined in subsections 1.2 to 1.17.

Early Notification of First Nation Jurisdiction

1.2 In order to ensure that procedural fairness is respected, FNTC must be satisfied that potential taxpayers and affected parties have been given sufficient notice of the First Nation’s intention to assume taxation jurisdiction on reserve lands.

1.3 A First Nation should inform affected parties of its intention to assume taxation jurisdiction in accordance with subsection 1.5 of this Policy. The earlier affected parties are notified, the less potential for confusion and misunderstanding.

1.4 Where possible, First Nations should hold information meetings with affected parties, namely the following:

- (a) First Nation members should have an understanding of real property taxation and its implications for the First Nation community;

- (b) Taxpayers, as a matter of procedural fairness, should be informed that the First Nation is assuming taxation jurisdiction and the effect (e.g. changes in rates, level and types of services) on their interests in reserve;
- (c) Members of Parliament and provincial legislative representatives should be informed so they can respond to inquiries from constituents;
- (d) Provincial and municipal governments should be notified because of potential changes in their tax bases. First Nations may also have to negotiate with provincial or municipal governments for services; and
- (e) Other affected parties, including provincial assessment authorities, that would be affected by First Nation taxation.

1.5 The following procedures are required:

- (a) Council shall, at least thirty (30) days before making its initial assessment or taxation by-law,
 - (i) publish notice of the proposed by-law on the *First Nations Gazette* website (www.fng.ca),
 - (ii) post the notice in a public place on its reserve lands, and
 - (iii) send a copy of the notice to the FNTC;
- (b) The notice shall
 - (i) describe the proposed by-law,
 - (ii) state where a copy of the proposed by-law, and any documents necessary to understand it, may be obtained,
 - (iii) invite representations regarding the proposed by-law to be made, in writing, to the Council within thirty (30) days after the day stated in the notice, and
 - (iv) if Council is to review the by-law at a public meeting, state the time and place of the meeting;
- (c) Before enacting the by-law, Council should consider representations made by taxpayers;
- (d) Written taxpayer representations to Council, if any, shall be forwarded to the FNTC as part of the submittal of the proposed by-law.

1.6 First Nations are to provide FNTC with the following additional documentation:

- (a) a description of taxable interests on reserve;
- (b) a description of consultation activities; and
- (c) any other information that may be relevant.

Services Provided by Other Jurisdictions

1.7 First Nations should initiate service agreement discussions with any municipalities providing services on reserve in the year preceding the targeted date of taxation. This will ensure the continuity of services and will enable both the First Nation and the municipality to plan accordingly.

1.8 First Nations will provide FNTC with a list of services provided and the status of the service agreement negotiations.

1.9 The FNTC encourages First Nations to consider entering into a protocol agreement with the adjacent local government to establish a framework for negotiating a service agreement.

British Columbia Requirements

1.10 In British Columbia, the *Indian Self Government Enabling Act* requires that other taxing authorities vacate the field once a First Nation asserts taxation jurisdiction.

- 1.11 In order for the *Indian Self Government Enabling Act* to take effect,
- (a) a First Nation submits a Notice of Intention to the BC Minister of Aboriginal Affairs stating its intention to enact a property taxation by-law (independent taxation); and
 - (b) the First Nation is issued a Certificate notifying that the Province has vacated the field.
- 1.12 If the Notice of Intention is submitted prior to March 1, taxation may commence in that calendar year.
- 1.13 If the Notice of Intention is submitted on or after March 1, taxation may be imposed for the following year.
- 1.14 The FNTC requires a copy of the Certificate referred to in paragraph 1.11(b).
- 1.15 In order to facilitate an orderly transition, the FNTC has set June 30 as a deadline for the submission of property taxation by-laws to have effect for the following year.

Québec Requirements

- 1.16 In Québec,
- (a) section 29.10.1 of the *Cities and Towns Act*, C.Q.L.R. c. C-19 and section 14.8.1 of the *Municipal Code of Québec*, C.Q.L.R. c. C-27.1 provides that a "...municipality may enter into an agreement with the council of a band within the meaning of the *Indian Act* (Revised Statutes of Canada, 1985, chapter I-5) in relation to the exercise of its powers on the reserve over which the council of the band has authority and which is included within the territory of the municipality;" and
 - (b) agreements made between Québec taxing authorities and First Nations are formally approved by the Province through an Order in Council.
- 1.17 First Nations must send to FNTC a copy of the Order in Council, referred to in paragraph 1.16(b), as evidence that the local government has vacated the jurisdiction.

