



CLEARING THE PATH

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Improvements to the Standards for First Nation Tax Rates Laws

In late 2015, FNTC introduced a series of proposed changes to its Standards concerning annual tax rates laws. As First Nations begin to prepare for the 2016 Property Tax year, we take a closer look at the upcoming changes affecting First Nation Tax Rates Laws.

Average Tax Bill Calculation

For nearly ten years, the FNTC has been using the “average tax bill” comparison as a means to determine the impact a proposed tax rate may have on taxpayers, and whether First Nation tax rates can be approved. The FNTC compares a First Nation’s current year average tax bill (based on the proposed First Nation tax rates) with the previous year’s average tax bill. As long as the current year’s average tax bill does not increase by an amount greater than the national rate of inflation (CPI) or by the rate of increase in the reference jurisdiction, the rates will meet the requirements of the Standards. Many local governments have adopted a similar “average tax bill” comparison when communicating how their proposed tax rates will impact certain taxpayers (especially residential and commercial taxpayers).

Under the FNTC Standards, the “average tax bill” is determined by either using the mean (i.e., the total property tax raised divided by the number of taxpayers) or the median (i.e., the midpoint between the highest and lowest property taxpayer). The proposed changes to the Standards would enable the use of a median “representative” taxpayer whose actual tax bill can be compared from year to year. This change simplifies the average tax bill calculation for tax administrators. It also provides a better tool to track real changes in the average tax bill.

Other changes to the average tax bill calculation would exclude results from assessment appeals where the result leads to increases/decreases in value. This will ensure that the average tax bills are not skewed by changes in assessed values attributable to appeals. Additionally, the proposals will exclude certain properties

whose assessments are governed by regulated rates from the average tax bill calculation. For example, railways in British Columbia are assessed using a regulated rate that is based on actual tonnage which can vary significantly from year to year. These changes will ensure that First Nations can set rates using either CPI or average tax bill comparison in a way that achieves fairness.

Justification for Additional Rate Increases

The ability for First Nations to impose rates that exceed rates requirements is currently found in section 7 of the Standards. The proposed changes would set out three distinct rationale:

- significant increases to the cost of local services (i.e., water, sewer, waste collection, fire protection, and road maintenance);
- consistency with a First Nation’s reference jurisdiction transition plan, or
- taxpayer support within the affected class.

First Nations citing significant increases in the cost of services as a justification, would provide evidence to the Commission in the form of a signed service agreement showing cost increases, or written evidence provided by the First Nation’s chief financial officer.

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Message from the Chief Commissioner



This is my first report for 2016 and I trust that everyone working to develop our First Nations tax system is greeting the new year with a renewed commitment to marshal the strength and energy needed to respond to the economic and other challenges we are facing.

In October 2015, Canadians elected a new government, one that is committed to establishing a nation-to-nation relationship with First Nations. They are committed to raising our service and infrastructure standards to those of other jurisdictions through a new fiscal relationship based on stable revenues. As taxing First Nations know well, the most stable revenue source is a permanent tax jurisdiction, so this could be a great opportunity to work with First Nations and the federal government to advance our tax jurisdiction and develop a new revenue based fiscal relationship.

As you know, a number of First Nations have been promoting the aboriginal resource tax as a means to reconcile their aboriginal title with proposed resource projects in their territories. We have been working with these First Nations and providing presentations to other interested First Nations and governments. I believe this concept has the potential to be the foundation of a new fiscal relationship and provide First Nations with the stable revenues necessary to close the infrastructure and services gaps with other Canadians. I expect we will be talking a lot more about ART in 2016.

In June 2015, with your support, some amendments were passed by Parliament to improve the First Nations Fiscal Management Act. Those amendments will come into force later this year so we will be working with taxing First Nations in the coming months to efficiently and effectively implement them. We will also be implementing new changes to the property tax rates standards and policy, and working with the First Nations Financial Management Board on standards associated with the local revenue account.

This year will also see the further expansion of the First Nations Gazette as the definitive source for First Nation law. We will also be working with the First Nation Tax Administrators and the Tulo Centre of Indigenous Economics to develop additional courses on new fiscal relationship and implementing all FMA revenue options. These courses will support a new Tulo Centre diploma for interested tax administrators and other First Nation students and staff. The Commission will also work with the federal government to help improve First Nation access to the full range of revenue raising tools currently available.

