

**POLICY FOR
FIRST NATION PROPERTY TAXATION BY-LAWS, 2018**

**PART I
PREAMBLE**

WHEREAS:

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

**PART II
PURPOSE**

This Policy sets out the requirements that should be met for First Nation property taxation by-laws enacted under subsection 83(1) of the Act. This Policy is used by the Commission in its review and recommendation for approval of First Nations' property taxation by-laws, pursuant to subsection 2.1 of the Memorandum of Understanding between the Commission and the Minister of Indian Affairs and Northern Development.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. This Policy is intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY**

This Policy is established pursuant to subsection 1.2 of the Memorandum of Understanding between the Commission and the Minister of Indian Affairs and Northern Development.

**PART IV
APPLICATION**

This Policy applies to every property taxation by-law, including a by-law amending or repealing such a by-law, submitted to the Commission for review and recommendation pursuant to the Memorandum of Understanding.

**PART V
CITATION**

This Policy may be cited as the *Policy for First Nation Property Taxation By-laws, 2018*.

**PART VI
DEFINITIONS**

In this Policy:

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

“annual rates by-law” means a by-law enacted under paragraph 83(1)(a) of the Act that sets the rates of tax to be applied to the assessed value of each assessable property;

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

“assessment by-law” means a First Nation’s property assessment by-law enacted under paragraph 83(1)(a) of the Act;

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

“By-law” means a property taxation by-law enacted under paragraph 83(1)(a) of the Act or a combined assessment and taxation by-law enacted under paragraph 83(1)(a) of the Act;

“child” includes a child for whom a person stands in the place of a parent;

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

“Council” has the same meaning as “council of the band” in subsection 2(1) of the Act;

“expenditure by-law” means a by-law enacted under subsection 83(2) of the Act;

“First Nation” means a band as defined in subsection 2(1) the Act;

“First Nation Corporation” means a corporation in which at least fifty percent (50%) of the shares are held in trust for the benefit of the First Nation or all of the members of the First Nation;

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

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

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

“property class” means each of the categories of property established in a First Nation’s assessment by-law for the purposes of assessment and taxation;

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

“reference jurisdiction” means a taxing jurisdiction, located adjacent to a First Nation, that is identified for the purpose of comparing a First Nation’s tax rates;

“related individual” means, in respect of a member of the First Nation,

- (a) that member’s spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent or guardian,
- (b) the spouse of that member’s parent, grandparent, great-grandparent, child, grandchild or great-grandchild, or
- (c) the child, grandchild, great-grandchild, parent, grandparent or great-grandparent of that member’s spouse;

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

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

“spouse” includes a common law partner;

“tax administrator” means a person appointed by Council to administer and enforce a By-law;

“tax district” means a geographically defined area comprising all or portions of one or more reserves that is established for the purpose of setting tax rates;

“tax notice” means a notice of taxes owing sent to a holder of taxable property under a By-law;

“tax roll” means a list of persons liable to pay tax on taxable property;

“taxable property” means a property that is subject to tax under a By-law;

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

“taxes” includes all taxes on interests in land imposed, levied, assessed or assessable under a By-law, and all penalties, interest and costs added to taxes under a By-law;

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

“transition period” means the first five (5) years during which a First Nation implements taxation under a By-law.

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

PART VII POLICY

1. Appointment of Tax Administrator

1.1 The By-law must provide for the appointment by Council, by resolution, of a tax administrator to oversee the administration and enforcement of the By-law.

1.2 The By-law must provide that the tax administrator is responsible for the day-to-day management of the First Nation’s taxation account.

2. Tax Liability

2.1 The By-law must provide that

(a) it applies to all interests in land in the reserve; and

(b) all interests in land in the reserve are subject to taxation unless exempted from taxation in accordance with the By-law.

2.2 The By-law must provide that taxes must be levied on each taxable property by applying the applicable tax rate against the assessed value of the taxable property, except as provided in subsection 2.3

2.3 If a First Nation wishes to establish a minimum amount of tax to be levied on taxable property in a property class, the By-law must provide that the First Nation may set a minimum tax in one or more property classes in its annual rates by-law each year.

3. Tax Districts

3.1 Where a First Nation wishes to have one (1) or more tax districts, the By-law must

(a) establish each tax district; and

(b) describe the reserves and parts of reserves included in each district, using either a map or written description that clearly defines the geographical boundaries of the tax district.

3.2 A First Nation may only establish a tax district where necessary to create a fair taxation regime because the First Nation

- (a) has multiple reserves and one (1) or more of the reserves or parts of reserves have differing levels of servicing requirements or different reference jurisdictions; or
- (b) has a single reserve and one or more parts of the reserve has differing levels of servicing requirements or different reference jurisdictions.

