

ANNOTATED SAMPLE FIRST NATION PROPERTY TAXATION LAW (NEW BRUNSWICK)

The *First Nations Fiscal Management Act* (“FMA”) provides a framework for First Nation real property taxation on reserve. First Nation fiscal powers are set out in Part 1 of the FMA and include, under section 5, the authority to make laws respecting taxation for local purposes of reserve lands, interests in reserve lands, or rights to occupy, possess or use reserve lands.

A First Nation wishing to implement property taxation will require two core laws, the assessment law and taxation law. These two laws work together to establish the property taxation framework. The taxation law creates the framework for the administration of the taxation regime, including setting out the duties of the tax administrator, how taxes are levied, exemptions from taxation, the preparation of the tax roll and tax notices, the imposition of penalties and interest, and the enforcement and collection of taxes.

Laws enacted under the FMA must comply with the legislative framework, which includes all requirements in the FMA, any regulations made under paragraph 36(1)(d) of the FMA and any standards established by the First Nations Tax Commission (“Commission”) under section 35 of the FMA. Canada has made the *First Nations Taxation Enforcement Regulations* (“Enforcement Regulations”), which set out detailed requirements for the enforcement of property taxation laws. The Commission has established *Standards for First Nation Property Taxation Laws, 2016* (“Taxation Law Standards”), which provide further requirements for the form and content of taxation laws. The Commission has also established the *Standards for the Timing of First Nation Annual Rates and Expenditure Laws, 2016*.

The Commission prepares sample laws for use and adaptation by First Nations. The sample First Nation Property Taxation Law (“sample law”) complies with the legislative framework and provides a comprehensive taxation law, including enforcement measures, that reflects taxation practices on reserve lands and incorporates components of the New Brunswick provincial taxation regime where appropriate. It provides a best practices sample for use and adaptation by First Nations in drafting their own FMA taxation laws.

This annotation of the sample law provides explanatory and additional information on key aspects of the sample law, and is intended to assist First Nations in creating their own property taxation laws. This annotated law is not intended to provide legal advice or legal interpretation, and should not be relied upon as such.

FIRST NATION
PROPERTY TAXATION LAW, 20__

(NEW BRUNSWICK)

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EXPLANATORY NOTES & COMMENTS

The title of the law should include the name of the First Nation, and the year the First Nation will enact the law.

This indicates that the sample law has been created for First Nations located in New Brunswick. This wording should be deleted in the First Nation's law.

When the drafting is complete, ensure that all of the Part numbers and headings correspond to the actual Part numbers and the headings used in the law.

When the drafting is complete, ensure that the Schedule numbers and names correspond to the numbers and names used in the law.

WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands, interests in reserve lands or rights to occupy, possess or use reserve lands;

B. The Council of the _____ First Nation deems it to be in the best interests of the First Nation to make a law for such purposes; and

C. The Council of the _____ First Nation has given notice of this law and has considered any representations received by the Council, in accordance with the requirements of the *First Nations Fiscal Management Act*,

NOW THEREFORE the Council of the _____ First Nation duly enacts as follows:

These recitals are recommended in order to show the authority for the law and the fulfillment of notice requirements. Additional recitals can also be included as the First Nation determines appropriate.

The enactment clause is required in order to show Council's intention to enact the law.

**PART I
CITATION**

Citation

1. This Law may be cited as the _____ *First Nation Property Taxation Law, 20__*.

The citation includes the First Nation's name and the year the law is made by the First Nation. Proper citation of the law should be used when referencing it in documents, forms or other laws.

**PART II
DEFINITIONS AND REFERENCES**

Definitions and References

2.(1) In this Law:

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

“assessed value” has the meaning given to that term in the Assessment Law;

“Assessment and Tax Notice” has the meaning given to that term in the Assessment Law;

The definitions used are the same as set out in the FMA, the *Indian Act*, the FMA Regulations and the First Nation's Assessment Law. Where terms are not defined in those enactments, additional definitions are included to assist in the interpretation of the law. All definitions in this law should be consistent in the First Nation's Assessment Law. When drafting is complete, any definitions that are not used in the law should be deleted.

In New Brunswick, the assessment notice and the tax notice are combined into one notice.

“assessment and tax roll” has the meaning given to that term in the Assessment Law;

In New Brunswick, the assessment roll and the tax roll are combined into one roll.

“Assessment Law” means the _____ *First Nation Property Assessment Law, 20__* ;

“Assessment Review Board” means the assessment review board established under the Assessment Law;

“assessor” means a person appointed to that position under the Assessment Law;

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

This term is defined in the FMA and it therefore cannot be changed in this law.

“debtor” means a person liable for unpaid taxes imposed under this Law;

“expenditure law” means an expenditure law enacted under paragraph 5(1)(b) of the Act;

“First Nation” means the _____ First Nation, being a band named in the schedule to the Act;

“First Nation Corporation” means a corporation in which at least a majority of the shares are held in trust for the benefit of the First Nation or all of the members of the First Nation;

This definition can be modified to create a greater share holding requirement than a majority, but cannot be modified to allow a share holding of less than a majority. Note that this definition cannot be expanded to include non-corporate business ventures.

“holder” means a person in possession of an interest in land or a person who, for the time being

This definition is used in the Assessment Law and in Commission Standards and sample laws, and therefore should remain consistent in this law.

(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;

“improvement” means any building, fixture, structure or similar thing, other than land, that is included in the definition of “real property” in the *Assessment Act* (New Brunswick);

This definition is used in the Assessment Law and in provincial assessment legislation and therefore should remain consistent in this law.

“interest in land” or “property” means land or improvements, or both, in the reserve and, without limitation, includes 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;

This definition is used in the Assessment Law and in Commission Standards and sample laws, and therefore should remain consistent in this law.

“local revenue account” means the local revenue account referred to in section 13 of the Act;

“locatee” means a person who is in lawful possession of land in the reserve under subsections 20(1) and (2) of the *Indian Act*;

“Notice of Discontinuance of Services” means a notice containing the information set out in Schedule IX;

The notices relating to enforcement are required by the Enforcement Regulations to include certain content. Any modifications need to be consistent with those requirements.