The personal support I received last year from Chiefs, Councillors, members, tax administrators and on-reserve taxpayers from across Canada has been overwhelming and something which I will always remember. It provides me with great strength and the determination to carry on our joint work to grow our economies and expand our tax jurisdiction.

I want to reiterate my gratitude for your support and dedication to our common cause. Together we can expect a great year for First Nation taxation.

Sincerely,

Manny
C.T. (Manny) Jules
Chief Commissioner



Download the FNTC App to your mobile device today!
You will have quick and immediate access to current news, announcements and updates. To download, scan the QR code or search "FNTC" in the Apple Store or Google Play Store.



A New Path: The Aboriginal Resource Tax

The story of First Nations property tax jurisdiction is well known. When First Nations assumed permanent property tax jurisdiction over their own lands, it started a process of economic renewal. It attracted investment and land values rose. The value of the taxes collected from those lands grew quickly. There were substantial improvements in opportunities and services for members. Many First Nations became major contributors to their regional economies.

This story is used to explain the Commission's perspective: permanent First Nation tax room and First Nation control of services makes everyone better off. Much of our economic disadvantage is a result of the failure of other governments to properly acknowledge First Nation tax jurisdiction since confederation. In fact, in the 1920s, the ability to raise any revenues was taken away. As a result, First Nations became dependent on other governments. With no money and no power, the decisions that affected the daily lives of First Nations were often made in Ottawa or regional offices.

First Nation assumption of property tax and other tax jurisdictions started to correct this historic injustice. However, it was only a start. First Nation tax jurisdiction has been constrained to reserve lands. These are small in size relative to our historic territories, and many are poorly sited. As a result, not all First Nations have been able to take advantage of their tax jurisdiction.

However, because of the Commission's experience with property tax we see the path forward. Tax jurisdiction had let the economy work for First Nations. It provided First Nations with the capacity to participate in the economy and to share directly in the benefits when business succeeds. Once First Nations were able to

generate their own revenues it began to free them from having revenues determined by some arbitrary standard that is unrelated to national standards.

Tax jurisdiction allows First Nations to move away from a world where their priorities are dictated by other governments. It also provides a measure of protection. When times are hard, transfers to other governments are always the first things to be cut. As is well known, for many years, First Nations have lost progress on transfers and funding levels compared to services in other jurisdictions.

The way forward to correct this is by expanding First Nation tax jurisdiction. The FNTC is exploring how this could be achieved through an Aboriginal Resource Tax (ART). The ART would allow First Nations to establish tax jurisdiction over their whole traditional territory and generate revenues from new projects on their territory.

The development of an ART makes good economic, fiscal and political sense for both First Nations and Canada. It would signal in a very real way Canada's commitment to correcting a historical injustice and instituting true nation to nation relations. It would provide more stable revenues to support a new fiscal relationship. It would improve the investment climate. First Nations could develop more self-sustaining economies and governments and move towards greater independence.

The FNTC has been working with interested First Nations to discuss and advance the ART. For more information on the ART, or to schedule a presentation on this important initiative, please contact the FNTC at mail@fntc.ca. ■

\$200 million goes unclaimed by First Nation governments annually

How much is **your First Nation** missing out on?

200 millions de dollars ne sont pas réclamés par les gouvernements des premières nations par année

A combien se chiffre le manque à gagner pour **vo**tre première nation?

LET US SHOW YOU HOW TO USE YOUR JURISDICTION AND POWERS. Permettez-nous de vous montrer comment exercer vos pouvoirs et votre compétence.

FIRST NATIONS TAX COMMISSION
COMMISSION DE LA FISCALITÉ DES PREMIÈRES NATIONS
WWW.FNTC.CA

Créer des revenus maintenant et pour les générations à venir

Create revenue now and for future generations

Year	Revenue (Million \$)
1997	22
2004	72
2014 (Projected)	154
2014 (Estimated Future Growth)	100

A STABLE RESOURCE. A LEGACY.
UNE RESSOURCE STABLE. UN HÉRITAGE

Profile: Commissioner Ann Shaw



Commissioner Ann Shaw is a lawyer from Quebec with more than 25 years experience in real property and taxation matters.