4. Transition Period for Certain Taxing First Nations

4.1 Where a First Nation is implementing taxation for the first time and, in the year prior to making the By-law,

- (a) the interests in land that will be subject to taxation under the By-law were not subject to provincial taxation jurisdiction, and
- (b) the First Nation charged a fee for the provision of local services to holders of interests in land in all or certain property classes,

the By-law must include requirements for establishing tax rates during the transition period for those property classes that were subject to the fee referenced in paragraph (b), which requirements must comply with subsections 4.2 and 4.3.

4.2 Where subsection 4.1 applies to a First Nation, the By-law must require the First Nation to establish tax rates in each year of the transition period that

- (a) are based on annual budgeting for the provision of local services to taxpayers; or
- (b) will move incrementally towards establishing tax rates that are identical to the tax rates set by the reference jurisdiction.

4.3 Where a First Nation's By-law

- (a) applies paragraph 4.2(a), the By-law must include a list of the services to be provided, the estimated costs of the services, and the anticipated tax rates in each applicable property class in each year of the transition period; or
- (b) applies paragraph 4.2(b), the By-law must include a list of the services to be provided and the anticipated tax rates in each applicable property class in each year of the transition period.

5. Exemptions from Taxation

5.1 Where a First Nation wishes to provide for exemptions from property taxation under a By-law, those exemptions must be set out in the By-law.

5.2 Where exemptions from taxation are included in a By-law, the exemptions must be in respect of interests in land in one or more of the following categories:

- (a) an exemption for an interest in land held or occupied by the First Nation, a First Nation Corporation, or a member of the First Nation;
- (b) an exemption for an interest in land occupied as a residence by one (1) or more members of the First Nation and related individuals of those members and by no other persons; or
- (c) an exemption in a class of exemption used by local governments in the Province.

5.3 Where a Law provides an exemption under paragraph 5.2(a), the By-law must provide that where an interest in land is held by the First Nation, a First Nation Corporation or a member of the First Nation and is wholly occupied by a person who is not the First Nation, a First Nation Corporation or a member of the First Nation,

- (a) the exemption does not apply to the person who is not the First Nation, a First Nation Corporation or a member of the First Nation;

- (b) that person is responsible for the taxes levied in respect of the interest in land; and
- (c) the taxes are a liability only on that person.

5.4 Where a By-law provides an exemption under paragraph 5.2(a), the By-law must provide that where an interest in land is occupied by the First Nation, a First Nation Corporation or a member of the First Nation and is also occupied by a person who is not the First Nation, a First Nation Corporation or a member of the First Nation,

- (a) the exemption does not apply to the person who is not the First Nation, a First Nation Corporation or a member of the First Nation;
- (b) that person is responsible for the taxes levied in respect of that person's proportionate occupation of the interest in land; and
- (c) the taxes are a liability only on that person.

6. Grants and Tax Abatement

6.1 Where a By-law provides for a granting program, the By-law must

- (a) set out the objectives of the program, which must relate to a community purpose or goal;
- (b) set out the qualifying criteria for the program;
- (c) provide that the grant
 - (i) may be given only to a holder of property that is taxable in the current taxation year,
 - (ii) 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, abatements or offsets, and
 - (iii) must be used only for the purposes of paying the taxes owing on the property in the current taxation year; and
- (d) provide that Council will in each taxation year determine all grants that will be given and authorize those grants in an expenditure by-law.

6.2 The By-law may provide for a form of tax abatement only where it is the same type and the same amount or percentage amount of abatement that is provided by the Province.

6.3 Where a By-law provides for tax abatement, the qualifying requirements must be set out in the By-law, and the amount of abatements given must be shown annually in the annual expenditure by-law.

7. Reserve Funds

7.1 If a First Nation wishes to establish a reserve fund,

- (a) the By-law must include the provisions set out in this section; and
- (b) each reserve fund must be established in an expenditure by-law.

7.2 The By-law must include the following provisions respecting the use of reserve funds:

- (a) except as authorized in the By-law, money in a reserve fund and interest earned on it must be used only for the purpose for which the reserve fund was established;
- (b) Council may, by expenditure by-law,
 - (i) transfer moneys in a capital purpose reserve fund to another reserve fund or account only where all projects for which the reserve fund was established have been completed,
 - (ii) transfer money in a non-capital purpose reserve fund to another reserve fund or account,

(iii) borrow money 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 money is needed for the purposes of that reserve fund; and

(c) all payments into a reserve fund and all expenditures from a reserve fund must be authorized by an expenditure by-law.

7.3 Where a By-law provides for the investing of moneys in a reserve fund that are not immediately required, it must allow for investment only 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.

8. Tax Payments

8.1 The By-law must

(a) provide for the date on which taxes are due and payable; and

(b) set out the acceptable forms of payment and where payment must be made, if applicable.