“Notice of Sale of a Right to Assignment of Taxable Property” means a notice containing the information set out in Schedule VIII;

“Notice of Sale of Seized Personal Property” means a notice containing the information set out in Schedule VI;

“Notice of Seizure and Assignment of Taxable Property” means a notice containing the information set out in Schedule VII;

“Notice of Seizure and Sale” means a notice containing the information set out in Schedule V;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“property class” has the meaning given to that term in the Assessment Law;

“Province” means the province of New Brunswick;

“registry” means any land registry in which interests in land are registered;

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

Laws made under the FMA can apply only on the reserve lands of a First Nation, as that term is defined in the [Indian Act](#).

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

“tax administrator” means a person appointed by Council under subsection 3(1) to administer this Law;

“Tax Arrears Certificate” means a certificate containing the information set out in Schedule IV;

The content of a Tax Arrears Certificate is prescribed under the [Enforcement Regulations](#).

“Tax Certificate” means a certificate containing the information set out in Schedule III;

“taxable property” means an interest in land that is subject to taxation under this Law;

“taxation year” means the calendar year to which an assessment and tax roll applies for the purposes of taxation;

“taxes” include

(a) all taxes imposed, levied, assessed or assessable under this Law, and all penalties, interest and costs added to taxes under this Law, and

(b) for the purposes of collection and enforcement, all taxes imposed, levied, assessed or assessable under any other local revenue law of the First Nation, and all penalties, interest and costs added to taxes under such a law; and

“taxpayer” means a person liable for taxes in respect of taxable property.

(2) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 3(4)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

This definition includes penalties, interest and costs added to unpaid taxes.

This definition allows a First Nation to use the collection and enforcement provisions in this law to collect taxes owing under the First Nation’s other FMA local revenue laws.

PART III ADMINISTRATION

Tax Administrator

3.(1) Council must, by resolution, appoint a tax administrator to administer this Law on the terms and conditions set out in the resolution.

(2) The tax administrator must fulfill the responsibilities given to the tax administrator under this Law and the Assessment Law.

(3) The tax administrator may, with the consent of **[insert title]**, assign the performance of any duties of the tax administrator to any officer, employee, contractor or agent of the First Nation.

The law must provide for the appointment of a tax administrator, as the tax administrator has specific required duties under [Enforcement Regulations](#) and this law. [Taxation Law Standards](#) s. 1.

This provision provides flexibility where the tax administrator is not able to personally fulfill all of the duties at any given time.

- (4) The tax administrator's responsibilities include
- (a) the collection of taxes and the enforcement of payment under this Law; and
 - (b) the day to day management of the First Nation's local revenue account.

This provision sets out the general responsibilities of the tax administrator as well as other duties specified in this law and the assessment law.

PART IV LIABILITY FOR TAXATION

Application of Law

4. This Law applies to all interests in land.

The law applies to all interests in land in the reserve. [Taxation Law Standards](#) paragraph 2.1(a).

Tax Liability

5.(1) Except as provided in Part V, all interests in land are subject to taxation under this Law.

All interests in land in the reserve are liable for property taxation, unless exempted under this law. [Taxation Law Standards](#) paragraph 2.1(b).

(2) Taxes levied under this Law are a debt owed to the First Nation, recoverable by the First Nation in any manner provided for in this Law or in a court of competent jurisdiction.

Taxes owing are a debt to the First Nation, and can be collected in the same manner as other debts in addition to collection under this law.

(3) Where an interest in land is exempt from taxation under paragraph 7(1)(a) or (b), that exemption does not affect the liability to taxation of other holders of interests in the same property

Where an interest in land is not taxable under this law, another holder or another interest in the same property may be taxable.

(4) Taxes are due and payable under this Law notwithstanding any proceeding initiated or remedy sought by a taxpayer respecting his or her liability to taxation under this Law.

This provision ensures that taxes are paid even where a taxpayer is appealing an assessment or seeking any other remedy in respect of those taxes.

(5) Any person who shares the same interest in taxable property is jointly and severally liable to the First Nation for all taxes imposed on that taxable property under this Law during the taxation year and for all unpaid taxes imposed in a previous taxation year, including for clarity, interest, penalties and costs as provided in this Law.

This provision addresses the situation where there are multiple interests in the same property. Each interest in the property is subject to taxation, and every holder who shares the same interest in taxable property is jointly and severally liable for taxes.

Tax Refunds

6.(1) Where a person is taxed in excess of the proper amount in a taxation year, the tax administrator must refund to that person any excess taxes paid by that person.

This section provides wording for tax refunds. The law must include provisions for refunds of taxes paid where a change in assessment results in a reduction of taxes. [Taxation Law Standards](#) paragraph 10.1(a).

(2) Where a person is entitled to a refund of taxes, Council may direct the tax administrator to refund the amount in whole or in part by applying it as a credit on account of taxes or other unpaid amounts that are due or accruing due to the First Nation in respect of taxable property held by that person.

(3) Where a person is entitled to be refunded an amount of taxes paid under this Law, the tax administrator must pay the person interest as follows:

(a) interest accrues from the date that the taxes were originally paid to the First Nation;

(b) the interest rate during each successive three (3) month period beginning on January 1, April 1, July 1 and October 1 in every year, is two percent (2%) below the prime lending rate of the principal banker to the First Nation on the 15th day of the month immediately preceding that three (3) month period;

(c) interest will not be compounded; and

(d) interest stops running on the day payment of the money owed is delivered or mailed to the person to whom it is owed, or is actually paid.

The First Nation can apply refunds to other amounts that the taxpayer owes the First Nation that relate to the taxable property. [Taxation Law Standards](#) subsection 10.2.

The law must provide for interest to be paid at a rate of at least prime minus two percent. [Taxation Law Standards](#) paragraph 10.1(b).