Her expertise includes litigation and advising clients on diverse topics ranging from GST, PST, and income tax to land development and preservation issues.

Commissioner Shaw's background has allowed

her the opportunity to negotiate extensively with all levels of government and has introduced her to First Nations' issues relative to residential homes located on reserve lands.

Clearing the Path recently had the opportunity to sit down with Commissioner Shaw to talk about her experience and involvement with the FNTC.

How does your previous experience relate to your work as a Commissioner?

Early in my career I worked for the Ministère de la Justice (Québec) and that helped solidify my understanding of how government works and how sensitive issues are addressed in many areas. I honed my negotiation skills and learned to understand the opposing party's point of view and determine its objectives in order to settle cases out of court. My legal background has enabled me to comprehend First Nations' issues and appreciate the historic context behind existing problems. My expertise and knowledge of taxation and real property matters allows me to better fulfil my role as a Commissioner by

facilitating my understanding of what is at stake for all stakeholders.

What made you interested in putting your name forward to serve on the Commission?

I am deeply interested in First Nations and their issues and felt that my background would allow me to make a valuable contribution. I thought my experience dealing with federal, provincial and municipal governments could be helpful as well. I wanted to learn more about First Nations and First Nations property taxation. I saw the opportunity to collaborate in the development of a framework that could assist First Nations better their living conditions in Canada.

What has your experience been like serving as a Commissioner? Is it what you expected?

I have learned so much about First Nations since 2007. I am thrilled and honoured to be part of the team made up of the Chief Commissioner and fellow Commissioners, along with staff and advisors. I did not expect my work as a Commissioner to encompass such a wide range of issues.

What do you see for the future of First Nation economic development?

The economic challenges that all governments (including First Nations) face will require new ways of doing things to develop First Nations' economies.

My experience has taught me that innovative thinking and innovations in fiscal relationships will continue to offer viable alternatives to give First Nations the opportunities they need to become self-reliant.

I expect more First Nations will choose property taxation and use the FMA framework as a means to spur economic growth and improve their lives. ■

TULO CENTRE OF
INDIGENOUS
ECONOMICS

www.tulo.ca
REGISTER FOR A
TULO CENTRE
PROGRAM

TAS
Tax
Administration
System

tascloud.ca

Tax Administration System (TAS) is a simple and powerful administrative tool designed to help tax administrators efficiently manage the complete annual property tax cycle.

New Guide to Property Tax Expenditures and Local Revenue Account Management

The First Nations Tax Commission has developed a resource guide to assist financial practitioners in carrying out their roles and responsibilities related to managing and reporting of Local Revenue Account activities. The Guide which is planned to be released early in the spring will provide general information on property tax expenditure management and reporting. The guide reflects amendments to the FMA which we anticipate will come into effect in April 2016.

The reference guide developed for finance practitioners provides a brief description of the mandate of the First Nations Tax Commission, an overview of the legal framework for First Nation property taxation in Canada

and the various local revenue laws that may be made by a First Nation, an overview of the tax rate and budget setting process, local revenue expenditure categories and management, and an overview of reporting and audit requirements for the local revenue account. The guide will be available in print form and will be available for download on the FNTC website.

In conjunction with the release of the guide, the FNTC will be hosting webinars for finance officials on local revenue account management and property tax expenditures. If you are interested contact FNTC for dates and further information. ■

BC First Nation Assessment Appeals Lower than Provincial Average

Over the last 10 years, approximately 1% of all First Nation assessments have been appealed compared to 1.5% of all provincial appeals. Currently, 98 First Nations levy property taxes in British Columbia under the *First Nations Fiscal Management Act* (72) and section 83 of the *Indian Act* (26).

