



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

**April 8, 2016**

## **BULLETIN**

### **2016 Annual Laws**

The Annual 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 laws made under the *First Nations Fiscal Management Act* (FMA). In 2016, there are changes to the annual law process, arising out of amendments to the FMA (which came in force on April 1, 2016), and changes to the FNTC Standards for rates and expenditure laws.

The FNTC encourages First Nations to consult as early as possible with an FNTC advisor for an update on the changes for 2016, and to obtain technical comments on draft laws. These comments can help ensure the laws are consistent with FMA requirements, and will prevent errors in the laws before they are submitted for Council approval.

#### **Timing for the Making of the Annual Rates and Expenditure Laws**

A key change to the FMA gives the FNTC the ability to set standards for the timing when annual laws are to be made by First Nations. Previously, federal regulations governed the timing of annual laws. These regulations were repealed on April 1, 2016. The FNTC has developed proposed standards to replace the regulations, and the standards would set the date as July 31st. The standards are currently available for public comment at [www.fntc.ca](http://www.fntc.ca).

It is important to note that each First Nation's property taxation law sets the date when annual rates laws must be made. Please refer to this date when developing your First Nation's annual rates law. Two other important dates set by the property taxation 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 laws and all supporting materials are filed with the FMA Registrar as soon as practicable. To allow sufficient time for the review and approval of your First Nation's annual laws and to ensure compliance with the timelines established in your First Nation's property taxation law, **the FNTC recommends that First Nations submit their annual laws at least 15 days in advance of the date tax notices are to be issued.**

## Annual Rates Laws

### **Tax Rate Setting in the First Year of Taxation (Section 6 of the Standards)**

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 typically 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 Standards)**

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 Standards.

#### *Average Tax Bill Comparison (Section 7)*

Tax rates can meet section 7 of the Standards 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 2016 tax year, the annual rate of inflation is 1.6%.**
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 revenues 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 (Section 8)*

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 CPI to using this method, should review section 11 of the Standards and consult with an FNTC advisor.

### *Rate Setting and Transition Provisions (Section 9)*

Section 9 of the Standards applies only to First Nations who have included a property tax transition process in their property tax laws. The section enables First Nations to implement these transition provisions by allowing the First Nation to set rates in accordance with their transition process rather than in accordance with sections 7 and 8. Because the inclusion of a transition process is new, there are no First Nations that will be using this provision for their 2016 rates law.

### *Justification for Rates Exceeding Sections 7, 8 & 9*

Where tax rates fail to meet the requirements of sections 7, 8, or 9, First Nations can justify tax rate increases on the basis of any of 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.

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.

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 Nations who have a transition plan for rate setting in their property tax law can use taxpayer support to justify variations with the transition plan rates.

First Nations seeking to justify their tax rates as a transition to reference jurisdiction rate-setting (rationale #2) are required to submit the following to the Commission:

- their reference jurisdiction transition plan;
- confirmation that the First Nation, in the previous year, delivered written notice to taxpayers of the First Nation's intention to develop a transition plan and intention to move to reference jurisdiction rate-setting;
- confirmation that the First Nation, in the previous year, gave notice of its transition plan and of a meeting to discuss the plan; and
- confirmation that the First Nation, in the previous year, delivered the notice of meeting to any taxpayer associations, and posted the notice on the First Nation's website, on the *First Nations Gazette* website, at the First Nation's administrative office, and at two other on-reserve locations, at least 14 days in advance of the meeting.

The transition plan must include a description of how increased revenues will lead to improved services or improved local infrastructure, and must require that the transition to reference jurisdiction rates be completed within 5 years. Given that the requirements for using this justification must be completed in the previous year, this method is not available for 2016 tax rates laws.

A First Nation should contact the FNTC as early as possible in the event the First Nation intends to provide justification for exceeding sections 7 – 9 of the Tax Rates Law Standards.

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 12 of the Tax Rates Law Standards).

### **Minimum Tax**

Most First Nations have provisions in their property tax 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 law. The Standards for First Nations Tax Rates Laws 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. the First Nation had established a higher minimum tax amount in its taxation regime existing at the time of being scheduled under the FMA;
- b. to harmonize with minimum tax amounts established in the relevant province or the reference jurisdiction; and
- c. 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 law.

### **Public Notification of Proposed Tax Rates**

Section 12 of the Tax Rates Law Standards require notice of proposed tax rates prior to the rates 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 Laws can use the notification procedures in that 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 Rates Law and submit the Law to the FNTC; or, First Nations can enact the Rates Law, provide notification, and then submit the Law to the FNTC. Both approaches meet the requirements of section 12.

First Nations who wish to use the FNG 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 FNG website:  
<http://www.fng.ca/index.php?mod=register>
2. **By email**  
Email a Word version of the proposed *Rates Law Schedule* and a *Request to Post* form to [notice@fng.ca](mailto:notice@fng.ca)

## **Borrowing Member First Nations and Tax Rates Laws**

First Nations who are Borrowing Members with the First Nations Finance Authority and have a borrowing agreement law approved by the FNTC, are required under subsection 5(6) of the FMA, to have a *special levy* provision in their annual rates laws. The following sample provision has been developed to meet this statutory requirement, and is for First Nation consideration and use:

*If the First Nation is at any time required, in accordance with paragraph 84(5)(b) of the Act, to pay to the First Nations Finance Authority an amount sufficient to replenish the debt reserve fund, Council must make or amend such property taxation laws as necessary in order to recover the amount payable.*

## **FNTC Information Requirements for the Review of Rates Laws**

FNTC requires sufficient information to review and approve laws. The FNTC may request some or all of the following information to accompany the First Nation's annual 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 Rates Law Standards.