PART V

EXEMPTIONS FROM TAXATION

Exemptions

[Note to First Nation: The First Nation should determine what, if any, exemptions it wishes to provide in its law. Refer to the Taxation Law Standards for further information and limitations on the types of exemptions that may be included. The following are examples of exemptions a First Nation may wish to consider in its law.]

7.(1) The following interests in land are exempt from taxation under this Law to the extent indicated:

(a) subject to subsection (2), any interest in land held or occupied by a member of the First Nation;

This Part includes sample wording for exemptions from taxation that a First Nation may want to include in its law. It is the First Nation's decision whether to provide any exemptions from taxation in its law. All exemptions provided must be set out in the law. [Taxation Law Standards](#) subsection 5.1.

Exemptions that may be included are those falling within any of the following categories: exemptions for interests in land held or occupied by members of the First Nation; exemptions for interests in land held or occupied by the First Nation or corporations that are at least majority-owned by the First Nation; and exemptions within a class of exemption used by local governments in the province. [Taxation Law Standards](#) subsection 5.2.

(b) subject to subsection (2), any interest in land held or occupied by the First Nation or a First Nation Corporation;

(c) property held by a church for use as a residence for priests, ministers or rabbis;

(d) subject to subsection (3), property held by a church or religious order and used by that body solely for religious, educational or charitable purposes, including burying grounds and church halls from which only revenue for church purposes is derived;

(e) property held by a university, not operated for profit, and excluding any portion of the property used for commercial purposes; and

(f) subject to subsection (3), property used for a cemetery by a corporation not organized, incorporated or operated for profit.

(2) The exemptions in paragraphs (1)(a) and (1)(b) do not apply to interests in land that are held by a member of the First Nation, the First Nation, or a First Nation Corporation, as the case may be, where that interest in land is actually occupied by someone other than a member of the First Nation, the First Nation, or a First Nation Corporation.

This provision ensures that exemptions for interests in land held or occupied by members, the First Nation or First Nation-owned corporations will not be given where someone other than an exempted person is actually occupying the property.

(3) The exemptions in paragraph (1)(d) for burying grounds and in paragraph (1)(f) do not apply to property or any portion of property not actually in use for the interment of the dead.]

This provision provides for a portion of surrounding land to be included as part of an exemption for a building.

(4) [Note to First Nation: This wording may be included if exemptions are included that apply to buildings. An exemption from taxation applies only to that portion of a building occupied or used for the purpose for which the exemption is granted, and a proportionate part of the land on which the building stands.]

PART VI GRANTS AND TAX CREDITS

[Note to First Nation: The First Nation should consider what, if any, grants or other forms of tax abatement it wishes to provide in its law. The qualifying requirements for grants and other forms of abatement must be set out in this law, with the amounts to be determined each year in an expenditure law. The following are examples of possible grants and credits.]

Annual Grants

8.(1) Council may provide for a grant to a holder:

(a) where the holder is a charitable, philanthropic or other not-for-profit corporation, and Council considers that the property is used for a purpose that is directly related to the purposes of the corporation; and

(b) [set out qualifying criteria for other grant programs].

(2) Grants provided under subsection (1)

(a) may be given only to a holder of property that is taxable in the current taxation year;

(b) must be in an amount equal to or less than the taxes payable on the property in the current taxation year, less any other grants or credits; and

(c) must be used only for the purposes of paying the taxes owing on the property in the current taxation year.

Residential Tax Credit

9.(1) Council may provide for a tax credit to holders of residential property who would be entitled to a credit under the provisions of the *Residential Property Tax Relief Act* (New Brunswick) if the holder's property were located off the reserve.

This Part includes sample wording for grants and credits a First Nation may want to include in its law. The qualifying requirements for any grants and credits must be set out in the law. The amounts of grants and credits to be given in each year are authorized in the annual expenditure law. [Taxation Law Standards](#) subsection 6.2 and 6.3.

This section provides sample wording for implementing certain types of grants, including grants to non-profits.

The law may include additional granting programs, provided the qualifying criteria for the granting program are set out in the law.

Once a First Nation decides what grants, if any, it will include in the law, this sample language should be tailored to reflect the First Nation's decisions. Where the law establishes a granting program, the requirements in subsection 8(2) must be included in the law. [Taxation Law Standards](#) section 6.

This section provides sample wording for implementing the residential property tax credit to holders of residential property that is provided in the Province under the [Residential Property Tax Relief Act](#).

(2) A credit under subsection (1) must be in an amount that is not more than the amount to which a person would be entitled under the *Residential Property Tax Relief Act (New Brunswick)* if the holder's property was subject to property taxation by the Province.

Annual Authorization

10. Council will in each taxation year determine all grants and credits that will be given under this Part and will authorize those amounts in an expenditure law.]

This provision reflects that grants and credits are approved each year by Council in the First Nation's annual expenditure law. [Taxation Law Standards](#) paragraph 6.1(d).

PART VII LEVY OF TAX

Tax Levy

11.(1) On or before December 14 in the year prior to each taxation year, Council must adopt a law setting the rate of tax to be applied to each property class.

The law sets out the date by which Council must adopt an annual rates law in each year. The Standards for the Timing of First Nation Annual Rates and Expenditure Laws, 2016 require the date to be no later than July 31 of the taxation year. [Standards for the Timing of First Nation Annual Rates and Expenditure Laws, 2016](#), section 1 and [FMA](#) section 10.

(2) A law setting the rate of tax may establish different tax rates for each property class.

Different tax rates can be established for each of the property classes set out in the First Nation's assessment law.

(3) Taxes must be levied by applying the rate of tax against each one thousand dollars (\$1,000) of assessed value of the interest in land.

First Nations in New Brunswick use a "mill" rate, which is the rate of tax applied against each one thousand dollars of assessed value.

(4) Taxes levied under this Law are deemed to be imposed on January 1 of the taxation year in which the levy is first made.

Taxes are levied for the entire calendar year, beginning January 1, although they are not collected until later in the year.

(5) Notwithstanding subsection (3), Council may establish, in its annual law setting the rate of tax, a minimum tax payable in respect of a taxable interest in land.

