



First Nations Tax Commission
Commission de la fiscalité des premières nations

April 8, 2017

2017 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 2017, and to obtain technical comments on draft 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.

Timing for the Making of Tax Rates and Expenditure By-laws

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.

Tax Rates By-laws

Tax Rate Setting in the First Year of Taxation (Section 6 of the *Policy for First Nation Tax Rates By-laws, 2016*)

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 7-10 of the Policy)

In the second and all subsequent years that a First Nation exercises property taxation, tax rate setting must meet the requirements of section 7, 8, 9, or 10 of the Policy.

Average Tax Bill Comparison (Section 7)

Tax rates can meet section 7(a) of the Policy 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 2017 tax year, the national rate of inflation is 1.5%.**
2. Average tax bill 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 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, tax administrators can use one of two ways to express the “average” tax bill:

1. Mean Tax Bill: Divide the total number of folios (i.e., taxable interests) 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, from the lowest to the highest by 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

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 average tax bill comparison to using this method, should review section 9 of the Policy and consult with an FNTC advisor.

Rate Setting and Transition Provisions (Section 8)

Section 8 of the Policy applies only to First Nations who have included a property tax transition process 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.

Justification for Rates Exceeding Sections 7, & 9

Where tax rates fail to meet the requirements of sections 7 and 9, 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.
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 sections 7 and 9 of the *Policy for First Nation Tax Rates By-laws, 2016*.

In justifying its proposed rates under rationale #1 or #3, 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* website, or by holding a public meeting (see section 10 of the *Policy for First Nation Tax Rates By-laws, 2016*).

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, 2016* 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.

Public Notification of Proposed Tax Rates

Section 10 of the *Policy for First Nation Tax Rates By-laws, 2016* requires notice of proposed tax rates prior to the rates by-law being submitted to the Commission for review. First Nations can satisfy these requirements by posting their proposed rates on their website, posting the rates on the *First Nations Gazette* website, or by holding a public meeting. Additionally, First Nations with Taxpayer Representation to Council By-laws can use the notification procedures in that by-law to meet these requirements.

First Nations can use one of two approaches for notification: First Nations may approve proposed rates for the purposes of notification, provide notification, and then enact the Tax Rates By-law and submit the By-law to the FNTC; or, First Nations can enact the Tax Rates By-law, provide notification, and then submit the By-law to the FNTC. Both approaches meet the requirements of section 10.

First Nations who wish to use the *First Nations Gazette* website to post their rates can do so in one of two ways:

1. **Online** (fastest and easiest method)
Sign up and submit directly on the *First Nations Gazette* website:
<http://www.fnq.ca/index.php?mod=register>
2. **By email**
Email a Word version of the proposed *Rates By-law Schedule* and a *Request to Post* form to notice@fnq.ca

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 two previous years and current taxation year;
- the number of property occurrences within each property class (this usually appears on the summary assessment rolls provided by the First Nation's assessor);
- the tax rates from the previous two years;
- the amount of new construction reflected in the current assessment roll, as determined by comparing the folio counts in this year to last year;
- the reference jurisdiction's tax rates for the previous and current taxation year; and
- confirmation that the First Nation has met the requirements of section 12 of the *Policy for First Nation Tax Rates By-laws, 2016*.

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

Tax notices must only be issued after the Minister of Indigenous and Northern Affairs approves the 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.

Annual Expenditure By-laws

Annual Budget

Important Change for 2017 – Greater Flexibility for Contingency Reserve Funds

Contingency Reserve Funds

Contingency reserve funds (CRFs) are common local government reserve funds intended to help governments remediate the adverse financial impact of unforeseen events and downturns in the economy. Several First Nations have established CRFs in their expenditure by-laws.

New for 2017, First Nations can now allocate up to 10% of their current year budget to the CRF, provided that the CRF does not exceed 50% of the current year budget.

Contingency Amounts

The *Policy for First Nation Expenditure By-laws, 2013* requires First Nations by-laws to establish contingency amounts between 1% and 10% of the total local revenues (i.e., revenues raised under a section 83 by-law) **excluding** revenues transferred to reserve funds in the fiscal year (including DCC revenue).

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. First Nations can include PILT amounts 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 (see attached).

Reserve Fund Purposes Statement

The *Policy for First Nation Expenditure By-laws, 2013* 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, 2013*. Reserve funds must also meet the criteria set out in section 5 and 6 of the *Policy for First Nation Expenditure By-laws, 2013*, 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 6 of the Expenditure By-law Policy):

- 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.

Please direct inquiries or comments regarding the 2017 Annual By-laws Bulletin to Lilian Richards, Registrar s.83 / Records Manager (lrichards@fntc.ca) or by contacting us at:

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