

CLEARING THE PATH

First Nations Tax Commission

Volume 5 Issue 2 March 2011



Commission Reviews BC Carbon Tax Measures

The First Nations Tax Commission (FNTC) is concerned that recent carbon tax measures announced by the BC Government will not benefit taxpayers on First Nation lands as they should. The measures only provide carbon tax relief to property taxpayers under provincial property tax jurisdiction. The FNTC is seeking changes to the carbon tax relief measures so that taxpayers on First Nation lands have equal access, and First Nation tax authorities will not be adversely affected.

In January 2011, the BC Government introduced several measures aimed at reducing the burden of carbon tax on certain BC property taxpayers:

- Northern and Rural Homeowner benefit of up to \$200 for homeowners outside of the Capital Regional District, Greater Vancouver Regional District and Fraser Valley Regional District starting in the 2011 tax year.
- Industrial Property Tax Credit of 50% of school property taxes payable by light and major industrial businesses starting in the 2009 tax year and rising to 60% in 2011.
- School property taxes for farm land cut by 50% starting in 2011.

Currently, these carbon tax relief measures are not available for any taxpayers situated on First Nation lands. The FNTC estimates that taxpayers from 35 taxing First Nations are affected.

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Chief Commissioner Jules is shown above with Dr. Larry Susskind of the Consensus Building Institute in Boston, Massachusetts.

Settling Disputes and Building Relationships

Since 1998, the Consensus Building Institute (CBI) and the First Nations Tax Commission (then the Indian Taxation Advisory Board) have been working together to bring the mutual gains approach to negotiation to resolve disputes as they may arise in the First Nation property tax setting. Dr. Larry Susskind, founder of the Institute, along with his colleagues, have personally worked with the FNTC to provide ongoing training in dispute resolution. Members of the Commission and staff met with CBI to receive further training in this area in March 2011.

Clearing the Path recently met with Dr. Susskind who answered a few questions for our readers.

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Message from the Chief Commissioner



Welcome to the spring edition of *Clearing the Path*. We are nearing the busiest time of the year for First Nation tax authorities. During the next few months many communities will be completing assessment reviews, meeting with taxpayers, developing their rates and expenditure laws and by-laws, issuing their tax notices and collecting tax revenues.

The FNTC is always working to provide more support to First Nation tax authorities and their taxpayers during this busy time. I would like to report on three examples of projects we are working on. In 2008, the BC government introduced the carbon tax with the promise that it would be revenue neutral for taxpayers. This year, three programs for homeowners, industrial properties and farms were implemented to ensure the carbon tax was revenue neutral for those most impacted by the tax in rural and northern areas. Each of these programs was implemented through the provincial property tax system. Unfortunately, these programs are not applicable to First Nation taxpayers, even though they are paying the carbon tax. The FNTC is working with impacted First Nations, their taxpayers and the provincial government to ensure that these provincial carbon tax rebate programs are applied fairly.

In 2009, the FNTC released the Tax Administrator's Software (TAS) to help First Nation tax authorities efficiently create tax notices and collect taxes. We are now adding a number of enhancements to improve this software and to improve information to taxpayers and to First Nation tax authorities. We are also looking forward to releasing the Alberta version of TAS later this year.

Last year, First Nations began approaching the FNTC about using the business activity tax power in the *First Nations Fiscal and Statistical Management Act*. I can now report that in 2011 we will be working with communities from Manitoba, Saskatchewan, Alberta and British Columbia to develop business activity tax samples that are consistent with best practices and could be applied within these communities.

On a final note, we are in the midst of a federal election. Fifty-one years ago, on March 31, 1960, First Nation people won the right to vote in federal elections. This right is only meaningful if it is exercised. It is important for First Nation people to vote and be active participants in the Canadian federation.

Sincerely,

A handwritten signature in cursive script that reads "Manny".

C.T. (Manny) Jules
Chief Commissioner

BC Carbon Tax Measures

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First Nation tax authorities have expressed concern about the impact of these measures, particularly in relation to the Home Owner Grant Program. Under the carbon tax changes, the basic homeowner grant for affected homeowners will increase by \$200 to \$770 and the additional grant to \$1045. Residential taxpayers on reserve have made inquiries as to whether First Nations will be offering similar increases to their homeowner grant programs. First Nations do not collect carbon tax so they do not have an existing fund available to provide for the enhanced grant.

If services are to be maintained at existing levels, expenditures to provide the carbon tax grant

would result in a tax increase for the current year.

The Industrial Property Tax Credit and Farm Property Tax reduction are aimed at businesses. The measures are intended to ensure that businesses do not experience a net increase in taxes that would simply make them less competitive. However, businesses located on First Nation lands, which pay the carbon tax, will not receive this same compensation.

The FNTC recognizes the fiscal impact that these measures have placed on many First Nation tax administrations in the BC Interior and elsewhere. The Chief Commissioner has outlined FNTC's concerns in a letter to the provincial government, calling for an early meeting with provincial officials in order to find ways to remedy the problem.

Settling Disputes

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1. How was the Consensus Building Institute founded and what does it do?

I created the Consensus Building Institute (www.cbuilding.org) in 1993. I had been working with a for-profit dispute resolution company called Endispute, Inc

but I wanted to devote my time to working with governmental, civil society and aboriginal groups. That wasn't really possible in a company that was mostly interested in making a profit by mediating cases involving corporations that were in court and wanted help settling their disputes.