If the First Nation wishes to allow a minimum tax to be set in each year, the law must include this provision. A minimum tax is the lowest amount of tax payable, despite the assessed value of the property. [Taxation Law Standards](#) subsection 2.3.

(6) A minimum tax established under the authority of subsection (5) may be established in respect of one or more property classes.

The minimum tax is set each year in the First Nation's annual rates law. The Commission's [Tax Rates Law Standards](#) section 4 and 5 include provisions that apply to setting a minimum tax.

Tax Payments

12.(1) Taxes are due and payable on or before May 31 of the taxation year in which they are levied.

(2) Taxes must be paid at the office of the First Nation during normal business hours, by cheque, money order or cash.

(3) Payment of taxes made by cheque or money order must be made payable to the _____ First Nation.

The law must set a tax due date. May 31 is the tax due date used in the Province. First Nations are encouraged to establish tax due dates that are consistent with provincial practices.

The law must set out where taxes may be paid, and the forms of payment accepted. [Taxation Law Standards](#) subsection 8.1. Note that a First Nation can provide for the payment of taxes by instalments, as permitted by the Taxation Law Standards subsection 8.2. Sample wording is not included for instalment payments; however, the FNTC can assist with including appropriate wording on request.

PART VIII

ASSESSMENT AND TAX ROLL AND ASSESSMENT AND TAX NOTICE

Assessment and Tax Roll

13.(1) On or before November 30 in the year before the taxation year, the tax administrator must provide to the assessor the taxation information required to create the assessment and tax roll for that taxation year.

(2) If at any time the tax administrator discovers that there is an error or omission in any part of the assessment and tax roll, the tax administrator must advise the assessor of the error or omission.

In New Brunswick, the tax administrator provides the necessary taxation information to the assessor so that the assessor may create the assessment and taxation roll.

The tax administrator has an on-going obligation to advise the assessor of any errors or omissions in the roll so that they may be corrected.

Assessment and Tax Notices

14.(1) The mailing of the Assessment and Tax Notice under the Assessment Law constitutes a statement of and demand for payment of the taxes by the First Nation.

(2) Where the tax administrator [assessor] mails an amended Assessment and Tax Notice under the Assessment Law that indicates a reduction in the amount of taxes owing, the tax administrator must forthwith refund any excess taxes that have been paid, in accordance with section 6.

Because the assessment and tax roll are combined, the requirements for mailing assessment and tax notices are set out in the Assessment Law.

Amended Assessment and Tax Notices

15. Where the tax administrator [assessor] mails an amended Assessment and Tax Notice under the Assessment Law that indicates an increase in the amount of taxes owing, the taxes are due and payable on the date of mailing of the amended Assessment and Tax Notice; however, the taxpayer must be given thirty (30) days to pay those taxes and a penalty and interest must not be added in that period.

Taxpayers are given thirty days to pay additional taxes before interest and penalties are assessed by the First Nation.

Requests for Information

16.(1) The tax administrator may, for any purpose related to the administration of this Law, deliver a Request for Information containing the information set out in Schedule I, to a holder or a person who has disposed of property, and that person must provide the requested information to the tax administrator within fourteen (14) days or a longer period as specified in the notice.

The tax administrator is given the ability to request information respecting taxable property for any purpose related to the administration of the taxation law. A form of request is set out in Schedule I.

(2) The tax administrator is not bound by the information provided under subsection (1).

PART IX

PAYMENT RECEIPTS AND TAX CERTIFICATES

Receipts for Payments

17. On receipt of a payment of taxes, the tax administrator must issue a receipt to the taxpayer and must enter the receipt number on the assessment and tax roll opposite the interest in land for which the taxes are paid.

The tax administrator must issue a receipt to the taxpayer and note the payment on the assessment and tax roll.

Tax Certificate

18.(1) On receipt of a written request and payment of the fee set out in subsection (2), the tax administrator must issue a Tax Certificate showing whether taxes have been paid in respect of an interest in land and if not, the amount of taxes outstanding.

The tax administrator must issue a tax certificate on request, showing whether taxes have been paid on a property, and the amount of any outstanding taxes.

(2) The fee for a Tax Certificate is twenty-five dollars (\$25) for each assessment and tax roll folio searched.

The law must stipulate a fee, if any, to be paid for the issuance of a tax certificate. The fee should reflect an amount that compensates the First Nation's reasonable costs in providing the certificate.

PART X PENALTIES AND INTEREST

[Note to First Nations: First Nations can levy both penalties and interest on unpaid taxes. However, New Brunswick levies a penalty only and does not charge interest for unpaid taxes. The penalty in New Brunswick is currently set at thirteen and one-half percent (13.5%) per year, which exceeds what is allowed under the FMA.]

Penalty

19. If all or any portion of the taxes remains unpaid after May 31 of the year in which they are levied, a penalty of ____ percent (____ %) **[Note to First Nation: maximum total penalty permitted is ten percent (10%)]** of the portion that remains unpaid will be added to the amount of the unpaid taxes and the amount so added is, for all purposes, deemed to be part of the taxes.

The law may impose a penalty where taxes are not paid in full on the due date. The amount of the penalty and when it will be imposed must be specified in the law. The penalty cannot exceed ten percent. [Enforcement Regulations](#) subsection 4(3) and [Taxation Law Standards](#) subsection 11.1.

Interest

20. If all or any portion of taxes remains unpaid after May 31 of the year in which they are levied, the unpaid portion accrues interest at ____ percent (____%) per year. **[Note to First Nation: maximum interest is fifteen percent (15%) per year.]**

The interest rate cannot exceed fifteen percent per year and the rate of interest must be specified in the law. [Enforcement Regulations](#) subsection 4(2).

Application of Payments

21. Payments for taxes must be credited by the tax administrator first, to taxes, including interest, from previous taxation years, second, to a penalty added in the current taxation year, and third, to unpaid taxes for the current taxation year.

PART XI REVENUES AND EXPENDITURES

Revenues and Expenditures

22.(1) All revenues raised under this Law must be placed into a local revenue account, separate from other moneys of the First Nation.