As is illustrated in the chart below there were only 2 years (2007 and 2011) where the percentage of First Nation appeals was higher than elsewhere in the province, and 8 years where the percentage of provincial assessment appeals were higher than the percentage of First Nation assessment appeals. Possible reasons for the lower proportion of assessment appeals on First Nations include the standardized First Nation assessment legal framework supported by the professional work of British Columbia Assessment in providing stable and reliable assessment rolls, all within the First Nation taxation regulatory framework. The result is certainty and satisfaction to taxpayers on reserve. ■

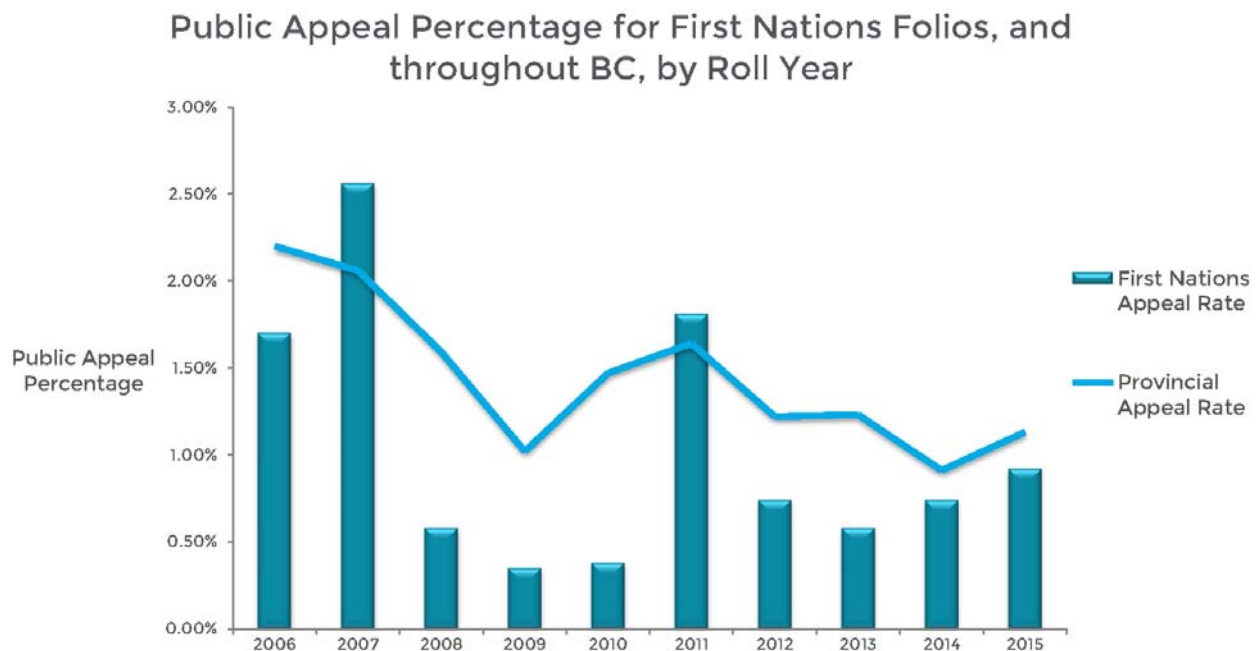


Chart courtesy of BC Assessment. BC Assessment works hard to provide First Nations with stable and reliable assessment rolls that help fund vital community services. www.bcasessment.ca

Implementing Amendments to the FMA

In September 2015, the Clearing the Path reported on the amendments to the *First Nations Fiscal Management Act* (FMA) passed by Parliament in June, and the work on amendments to several FMA Regulations. The timetable for the introduction of the amendments remains April 2016. With the amendments to the FMA and its regulations slated to come into effect in April 2016, the FNTC will be making corresponding changes to its Standards, sample laws, and law development materials. A full list of all proposed regulatory amendments advanced by the Commission can be found on www.fntc.ca.

Here's a brief look at some of the FMA changes involving First Nation property taxation:

Access to the FMA

- The Minister of Indigenous and Northern Affairs, rather than Governor in Council, can amend the Schedule for First Nation participation. This will significantly reduce delays associated with adding new First Nations to the FMA Schedule.

Notification of Laws

- Shorter period of notification of laws or amendments (from 60 to 30 days).
- Mail out requirement to members and taxpayers eliminated.
- Newspaper publication requirement eliminated. Replaced with notification in the First Nations Gazette.
- Gives FNTC the ability to develop standards for notification.

Submission of Laws for FNTC

- Representations to Council no longer need to be sent to FNTC.