2. General By-law Requirements

- 2.1 All by-laws, including those for taxation and assessment, must meet the requirements outlined in subsections 2.2 to 2.11.

By-law Drafting

- 2.2 By-laws should be clearly drafted to avoid ambiguities and technical errors.
- 2.3 The FNTC recommends that by-laws are drafted
- (a) in plain language;
 - (b) in present tense;
 - (c) in active voice;
 - (d) in gender neutral language; and
 - (e) consistent with the *First Nations Gazette Style Guide* (available at www.fntc.ca).

Charter Conformity

- 2.4 By-laws must comply with guarantees set out in the *Canadian Charter of Rights and Freedoms*.

Delegation of Unfettered Discretionary Power

- 2.5 By-laws, because they are subordinate legislation made pursuant to the *Indian Act*, cannot contain or delegate unfettered discretionary power.

Procedural Fairness

- 2.6 In instances where an individual's rights or interests may be affected, by-laws must provide for reasonable notice and opportunities to be heard.

By-law Amendment Procedure

2.7 By-laws can only be amended with an amending by-law that is in accordance with section 83 of the *Indian Act*.

2.8 Like all section 83 by-laws, amending by-laws are subject to the review of the FNTC and the approval of the Minister of Indian Affairs and Northern Development.

2.9 Where a First Nation wishes to make a significant amendment to its by-law, the following procedure is required:

- (a) Council shall, at least thirty (30) days before making a significant amendment to its existing by-law,
 - (i) publish notice of the proposed by-law on the *First Nations Gazette* website (www.fng.ca),
 - (ii) post the notice in a public place on its reserve lands, and
 - (iii) send a copy of the notice to the FNTC;
- (b) The notice shall
 - (i) describe the proposed by-law,
 - (ii) state where a copy of the proposed by-law and any documents necessary to understand it may be obtained,
 - (iii) invite representations regarding the proposed by-law to be made, in writing, to the Council within thirty (30) days after the day stated in the notice, and
 - (iv) if Council is to review the by-law at a public meeting, state the time and place of the meeting;
- (c) Before enacting the by-law, Council should consider representations made by taxpayers; and
- (d) Written taxpayer representations to Council, if any, shall be forwarded to the FNTC as part of the submittal of the proposed by-law.

No Crown Liability

2.10 By-laws must not contain any provisions which could attract Crown liability.

Amalgamated By-laws

2.11 First Nations may submit separate or amalgamated property assessment and taxation by-laws.

3. Appointment of Assessor

The by-law must

- (a) provide for the appointment of an assessor to conduct assessments of assessable property in accordance with the by-law and such other duties as set out in the by-law; and
- (b) provide that any person carrying out valuations of assessable property must be qualified to assess real property for taxation purposes in the province.

4. Assessment Dates

4.1 For those aspects of the assessment process that are set out in Schedule I to this Policy, the by-law must incorporate the corresponding dates or time-frames in Schedule I, if any.

4.2 Where Schedule I does not provide a date for time-frame but allows a First Nation to select a date to be set in its by-law, the by-law must set a fixed date for that aspect of the assessment process.

5. Assessment Classification

5.1 The by-law must

- (a) establish property classes for the purposes of assessment that are the same as those property classes established in the Province; and
- (b) require the assessor to classify properties by using the provincial classification rules for each property class.

5.2 As an exception to subsection 5.1, by-laws of First Nations located in British Columbia are not required to establish property class 7, managed forest land.

5.3 As an exception to subsection 5.1, by-laws of First Nations located in British Columbia are not required to establish property class 3, supportive housing.

6. Assessment Method

6.1 For the purposes of assessing interests in land, the by-law must require the use of the

- (a) valuation methods, rates, rules and formulas established under provincial assessment legislation; and
- (b) assessment practices used in the Province for conducting assessments off the reserve,

except where otherwise provided in the by-law.

6.2 Without limiting subsection 6.1,

- (a) by-laws of First Nations located in Manitoba must establish percentages of assessed value for each property class for which such a value is established by the Province, and must require the assessor to determine the portioned value of each property using the applicable percentages of assessed values established in the by-law; and
- (b) by-laws of First Nations located in Saskatchewan must establish percentages of assessed value for each property class for which such a value is established by the Province, and must require the assessor to determine the taxable assessment of each property by multiplying the fair value assessment by the applicable percentage of value established in the by-law.