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 FNTC approves the tax rates law. Confirmation of approval is sent to First Nations by the FMA Registrar. The FMA Registrar can be reached at (250) 828-9895 or by email at [tsimon@fntc.ca](mailto:tsimon@fntc.ca).

## Annual Expenditure Laws

### **Annual Budget**

#### *Interim Budget*

As introduced in 2013, First Nation laws reference two budgets: an annual budget for the current year (2016) and an interim budget for the following budget year (2017). This change was brought about to bring greater clarity to the First Nation's authority to make expenditures during the first part of the next taxation year, before a new annual expenditure law is enacted. When the new expenditure law is enacted, the new annual budget will replace the interim budget, and make the necessary changes to both the revenues and expenditures. The FNTC sample First Nation Expenditure Law has been designed to provide for the interim budget using one Schedule. However, First Nations have the option to make a separate interim budget and attach that budget as Schedule B to the law.

#### *Budget Components*

New for 2016, the Budget Schedule in the Sample First Nation Expenditure Law has been changed to incorporate a third component: accumulated surplus/deficit. Previously the accumulated surplus or deficit from the previous year was carried forward to the current budget year and reported in the revenue section of the annual budget. The accumulated surplus or deficit from the prior year continues to be carried forward to the current budget year, however the amount is now reported in the accumulated surplus/deficit section of the annual budget. This change is consistent with reporting standards for local governments.

#### *Payments in Lieu of Taxation*

The FMA was amended to expand the definition of "local revenue" to include payments in lieu of taxation (PILT). A 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).

#### *Contingency Amounts*

The Standards require First Nations laws to establish contingency amounts between 1% and 10% of the total local revenues (i.e., revenues raised under a section 5 law) **excluding** revenues transferred to reserve funds in the fiscal year (including DCC revenue).

### *Reserve Fund Purposes Statement*

The Standards require that where a First Nation is establishing a reserve fund, the expenditure 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 law and must comply with reserve fund usage provisions in the First Nation's taxation law and the requirements in section 8 of the Expenditure Law Standards. Reserve funds must also meet the criteria set out in section 5 and 6 of the Expenditure Law Standards, including the requirement for capital plans. Reserve fund balances are reported in an appendix to the Annual Expenditure Law.

### *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 established contingency reserve funds prior to participating in the FMA, or who wish to establish these reserve funds, must be mindful of the following requirements (see section 7 of the Standards for Expenditure Laws:

- New contingency reserve funds must be established in the expenditure law.
- Only unexpended contingency amounts from the previous budget year may be transferred into the reserve fund.
- 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 Expenditure Law.

### *Property Transfer Taxes and the Annual Budget*

In preparing the annual budget, First Nations collecting property transfer tax (PTT) must include an estimate of the PTT revenue expected in the budget year. FNTC recommends that First Nations prepare a revenue estimate based on a review of previous year's PTT revenue and current market conditions. The estimated total is to be included in the Annual Expenditure Law Schedule under Part I, section 1(d). As with any other local revenue, First Nations can either expend in the current year or transfer PTT amounts into a reserve fund.

### *Development Cost Charges and the Annual Budget*

For First Nations collecting development cost charges, the annual budget must include an estimate of the development cost charges expected to be collected during the budget year. Tax administrators should consult with the First Nation land administrator to determine expected building permits to be issued or planned developments. DCC revenue must be expended as a transfer to the DCC reserve fund. DCC reserve fund balances are reported in an appendix to the Annual Expenditure Law.

*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 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 law and submit the law for FNTC review.

*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 should be included in the appropriate budget expenditure category.

Please direct inquiries or comments regarding this Bulletin to Trenton Paul, Director of Policy and Law Review ([tpaul@fntc.ca](mailto:tpaul@fntc.ca)) or by contacting us at:

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## Expenditure Categories for the Annual Expenditure 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 includes intergovernmental services, conferences, and 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>Categories/Subcategories</b>	<b>Explanation</b>
<b>c. Parking</b>	This subcategory includes the planning, maintaining, constructing, and operating parking facilities.
<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.

Categories/Subcategories	Explanation
<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>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.

Categories/Subcategories	Explanation
<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>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. Long-Term Borrowing Payments to the First Nations Finance Authority (FNFA)</b>	This subcategory includes debt repayments including interest paid in respect of long term borrowing using local revenue, and acquired through the FNFA.
<b>b. Interim Financing Payments to the FNFA</b>	This subcategory includes debt repayments including interest paid in respect of interim financing arrangements using local revenue, and acquired through the FNFA.

<b>Categories/Subcategories</b>	<b>Explanation</b>
<b>c. Other Debt Payments</b>	This subcategory includes debt repayments including interest paid in respect of borrowings for local revenue expenditures other than through the FNFA, commissions and other charges on sale of securities and other charges pertaining to the servicing of the public debt, excluding administrative costs.
<b>d. Accelerated Debt Payments</b>	This subcategory includes accelerated debt repayments including interest paid in respect of borrowings for local revenue expenditures other than through the FNFA.
<b>e. 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>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>Categories/Subcategories</b>	<b>Explanation</b>
<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 Law.
<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 Law.
<b>13. Transfers into DCC reserve funds</b>	This category includes transfers to established DCC reserve funds. Transfers into DCC reserve funds should also be reflected in the amounts disclosed in the DCC Reserve Fund Balances schedule included in Appendix B of the Annual Expenditure Law.
<b>14. Repayment of moneys borrowed from DCC reserve funds</b>	This category includes repayment of moneys borrowed from DCC reserve funds including interest and should be reflected in the amounts disclosed in the Reserve Fund Balances schedule included in Appendix B of the Annual Expenditure Law.