(2) Revenues raised include

(a) taxes, including for clarity, interest, penalties and costs, as set out in this Law; and

This provision requires that revenues raised under the law must be placed in the First Nation's local revenue account. The local revenue account is required by the FMA, and must be a separate account with a financial institution. [FMA](#) section 13.

(b) payments-in-lieu of taxes.

(3) An expenditure of revenue raised under this Law must be made under the authority of an expenditure law or in accordance with section 13.1 of the Act.

This provision recognizes that a First Nation may also expend local revenues as permitted in section 13.1 of the FMA, which enables emergency expenditures and pre-budget expenditures.

Reserve Funds

23.(1) Reserve funds established by Council must

These provisions set out how a First Nation may establish reserve funds, and how moneys may be transferred into and out of reserve funds. [Taxation Law Standards](#) section 7.

(a) be established in an expenditure law; and

(b) comply with this section.

A new reserve fund must be established in an expenditure law. The [Standards for First Nation Expenditure Laws](#) include provisions respecting the types of reserve funds that may be established, and supporting information that is required at the time a reserve fund is established.

(2) Except as provided in this section, moneys in a reserve fund must be deposited in a separate account and the moneys and interest earned on it must be used only for the purpose for which the reserve fund was established.

(3) Council may, by expenditure law,

(a) transfer moneys in a capital purpose reserve fund to another reserve fund or account, provided that all projects for which the reserve fund was established have been completed;

(b) transfer moneys in a non-capital purpose reserve fund to another reserve fund or account; and

(c) borrow moneys from a reserve fund where not immediately required, on condition that the First Nation repay the amount borrowed plus interest on that amount at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation, no later than the time when the moneys are needed for the purposes of that reserve fund.

(4) As an exception to paragraph (3)(c), where the First Nations Financial Management Board has

(a) assumed third-party management of the First Nation's local revenue account, and

(b) determined that moneys must be borrowed from a reserve fund to meet the financial obligations of the First Nation,

the First Nations Financial Management Board may, acting in the place of Council, borrow moneys from a reserve fund by expenditure law.

(5) Council must authorize all payments into a reserve fund and all expenditures from a reserve fund in an expenditure law.

(6) Where moneys in a reserve fund are not immediately required, the tax administrator must invest those moneys in one or more of the following:

- (a) securities of Canada or of a province;
- (b) securities guaranteed for principal and interest by Canada or by a province;
- (c) securities of a municipal finance authority or the First Nations Finance Authority;
- (d) investments guaranteed by a bank, trust company or credit union; or
- (e) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

Reserve fund moneys may only be invested in the listed types of investments. [Taxation Law Standards](#) subsection 7.3.

PART XII

COLLECTION AND ENFORCEMENT

Recovery of Unpaid Taxes

24.(1) The liability referred to in subsection 5(2) is a debt recoverable by the First Nation in a court of competent jurisdiction and may be recovered by any other method authorized in this Law and, unless otherwise provided, the use of one method does not prevent seeking recovery by one or more other methods.

This Part sets out general provisions respecting the collection of unpaid taxes and the enforcement of the law. The [Enforcement Regulations](#) set out detailed conditions and procedures for property tax enforcement. The law should include all enforcement mechanisms set out in the Regulations to ensure the First Nation has the option to choose the most effective mechanism for each enforcement situation.

This section provides sample wording respecting tax collection, including allowing recovery by one or more methods set out in the law. Unpaid taxes are a debt and the First Nation can use other methods of recovery in addition to the specific enforcement measures set out in the law.

(2) A copy of the Assessment and Tax Notice that refers to the taxes payable by a person, certified as a true copy by the tax administrator [assessor], is evidence of that person's debt for the taxes.

This section should reference the position that will undertake the enforcement. In most cases this will be the tax administrator.

(3) Costs incurred by the First Nation in the collection and enforcement of unpaid taxes

The law may provide for the recovery of costs incurred by the First Nation in the collection and enforcement of unpaid taxes.

(a) are determined in accordance with Schedule II; and

Schedule II should be completed in order to set out how costs are determined.

(b) are payable by the debtor as unpaid taxes.

(4) Where the tax administrator has reasonable grounds to believe that a debtor intends to remove his or her personal property from the reserve, or intends to dismantle or remove his or her improvements on the reserve, or take any other actions that may prevent or impede the collection of unpaid taxes owing under this Law, the tax administrator may apply to a court of competent jurisdiction for a remedy, notwithstanding that the time for payment of taxes has not yet expired.

(5) Before commencing enforcement proceedings under Parts XIII, XIV and XV, the tax administrator must request authorization from Council by resolution.

Tax Arrears Certificate

25.(1) Before taking any enforcement measures under Parts XIII, XIV or XV and subject to subsection (2), the tax administrator must issue a Tax Arrears Certificate and deliver it to every person named on the assessment and tax roll in respect of that property.

Before a First Nation may commence certain types of enforcement proceedings, a tax arrears certificate must be issued to every person named on the assessment and tax roll in respect of a property on which there are unpaid taxes. The tax arrears certificate must include the information set out in Schedule IV.

(2) A Tax Arrears Certificate must not be issued for at least six (6) months after the day on which the taxes became due.

[Enforcement Regulations](#) section 5.

Creation of Lien

26.(1) Unpaid taxes are a lien on the interest in land to which they pertain that attaches to the interest in land and binds subsequent holders of the interest in land.

This section provides for the creation, recording and discharging of liens.

(2) The tax administrator must maintain a list of all liens created under this Law.

Where the law provides for the creation of liens, the tax administrator is required to maintain a list of all liens created and must register a discharge of a lien without delay on payment of outstanding amounts. [Enforcement Regulations](#) sections 7 and 8.

(3) A lien listed under subsection (2) has priority over any unregistered or registered charge, claim, privilege, lien or security interest in respect of the interest in land.

(4) The tax administrator may apply to a court of competent jurisdiction to protect or enforce a lien under subsection (1) where the tax administrator determines such action is necessary or advisable.