So, with the assistance of my wife and two Harvard colleagues, we created the not-for-profit Consensus Building Institute. For almost twenty years, we have been providing conflict management (i.e. mediation and training) services around the world. My goal has also been to create opportunities for my MIT and Harvard students to apprentice as public dispute mediators so I can increase the supply of skilled mediation professionals. CBI allows us to bring the theoretical insights of the inter-university Program on Negotiation at Harvard Law School to practice and then to strengthen theory by reflecting on the results of our practice.

2. Can you explain how disputes between nations negotiating the Kyoto agreement and disputes between a First Nation and taxpayer are similar?

There are formal ways of settling disputes and there are informal ways. If disputants go to court, they have to follow very elaborate procedures, even if those rules get in the way of resolving particular disagreements. When parties engage in informal problem-solving, however, they sit down face to face and talk out their differences (sometimes with the help of a trained intermediary and sometimes on their own). The techniques of informal problem-solving are pretty much the same regardless of the scale at which they are applied. The help that a mediator can provide is the same.

When 195+ nations get together and try to use

formal diplomatic procedures to hammer out the details of a global treaty, the "rules" often get in the way of reaching agreements that all the parties know in their hearts would make a lot of sense. When a First Nation needs to work out a complaint or a dispute with an individual taxpayer they can use a formal (bureaucratic) procedure that is the same for all taxpayers; or, they try a more straightforward, informal problem-solving process appropriate to the particular situation. Helping the parties to the Kyoto negotiation learn how to use informal problem-solving techniques within the context of their formal treaty-making procedures has a lot in common with efforts to help a First Nation work out an informal agreement with an individual taxpayer. In each case, we need to help the parties understand how a mediator can be of assistance. We need to provide confidential advice to all sides so they can prepare properly for such problem-solving. And, we need to help the senior managers or leaders in all these cases understand how to add informal problem-solving without undermining their formal rules and procedures.

3. How would you see mutual gains benefiting First Nations?

Mutual gains is an approach to decision-making and conflict management that can be applied at any and all levels. Within First Nations, the way councils generate decisions can be enhanced by applying a mutual gains approach to collective decision-making. Efforts to pursue treaty rights can be enhanced by applying the mutual gains approach in negotiating situations where it hasn't been used before. The interaction among all the bands could be enhanced by adding a mediation step to the current group decision-making procedures that sometimes lead to adversarial position-taking. Governmental and administrative organizations can use mutual gains to cooperate and coordinate their assistance to First Nations.

4. What has been most rewarding with the mutual gains approach to dispute resolution?

When I can help the people in any organization or group improve their own ability in dealing with their differences using mutual gains — such that they can resolve future disputes in ways that generate fairer, more efficient, more stable and wiser results without my help — that's the most satisfying.

Local Revenue Account and Audit Requirements

We are entering into the time of year when First Nations begin to prepare their audits. For taxing First Nations, this includes preparing for an audit of the local revenue account. The local revenue account is a separate account where all of the First Nation's property tax revenue is placed. First Nations conduct a separate audit of the local revenue account annually. Given that auditors or the personnel involved in preparing the annual financial statements will change from time to time, tax administrators will typically meet with the auditor annually to familiarize the auditor with the local revenue account, and ensure revenue and expenditures in their local revenue account are reported properly.

While the audit of the local revenue account, and ensuring the audit report availability, are legal requirements for First Nations taxing under the FSMA, they are widely practiced by all taxing First Nations because they reflect sound financial management policy. Members, taxpayers, and potential investors need to have confidence in the management of the First Nation tax system, and access to the audit of the local revenue account is a fundamental pillar in instilling that confidence.

Tulo Centre Update

The Tulo Centre of Indigenous Economics is pleased to announce that the 2011/2012 academic calendar, including courses from the Certificate in Tax Administration and the Certificate in First Nation Applied Economics, will soon be available on the Tulo website (www.tulo.ca) along with registration applications and program information including academic policies. This academic year will see many new and exciting events such as the first graduating class of the Certificate in Tax Administration, classroom space in the new House of Learning at Thompson Rivers University and the first steps of the development of the Diploma program in First Nation Applied Economics.

You can enter your name in a draw to win a limited edition luggage tag. Email your response to the following question to sarah@tulo.ca.

Question: What are the eight courses in the Certificate in First Nation Tax Administration program? **Hint:** The answer can be found on the Tulo website.

The Tulo Centre is a not-for-profit institution dedicated to delivering certificate and diploma programs in First Nation Tax Administration, First Nation Economics and First Nation Public Finance. For the latest news and developments in Tulo programs and services, please visit the Tulo website (www.tulo.ca).

New Website for First Nations Gazette

The *First Nations Gazette* has revised its website. Not only does the site have a new look, but it now has a new document handling and search database. You may visit the site to look up any number of resources, including all FSMA laws and all by-laws developed under s.83 of the *Indian Act*. You will also find all the laws, regulations, standards, and policies that govern First Nation property tax jurisdiction. To visit the new site, go to www.fng.ca.



First Nations Tax Commission
Commission de la fiscalité des premières nations

Head Office

321-345 Yellowhead Hwy
Kamloops, BC V2H 1H1.
Phone: (250) 828-9857 Fax: (250) 828-9858

National Capital Region Office

160 George St., Suite 200
Ottawa, ON K1N 9M2.
Phone: (613) 789-5000 Fax: (613) 789-5008

www.fntc.ca

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