Property Taxation

- Local revenue includes payments in lieu of taxation.
- New fiscal power for collecting fees for water, sewer, waste management, animal control, recreation, and transportation, and other similar services.
- Clarifies that the recovery of costs for enforcement (including the costs of the seizure and sale of taxable property) are affirmed.

Annual Laws (Annual Rates and Expenditure Laws)

- Clarifies the ambiguity of when annual laws need to be made.
- Gives FNTC the ability to develop standards to facilitate the different timing requirements for First Nations.
- Clarifies the legislative authority for expenditure laws, and eliminates the need for interim budgets.

Local Revenue Account Management

- Clarifies that local revenues must be placed in local revenue account with a financial institution, and separate from other moneys of the First Nation.
- Provides that certain First Nations may opt for segment reporting on the local revenue account instead of conducting a separate audit.



Gazette des premières nations
First Nations Gazette

www.fng.ca

**Supporting the Legal Voice
of First Nations**



In addition to the changes to the FMA, the FNTC has been working with the federal government to amend several regulations supporting First Nation property assessment and taxation. Developed in consultation with all stakeholders, these changes will result in regulations that create efficiencies in the process, are smarter, and more responsive to First Nations and their taxpayers. Amendments of particular significance to tax administrators include:

Amendments to the Assessment Appeal Regulations

- Clarifies that non-practicing members of a law society can sit on the assessment appeal board.
- Eliminates the requirement that the assessor's address be included in the assessment law.
- Reduces the appeal timeline from 60 days to 45 days, the notice of hearing from 30 days to 10 days, and the commencement of a hearing from 90 days to 45 days.
- Provides for the Chair to provide documents to all parties in an appeal.
- Enables First Nations to set a timeframe for assessment review board decisions, provided the time is not less than 90 days from the hearing date.
- Clarifies the right to appeal a decision of the assessment review board, within 30 days of the board's decision.

Amendments to the Assessment Inspection Regulations

- Enables First Nations to use assessment inspection processes that are used in the province, instead of the processes set out in the Assessment Inspection Regulations.

Amendments to the Taxation Enforcement Regulations

- Clarifies the content of the Tax Arrears Certificate, and when a Tax Arrears Certificate is required.

Property Taxation helps create sustainable communities

Property taxation is an independent source of stable revenue that ensures First Nations have the confidence to plan for the future.

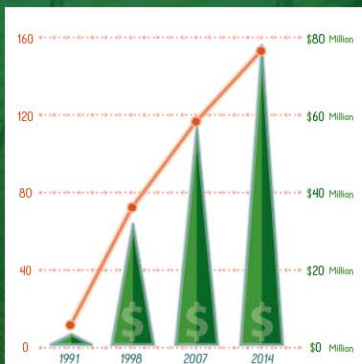
Property Taxation helps create strong governments

The First Nations Tax Commission works with First Nation governments to build and maintain property tax systems that grow revenues and increase local services.

FIRST NATIONS ACROSS THE COUNTRY ARE TRANSFORMING THEIR ECONOMIES THROUGH IMPLEMENTING PROPERTY TAX SYSTEMS.

• Number of First Nations with tax jurisdiction

■ Total tax revenue raised annually (Millions)



First Nation Jurisdiction

First Nations have developed property taxation over the past 25 years and have expanded taxation revenues, moving beyond dependency to become sustainable communities that provide quality services. The FNTC provides First Nations with the tools to create revenue opportunities by helping them create fair and transparent tax systems to ensure First Nations and their taxpayers receive the maximum benefits from their tax systems.



Building Economies

Taxation is an important tool governments use to generate revenues and support economic activity. Revenues from tax dollars fund new infrastructure that attracts investment. Investment drives economies by creating jobs and more infrastructure, increasing the First Nation's tax base. Increased tax revenues help First Nations improve services for taxpayers and help to fulfill community aspirations.



Capacity Building

- Tulo Centre of Indigenous Economics – In partnership with FNTC, The Tulo Centre provides a university accredited certificate in First Nation Tax Administration. FNTC provides limited bursaries for students to help cover the costs of tuition, travel and some meals while on campus.
- Tax Administration System (TAS) – Created in partnership with FNTC, TAS is a web application designed specifically for taxing First Nations to assist with the management of the annual property tax cycle, including preparing rates, tax budgets, and tax notices.