(5) On receiving payment in full of the taxes owing in respect of which a lien was created, the tax administrator must register a discharge of the lien without delay.

(6) Discharge of a lien by the tax administrator is evidence of payment of the taxes with respect to the interest in land.

(7) A lien is not lost or impaired by reason of any technical error or omission in its creation or recording in the list of liens.

Delivery of Documents in Enforcement Proceedings

27.(1) This section applies to this Part and Parts XIII, XIV and XV.

(2) Delivery of a document may be made personally or by sending it by registered mail.

(3) Personal delivery of a document is made

(a) in the case of an individual, by leaving the document with that individual or with an individual at least eighteen (18) years of age residing at that individual's place of residence;

(b) in the case of a first nation, by leaving the document with the individual apparently in charge, at the time of delivery, of the main administrative office of the first nation, or with the first nation's legal counsel; and

(c) in the case of a corporation, by leaving the document with the individual apparently in charge, at the time of delivery, of the head office or one of its branch offices, or with an officer or director of the corporation or the corporation's legal counsel.

(4) A document is considered to have been delivered

These document delivery provisions must be included in the law and apply to enforcement proceedings under Parts XII to XV. [Enforcement Regulations](#) section 22.

(a) if delivered personally, on the day that personal delivery is made; and

(b) if sent by registered mail, on the fifth day after it is mailed.

(5) Copies of notices must be delivered

(a) where the notice is in respect of taxable property, to all persons named on the assessment and tax roll in respect of that taxable property; and

(b) where the notice is in respect of personal property, to all holders of security interests in the personal property registered under the laws of the Province.

PART XIII

SEIZURE AND SALE OF PERSONAL PROPERTY

Seizure and Sale of Personal Property

28.(1) Where taxes remain unpaid more than thirty (30) days after a Tax Arrears Certificate is issued to a debtor, the tax administrator may recover the amount of unpaid taxes, with costs, by seizure and sale of personal property of the debtor that is located on the reserve.

(2) As a limitation on subsection (1), personal property of a debtor that would be exempt from seizure under a writ of execution issued by a superior court in the Province is exempt from seizure under this Law.

Notice of Seizure and Sale

29.(1) Before proceeding under subsection 28(1), the tax administrator must deliver to the debtor a Notice of Seizure and Sale.

(2) If the taxes remain unpaid more than seven (7) days after delivery of a Notice of Seizure and Sale, the tax administrator may request a sheriff, bailiff or by-law enforcement officer to seize any personal property described in the Notice of Seizure and Sale that is in the possession of the debtor and is located on the reserve.

This Part sets out detailed procedures that must be followed for a First Nation to undertake the seizure and sale of personal property belonging to a tax debtor. [Enforcement Regulations](#) sections 17, 18 and 19.

This enforcement mechanism can be undertaken only after taxes remain unpaid for at least thirty days after the tax arrears certificate is issued.

Personal property that would be exempt from seizure under provincial law is exempt from seizure under the First Nation's law.

A Notice of Seizure and Sale is delivered to the debtor.

If taxes remain unpaid after seven days, the tax administrator may have the described personal property seized. The property must be located on the reserve lands

(3) The person who seizes personal property must deliver to the debtor a receipt for the personal property seized.

Notice of Sale of Seized Personal Property

30.(1) The tax administrator must publish a Notice of Sale of Seized Personal Property in two (2) consecutive issues of the local newspaper with the largest circulation.

After goods are seized, a Notice of Sale of Seized Personal Property is published in two consecutive issues of the local newspaper.

(2) The first publication of the Notice of Sale of Seized Personal Property must not occur until at least sixty (60) days after the personal property was seized.

Conduct of Sale

31.(1) A sale of personal property must be conducted by public auction.

After the second publication of the Notice, the property may be sold at auction.

(2) Subject to subsection (4), at any time after the second publication of the Notice of Sale of Seized Personal Property, the seized property may be sold by auction.

(3) The tax administrator must conduct the public auction at the time and place set out in the Notice of Sale of Seized Personal Property, unless it is necessary to adjourn the public auction, in which case a further notice must be published in the manner set out in subsection 30(1).

(4) If at any time before the seized property is sold a challenge to the seizure is made to a court of competent jurisdiction, the sale must be postponed until after the court rules on the challenge.

Registered Security Interests

32. The application of this Part to the seizure and sale of personal property subject to a registered security interest is subject to any laws of the Province regarding the seizure and sale of such property.

Where there are registered security interests against the property, provincial law applies to the seizure and sale. [Enforcement Regulations](#) section 19.

Proceeds of Sale

33.(1) The proceeds from the sale of seized personal property must be paid to any holders of registered security interests in the property and to the First Nation in order of their priority under the laws applicable in the Province, and any remaining proceeds must be paid to the debtor.

Provincial law will apply to determine the priority that applies to the payment of secured interests in the property. The First Nation may be required to use the proceeds to first pay other interests before the tax debt. [Enforcement Regulations](#) section 20.

(2) If claim to the surplus is made by another person and such claim is contested, or if the tax administrator is uncertain who is entitled to such surplus, the tax administrator must retain such money until the rights of the parties have been determined.

The proceeds can be paid into court where there is uncertainty or claims cannot be resolved.

PART XIV SEIZURE AND ASSIGNMENT OF TAXABLE PROPERTY

Seizure and Assignment of Taxable Property

This Part sets out detailed procedures that must be followed for a First Nation to undertake the seizure and assignment of taxable property. [Enforcement Regulations](#) sections 9 to 16.

34.(1) Where taxes remain unpaid more than nine (9) months after a Tax Arrears Certificate is issued, the tax administrator may levy the amount of unpaid taxes by way of the seizure and assignment of the taxable property.

This enforcement mechanism can be undertaken only after taxes remain unpaid for at least nine months after the tax arrears certificate is issued.

(2) Before proceeding under subsection (1), the tax administrator must serve a Notice of Seizure and Assignment of Taxable Property on the debtor and deliver a copy to any locatee with an interest in the taxable property.