7. Assessment Roll

7.1 The by-law must provide for the completion of an annual assessment roll that contains a list of every interest in land liable to taxation or for which payments-in-lieu may be accepted by the Council.

7.2 As an exception to subsection 7.1, by-laws of First Nations located in Québec may provide for the completion of an assessment roll every three (3) years, or such other time frame as established or permitted by the Province.

7.3 The by-law must require the assessment roll to contain at least the following information:

- (a) the name and address of the holder of the property;
- (b) a description of the property;
- (c) the classification of the property;
- (d) the assessed value by classification of the property;
- (e) the total assessed value of the property;
- (f) for First Nations located in Manitoba, the portioned value of the property;
- (g) for First Nations located in Saskatchewan, the taxable assessment of the property; and

(h) for First Nations located in provinces other than Manitoba and Saskatchewan, the total assessed value of the property liable to taxation.

7.4 The by-law must provide for

- (a) certification of the assessment roll by the assessor that the assessment roll was completed in accordance with the by-law;
- (b) delivery of the certified assessment roll by the assessor to the Council;
- (c) inspection of the assessment roll by any person;
- (d) a prohibition on using the information contained in the assessment roll for solicitation purposes; and
- (e) a procedure where holders can apply to have their name, address or other information about the holder omitted or obscured from the assessment roll for reasons of safety or the mental or physical health of the holder or a member of the holder's household.

8. Correction of Errors and Omissions

The by-law must provide for procedures for the correction by the assessor of errors and omissions in the assessment roll through the use of one or more of revised, amended or supplementary assessment rolls.

9. Assessment Notice

9.1 The by-law must provide for assessment notices to be delivered to all persons named on the assessment roll in respect of an assessable property.

9.2 The by-law must require an assessment notice to contain at least the following information:

- (a) the name and address of the holder of the property;
- (b) a short legal description of the property;
- (c) the assessed value by classification of the property;
- (d) for First Nations located in Manitoba, the portioned value of the property;
- (e) for First Nations located in Saskatchewan, the taxable assessment of the property;
- (f) for First Nations located in provinces other than Manitoba and Saskatchewan, the total assessed value of the property liable to taxation;
- (g) the opportunity to make a request for reconsideration of the assessment by the assessor and the deadline for making such a request; and
- (h) the right to appeal the assessment to the Assessment Review Board, how to appeal and the deadline for an appeal.

10. Reconsideration

The reconsideration procedures in the by-law must

- (a) allow a person named on the assessment roll in respect of an assessed property to request that the assessor reconsider the assessment of that assessable property;
- (b) provide for at least twenty-one (21) days after the date of delivery of an assessment notice for a person to request a reconsideration by the assessor;
- (c) set out the grounds for reconsideration;
- (d) require the assessor to complete the reconsideration within fourteen (14) days after the assessor receives a request for reconsideration and
 - (i) notify the person who made the request that the assessment is confirmed, or

- (ii) where the assessor determines that the property should have been assessed differently, offer to modify the assessment; and
- (e) where the person who made the request agrees to a modification, provide for the assessor
 - (i) to amend the assessment roll,
 - (ii) to give notice of the amendment to all persons who received an assessment notice in respect of the assessable property, and
 - (iii) where a notice of appeal has been given in respect of an assessable property, to give notice of the amendment to the Assessment Review Board.

11. Assessment Appeals

11.1 The by-law must set out, at a minimum, the following grounds for appeal to the Assessment Review Board:

- (a) the assessed value of the assessed property;
- (b) the assessment classification of the assessed property;
- (c) the applicability of an exemption to the assessed property; and
- (d) an alleged error or omission in the assessment.

11.2 If the by-law provides for an administration fee for the filing of an assessment appeal, the fee must not exceed thirty dollars (\$30).

12. Assessment Review Board

12.1 The by-law must

- (a) set out the powers, duties and functions of the chair;
- (b) provide for the appointment of members of the Assessment Review Board by Council resolution and for a term of appointment of those members of not less than two (2) years; and
- (c) set out when and how members of the Assessment Review Board may be removed from office.

12.2 The by-law must establish practices and procedures for the conduct of Assessment Review Board hearings, including

- (a) a party's right to be heard, have representation, present evidence and call witnesses;
- (b) the manner by which the Assessment Review Board may conduct a hearing; and
- (c) the evidentiary rules that apply during a hearing.