8.2 Where the By-law provides for tax payments by instalments, the By-law must set out

(a) how a taxpayer may apply to pay taxes by instalments;

(b) the due date for each instalment;

(c) how each instalment amount will be calculated;

(d) any consequences of failing to pay an instalment by the instalment due date; and

(e) any penalties or interest that will be levied on unpaid instalment payments and when such charges will be imposed.

8.3 The By-law may require taxpayers to make an interim tax payment before the First Nation establishes its annual tax rates, provided the First Nation is located in a Province that permits interim tax levies in the provincial property taxation regime.

8.4 Where a By-law requires an interim tax payment, the By-law must set out

(a) the date on which the interim payment is due and payable;

(b) the calculation of the interim payment amount based on a specified percentage of the property taxes levied on a property in the previous taxation year;

(c) the interim tax payment percentage for each property class;

(d) that the interim tax payment will be applied towards the total taxes owing for that taxation year; and

(e) any penalties or interest that will be levied on an unpaid interim tax payment and when such charges will be imposed.

8.5 The percentages required by paragraph 8.4(c) must not exceed the percentages permitted under the applicable legislation in the Province in which the First Nation is located.

9. Tax Roll and Tax Notices

9.1 The By-law must provide for the tax administrator to create a tax roll each year by a date set out in the By-law.

9.2 The By-law must require the tax administrator to mail a tax notice in each year by a date set out in the By-law that is at least thirty (30) days before the date that any taxes are due.

9.3 The By-law must require the tax administrator to mail a tax notice to

- (a) each holder of an interest in land subject to tax; and
- (b) each person whose name appears on the tax roll in respect of a taxable property.

9.4 The By-law must require a tax notice to contain at least the following information:

- (a) a description of the property;
- (b) the taxes imposed under the By-law for the current taxation year, or the interim payment amount owing, as applicable;
- (c) when penalties will be added if taxes are not paid;
- (d) any unpaid taxes, penalties, interest and costs in respect of the property; and
- (e) where payment must be made, the manner of payment, and the date or dates the taxes are due, including due dates for any interim tax payments and instalment tax payments.

9.5 The By-law must provide for the mailing of amended tax notices where the tax roll is amended to reflect an amended, revised or supplementary assessment roll.

10. Tax Refunds

10.1 The By-law must set out procedures for providing refunds to taxpayers and the circumstances under which refunds will be given, and must include at least the following provisions:

- (a) a refund of excess taxes paid where a change in the assessment results in a reduction of taxes for a property; and
- (b) payment of interest at a rate of two percent (2%) below the prime lending rate of the principal banker to the First Nation on the fifteenth day of the month immediately preceding the calculation of the interest for the following three (3) month period.

10.2 Notwithstanding subsection 10.1, the By-law may provide that excess taxes be applied as a credit on account of taxes or other unpaid amounts due to the First Nation.

11. Penalties and Interest

11.1 Where the By-law provides for a penalty to be imposed in respect of unpaid taxes, the By-law must set out

- (a) the manner in which the penalty will be calculated;
- (b) the amount of the penalty, which must not exceed ten percent (10%) of the amount of the unpaid taxes; and
- (c) the date on which the penalty will be imposed if taxes remain unpaid.

11.2 Where a By-law provides for interest to be charged in respect of unpaid taxes, the By-law must set out

- (a) the manner in which interest will be calculated; and
- (b) the rate of interest, which must not exceed fifteen percent (15%) per year.

12. Enforcement

12.1 The By-law must set out the enforcement measures that may be taken by the First Nation to collect unpaid taxes.

12.2 If the First Nation wishes to recover its costs of enforcement, the By-law must set out the types of costs and how the amounts are determined.

13. Confidentiality

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

- (a) in the course of administering the By-law or performing functions under it;
- (b) in proceedings before the Assessment Review Board or a court of law;
- (c) where a holder gives written authorization for his or her agent to obtain confidential information relating to a property;
- (d) by the tax administrator to a third party for research (including statistical) purposes, provided the information or documents do not include any information that is in an individually identifiable form;
- or
- (e) by Council to a third party for research (including statistical) purposes.

14. Procedural Requirements

The requirements set out in Part VII of the Commission *Policy for First Nation Property Assessment By-laws, 2018*, apply to every By-law, including a by-law amending or repealing such a By-law, and a First Nation must meet those requirements in addition to the requirements set out in this Policy.

PART VIII

REVOCATION AND COMING INTO FORCE

Revocation

The *Property Taxation By-law Policy* established and effective as of June 28, 2017 is revoked.

Coming into Force

This Policy is established and in effect as of August 1, 2018.

PART IX

ENQUIRIES

All enquiries respecting this Policy should be directed to:

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

or

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