A Notice of Seizure and Assignment of Taxable Property is delivered to the debtor and to any locatee.

(3) Not less than six (6) months after a Notice of Seizure and Assignment of Taxable Property is delivered to the debtor, the tax administrator may sell the right to an assignment of the taxable property by public tender or auction.

If taxes remain unpaid after six months, the tax administrator may sell the right to an assignment of the taxable property by public tender or auction.

(4) Council must, by resolution, prescribe the method of public tender or auction, including the conditions that are attached to the acceptance of an offer.

Alternatively, the law could set out which method will be used and include any conditions that are attached to the acceptance of an offer.

Upset Price

35.(1) The tax administrator must set an upset price for the sale of the right to an assignment of the taxable property that is not less than the total amount of the taxes payable on the taxable property, calculated to the end of the redemption period set out in subsection 39(1), plus five percent (5%) of that total.

The tax administrator must set an upset price for the purchase of the property.

(2) The upset price is the lowest price for which the taxable property may be sold.

The property cannot be sold for less than the upset price.

Notice of Sale of a Right to Assignment of Taxable Property

36.(1) A Notice of Sale of a Right to Assignment of Taxable Property must be

(a) published in the local newspaper with the largest circulation at least once in each of the four (4) weeks preceding the date of the public tender or auction; and

(b) posted in a prominent place on the reserve not less than ten (10) days before the date of the public tender or auction.

(2) The tax administrator must conduct a public auction or tender at the time and place set out in the Notice of Sale of a Right to Assignment of Taxable Property, unless it is necessary to adjourn the public tender or auction, in which case a further notice must be published in the manner set out in subsection (1).

(3) If no bid is equal to or greater than the upset price, the First Nation is deemed to have purchased the right to an assignment of the taxable property for the amount of the upset price.

Notice to Minister

37. The tax administrator must, without delay, notify the Minister of Indian Affairs and Northern Development in writing of the sale of a right to an assignment of taxable property made under this Law.

A Notice of Sale of a Right to Assignment of Taxable Property must be published in a local newspaper for four consecutive weeks, and posted on the reserve for at least ten days before the auction or tender.

The tax administrator must give notice to the Minister of every purchase under this provision.

Subsisting Rights

38. When taxable property is sold by public tender or auction, all rights in it held by the holder of the taxable property or a holder of a charge immediately cease to exist, except as follows:

(a) the taxable property is subject to redemption as provided in subsection 39(1);

(b) the right to possession of the taxable property is not affected during the time allowed for redemption, subject, however, to

(i) impeachment for waste, and

The debtor retains the right to occupy the property during the three-month redemption period. The holder must not permit the property to deteriorate during this time, and the purchaser has the right to enter the property in order to maintain it.

(ii) the right of the highest bidder to enter on the taxable property to maintain it in a proper condition and to prevent waste;

(c) an easement, restrictive covenant, building scheme or right-of-way registered against the interest in land subsists; and

(d) during the period allowed for redemption, an action may be brought in a court of competent jurisdiction to have the sale of the right to an assignment of the taxable property set aside and declared invalid.

Redemption Period

39.(1) At any time within three (3) months after the holding of a public tender or auction in respect of taxable property, the debtor may redeem the taxable property by paying to the First Nation the amount of the upset price plus three percent (3%).

The debtor can redeem the property by paying the upset price plus three percent.

(2) On redemption of the taxable property under subsection (1),

(a) if the right to an assignment was sold to a bidder, the First Nation must, without delay, repay to that bidder the amount of the bid; and

(b) the tax administrator must notify the Minister of Indian Affairs and Northern Development in writing of the redemption.

(3) No assignment of taxable property must be made until the end of the redemption period provided for in subsection (1).

(4) Subject to a redemption under subsection (2), at the end of the redemption period, the First Nation must assign the taxable property to the highest bidder in the public tender or auction, or to itself as the deemed purchaser in accordance with subsection 36(3).

If the property is not redeemed before the end of the redemption period, the property transfers to the purchaser and the debtor is then required to vacate the property.

Assignment of Taxable Property

40.(1) Taxable property must not be assigned to any person or entity who would not have been entitled under the *Indian Act* or the *First Nations Land Management Act*, as the case may be, to obtain the interest or right constituting the taxable property.

The tax administrator must register the assignment in any registry in which the property is registered.

(2) The tax administrator must register an assignment of any taxable property assigned in accordance with this Law in every registry in which the taxable property is registered at the time of the assignment.

(3) An assignment under subsection 39(4) operates

(a) as a transfer of the taxable property to the bidder from the debtor, without an attestation or proof of execution; and

(b) to extinguish all the right, title and interest of every previous holder of the taxable property, or those claiming under a previous holder, and all claims, demands, payments, charges, liens, judgments, mortgages and encumbrances of every type, and whether or not registered, subsisting at the time the assignment is registered under subsection (2), except an easement, restrictive covenant, building scheme or right-of-way registered against the interest in land.

(4) Upon assignment under subsection 39(4), any remaining debt of the debtor with respect to the taxable property is extinguished.

The assignment transfers the property to the purchaser and extinguishes all rights of previous holders of the property.

The assignment extinguishes any remaining debt of the debtor.

Proceeds of Sale

41.(1) At the end of the redemption period, the proceeds from the sale of a right to assignment of taxable property must be paid

(a) first, to the First Nation, and

(b) second, to any other holders of registered interests in the property in order of their priority at law,

and any remaining proceeds must be paid to the debtor.

(2) If claim to the surplus is made by another person and such claim is contested, or if the tax administrator is uncertain who is entitled to such surplus, the tax administrator must retain such money until the rights of the parties have been determined.

The sale proceeds must be paid first to the First Nation and then to other registered security holders, with any remaining moneys to the debtor. [Enforcement Regulations](#) section 16.

Resale by First Nation

42.(1) If the right to assignment of taxable property is purchased by the First Nation under subsection 36(3), the tax administrator may, during the redemption period, sell the assignment of the taxable property to any person for not less than the upset price and the purchaser is thereafter considered the bidder under this Part.