12.3 In establishing practices and procedures, the by-law may

- (a) provide for additional practices and procedures to be established in a practices and procedures manual approved by Council resolution; and
- (b) permit the Assessment Review Board to determine its own procedure during a hearing to the extent not inconsistent with the by-law.

12.4 The by-law must provide for, at a minimum, the complainant, the assessor and the holder of the assessable property (if other than the complainant) to be parties to the appeal.

12.5 The by-law must set out procedures for updating the assessment roll to reflect decisions of the Assessment Review Board.

13. Confidentiality

The by-law must provide for the confidentiality of information and documents obtained by the tax administrator, assessor, the Assessment Review Board and any other person who has custody or control of records obtained or created under the by-law, except that disclosure may be made

- (a) in the course of administering the by-law or performing functions under it;
- (b) in proceedings before the Assessment Review Board or a court of law;
- (c) where a holder gives written authorization for his or her agent to obtain confidential information relating to a property; or
- (d) by Council to a third party for research (including statistical) purposes.

PART VII

COMING INTO FORCE

This Policy is established and in effect as of October 28, 2015.

PART VIII

ENQUIRIES

All enquiries respecting this Policy should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857

Or

First Nation Tax Commission
202 – 190 O’Connor Street
Ottawa, Ontario K2P 2R3
Telephone: (613) 789-5000

SCHEDULE I
ASSESSMENT TIMELINES

British Columbia

Assessment valuation date:	July 1 of year before taxation year
Physical condition and permitted use date:	October 31 of year before taxation year
Assessment roll and notices date:	December 31 of year before taxation year, where the First Nation has appointed the BC Assessment Authority as the assessor, or January 31 of taxation year, where the First Nation has appointed an assessor other than the BC Assessment Authority.

Alberta

Assessment valuation date:	July 1 of year before taxation year
Physical condition and use date:	December 31 of year before taxation year
Assessment roll date:	a date set by the First Nation in its by-law
Assessment notice date:	a date set by the First Nation in its by-law

Saskatchewan

Base date for valuation:	as established by Assessment Management Agency from time to time
Physical condition and use date:	January 1 of taxation year
Assessment roll date:	April 1 of taxation year
Assessment notice date:	within fifteen (15) days of completion of assessment roll

Manitoba

Reference date for valuation:	as set by Province from time to time
Assessment roll date:	December 31 of year before taxation year
Assessment notice date:	a date set by the First Nation in its by-law

Ontario

Valuation date:	January 1 in preceding year, or as set by provincial regulation
Classification date:	June 30 of year before taxation year
Assessment roll date:	not later than second Tuesday following December 1 of year before taxation year
Assessment notice date:	no later than fourteen (14) days before assessment roll is completed

Quebec

Valuation and condition date: July 1 of second fiscal year preceding first fiscal year for which assessment roll is made
Assessment roll date: August 15 to September 15 of year before taxation year
Assessment notice date: March 1 of taxation year

New Brunswick

Valuation date: January 1 of year before taxation year
Assessment roll date: December 31 of year before taxation year
Assessment notice date: a date set by the First Nation in its by-law

Nova Scotia

Valuation date: as set by Province from time to time
Physical condition and use date: December 1 of year before taxation year
Assessment roll date: December 31 of year before taxation year
Assessment notice date: on completion of assessment roll by a date set by the First Nation in its by-law

Prince Edward Island

Valuation date: as set by the First Nation in its by-law
Assessment roll date: as set by the First Nation in its by-law
Assessment notice date: fifth business day in May

Newfoundland & Labrador

Base date for valuation: January 1 of every third year after 1996
Assessment roll date: January 1 to September 30
Assessment notice date: on completion and delivery of assessment roll by a date set by the First Nation in its by-law

Yukon Territory

Valuation date: July 31 of year before taxation year
Assessment roll date: November 15 of year before taxation year
Assessment notice: immediately on return of corrected roll to collector by a date set by the First Nation in its by-law

Northwest Territories

Base year for valuation: as set by territory from time to time
Assessment roll date: October 31 of year before taxation year
Assessment notice date: twenty-one (21) days after certified roll sent to taxing authority

Nunavut

Base year for valuation: as set by territory from time to time
Assessment roll date: October 31 of year before taxation year
Assessment notice date: twenty-one (21) days after certified roll sent to taxing authority