Online Toolkit

www.fntc.ca

- The First Nations Tax Commission's website contains a property taxation toolkit which includes the applicable legislation, regulations, standards, sample laws and notices, explanatory notes and information related to the support of First Nation property.



Let's help you get started:

- When a First Nation decides to exercise property taxation jurisdiction, it can access one of two enabling federal statutes: the *Indian Act* or the *First Nations Fiscal Management Act*. In either case, the First Nations Tax Commission is the body that provides institutional and regulatory support to First Nation property taxation.
- Contact the FNTC to learn more about the steps involved in developing and maintaining a property tax system.

First Nations citing taxpayer support would provide the Commission letters of support from individual taxpayers or their associations representing at least 50% of the taxpayers in the property class, holding at least 50% of the total assessed value in the class. First Nations who have a transition plan for rate setting in their property tax law can only use taxpayer support to justify variations with the transition plan rates.

Transition to Reference Jurisdiction Rate-Setting

Used by many First Nations to establish their tax rates for the year, reference jurisdiction rates-setting involves “mirroring” the tax rates of an adjacent local government jurisdiction (or reference jurisdiction). This allows for harmonization with jurisdictions off-reserve, many of which provide local services to First Nations through service agreements.

The current definition in the Standards regarding reference jurisdiction rate-setting requires the use of the reference jurisdiction’s current and previous year’s tax rates. This makes it difficult for a First Nation to switch to this form of rate-setting.

To enable First Nations wishing to adopt this form of rate-setting while ensuring that such a transition does not lead to an adverse impact on taxpayers, the proposed Standards sets forth a process requiring advanced taxpayer notice, taxpayer engagement, and an incremental transition plan. The transition plan would include a description of how increased revenues will lead to improved services or improved local infrastructure, and the plan would require that the transition be completed within 5 years.

First Nations seeking to justify their tax rates as transitioning to the reference jurisdiction’s rates, would submit:

- their reference jurisdiction transition plan;
- confirmation that the First Nation provided written notice to taxpayers in the previous year of the First Nation’s intention to develop a transition plan and intention to move to reference jurisdiction rates; and
- confirmation that the First Nation gave notice of the meeting to its taxpayers (to taxpayer associations, FN website, First Nations Gazette, and posted on-reserve locations), at least 14 days in advance.

Property Tax Transition Periods for Certain Jurisdictions

Under the proposed changes to the Standards for First Nation Property Taxation Laws, a transition period is advanced to enable First Nations to incrementally introduce property taxation in certain jurisdictions that use a fee for service structure to meet the cost of local services provision. Proposed changes to the Standards for First Nation Tax Rates Laws are designed to

accommodate these transition provisions by providing for exceptions to the:

- minimum tax requirements - Transitioning jurisdictions would establish a minimum tax during the transition period that is equal to the service fee charged in the year prior to taxation; and
- first year of taxation and subsequent year requirements – Transitioning jurisdictions would establish first year and subsequent year tax rates consistent with their transition provisions.

Use of Tax Districts and Rates for Separate Reserves

Tax districts are used by some First Nations to treat different parts of their tax base differently to reflect varying levels of service or to allow for greater harmonization with adjacent jurisdictions. A new section is added to reflect First Nation practice and existing policy with regard to rates setting for tax districts and separate reserves. The proposed changes require rates to be established for each district and provide for the rate-setting requirements in the Standards to apply to each district separately. Further, other changes would enable First Nations to establish separate rates for separate reserves where there are multiple reference jurisdictions, without necessarily establishing districts for separate reserves.

These changes to the Standards for First Nation Tax Rates Laws are expected to be finalized and come in force before April 2016. Comments or questions regarding the proposed changes can be made to the FNTC at mail@fntc.ca. ■



First Nations Tax Commission

Head Office

321-345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1

Telephone: (250) 828-9857 Fax: (250) 828-9858

National Capital Region Office

202-190 O’Connor Street
Ottawa, ON K2P 2R3

Telephone: (613) 789-5000 Fax: (613) 789-5008

Toll free: 1-855-682-3682

www.fntc.ca | mail@fntc.ca

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