(2) A sale under subsection (1) does not affect the period for or the right of redemption by the debtor as provided in this Law.

If the First Nation is the deemed purchaser, it may sell the property for not less than the upset price.

PART XV DISCONTINUANCE OF SERVICES

Discontinuance of Services

43.(1) Subject to this section, the First Nation may discontinue any service it provides to the taxable property of a debtor if

(a) revenues from this Law or any property taxation law enacted by the First Nation are used to provide that service to taxpayers; and

(b) taxes remain unpaid by a debtor more than thirty (30) days after a Tax Arrears Certificate was delivered to the debtor.

(2) At least thirty (30) days before discontinuing any service, the tax administrator must deliver to the debtor and to any locatee with an interest in the taxable property a Notice of Discontinuance of Services.

(3) The First Nation must not discontinue

(a) fire protection or police services to the taxable property of a debtor;

(b) water or garbage collection services to taxable property that is a residential dwelling; or

(c) electrical or natural gas services to taxable property that is a residential dwelling during the period from November 1 in any year to March 31 in the following year.

This Part sets out detailed procedures that must be followed for a First Nation to discontinue services to taxable property. [Enforcement Regulations](#) section 21.

Services may only be discontinued where the services are provided from tax revenues, and where taxes remain unpaid for at least thirty days after the tax arrears certificate is issued.

The tax administrator must issue a Notice of Discontinuance of Services at least thirty days before discontinuing services.

This provision sets additional limits on the services that cannot be discontinued.

PART XVI GENERAL PROVISIONS

Disclosure of Information

44.(1) The tax administrator or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

- (a) in the course of administering this Law or performing functions under it;
- (b) in proceedings before the Assessment Review Board, a court of law or pursuant to a court order; or
- (c) in accordance with subsection (2).

(2) The tax administrator may disclose to the agent of a holder confidential information relating to the property if the disclosure has been authorized in writing by the holder.

(3) An agent must not use information disclosed under subsection (2) except for the purposes authorized by the holder in writing referred to in that section.

This section sets out the circumstances under which information or records obtained or created under the law can be disclosed. [Taxation Law Standards](#) section 12.

Disclosure for Research Purposes

45. Notwithstanding section 44,

- (a) the tax administrator may disclose information and records to a third party for research purposes, including statistical research, provided the information and records do not contain information in an individually identifiable form or business information in an identifiable form;
- (b) Council may disclose information and records to a third party for research purposes, including statistical research, in an identifiable form where
 - (i) the research cannot reasonably be accomplished unless the information is provided in an identifiable form, and
 - (ii) the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

This section enables the tax administrator to disclose information for research and statistical purposes provided the information is not in an identifiable form. Council may disclose this information in an identifiable form provided Council takes steps to protect the confidentiality of the information. [Taxation Law Standards](#) section 12.

Validity

46. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay tax or any other amount under this Law be affected by

- (a) an error or omission in a valuation or a valuation based solely on information in the hands of an assessor or the tax administrator;
- (b) an error or omission in an assessment and tax roll, Assessment and Tax Notice, or any notice given under this Law; or
- (c) a failure of the First Nation, tax administrator or the assessor to do something within the required time.

This section supports the validity of the law where errors or omissions are made. Although it may be helpful to include this type of provision, First Nations should strive for compliance with the law and not rely on this section to ensure the validity of its actions.

Limitation on Proceedings

47.(1) No person may commence an action or proceeding for the return of money paid to the First Nation, whether under protest or otherwise, on account of a demand, whether valid or invalid, for taxes or any other amount paid under this Law, after the expiration of six (6) months from the date the cause of action first arose.

(2) If a person fails to start an action or proceeding within the time limit prescribed in this section, then money paid to the First Nation must be deemed to have been voluntarily paid.

This section limits a person's ability to challenge a payment made under the taxation law. A person cannot challenge a payment after the expiration of six months from making the payment. This section wouldn't apply where the law specifically provides otherwise, for example where a refund is required.

Notices

48.(1) Where in this Law a notice is required to be given by mail, or where the method of giving the notice is not otherwise specified, it must be given

- (a) by mail to the recipient's ordinary mailing address or the address for the recipient shown on the assessment and tax roll;
- (b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or
- (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address or the address for the recipient shown on the assessment and tax roll.

This section sets out notice provisions that apply under the law unless otherwise specified.

- (2) Except where otherwise provided in this Law
- (a) a notice given by mail is deemed received on the fifth day after it is posted;
- (b) a notice posted on property is deemed received on the second day after it is posted; and
- (c) a notice given by personal delivery is deemed received upon delivery.

Interpretation

49.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

These general rules apply to the interpretation of the law. The federal [Interpretation Act](#) also applies when interpreting the law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of the enactment and must be construed as being inserted for convenience of reference only.

[Note to First Nation: Include this repeal provision only if this law is repealing and replacing an existing property taxation law.]

Repeal

50. The _____ *First Nation Property Taxation By-law, 20__* , as amended, is hereby repealed in its entirety.]

If the First Nation does not have an existing taxation law or by-law then this section is not required.

Force and Effect

51. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

The law comes into force on the day after the Commission approval. The First Nation can specify a later date for the law to come into force by modifying this language.

THIS LAW IS HEREBY DULY ENACTED by Council on the ____ day of _____, 20____, at _____, in the Province of New Brunswick.

These enactment provisions must be filled in at the time the law is enacted by the Council.

A quorum of Council consists of _____
(__) members of Council.

[Name]

Chief [please spell out name]

[Name]

Councillor [please spell out name]

SCHEDULES:

The sample law contains nine schedules. Each Schedule should be completed as much as possible, including by filling in the name of the First Nation and the references to the First Nation's law where indicated.

If a change is made to the substance of the law, any related schedules should be carefully reviewed and changes made to those schedules as necessary to ensure consistency. Conversely, if a substantive change is made to a schedule, the law should be reviewed and changes made as necessary to ensure consistency.