



FIRST NATIONS TAX COMMISSION
COMMISSION DE LA FISCALITÉ DES PREMIÈRES NATIONS

2023 ANNUAL LAW DEVELOPMENT UPDATE

The Annual Law Development Update is issued by the First Nations Tax Commission (“FNTC”) to assist First Nation tax administrators in the development and submission of annual laws made under the *First Nations Fiscal Management Act* (FMA).

HIGHLIGHTS

The national rate of inflation for the 2023 Taxation Year is 6.32%

COVID-19 Pandemic Emergency Response Standards ended

COVID-19 PANDEMIC EMERGENCY RESPONSE STANDARDS ENDED

Given that health restrictions have been lifted throughout the country, and the pandemic’s economic impact has eased, in March 2023, the Commission ended the Covid-19 Pandemic Emergency Response Standards, 2020.

Introduced as a temporary measure in 2020, the Covid-19 Pandemic Emergency Response Standards were intended to provide flexibility for First Nations to respond to the pandemic.

As a result of lessons learned during the pandemic, the Commission is making changes to the Standards for the Submission of Information Required under Section 8 of the Act, 2018 to accommodate local revenue laws enacted at council meetings held by teleconference or videoconference and submitting local revenue laws that were not originally signed because the meeting was held virtually.

In addition, the Commission is proposing to amend the Standards Respecting Notices relating to Local Revenue Laws, 2018 to enable the use of in-person alternatives for public meetings, open houses, or taxpayer meetings. Individuals interested in commenting on the proposed changes can view at First Nations Gazette the [Proposed Standards respecting Notices relating to Local Revenue Laws - First Nations Gazette \(fng.ca\)](#). If you are considering holding such a meeting this year, please consult with your FNTC advisor for the most up-to-date information.

ANNUAL TAX RATES LAWS

Each year First Nation councils set tax rates to raise revenue to cover the costs of local services. These tax rates are set for each class of property and appear in a Schedule to the Annual Tax Rates Law.

TAX RATE SETTING IN THE FIRST YEAR OF TAXATION

For First Nations entering the first year of taxation, tax rates must typically be consistent with the former tax authority or the reference jurisdiction (adjacent tax jurisdiction). This requirement ensures there is a smooth transition to First Nation tax jurisdiction.

[For more information on rate setting in the first year, please consult with an FNTC advisor.](#)

TAX RATE SETTING IN SUBSEQUENT YEARS

FNTC Standards on tax rate-setting in subsequent years reflect a consideration of the needs of First Nation government and the interests of taxpayers who share the burden of taxes. After the first year of taxation, First Nations may set rates that either:

- Result in an average tax bill change in each property class that does not exceed the national rate of inflation (for the 2023 tax year it is 6.32%) and/or does not exceed the average tax bill change in the same class in the reference jurisdiction.
- Are identical to those in the reference jurisdiction, provided the rates were identical to the reference jurisdiction's rates in the previous year.

When using the average tax bill comparison methods described above, new properties and new construction must be excluded from the comparison.

[Please consult with an FNTC advisor if you have questions about setting tax rates.](#)

JUSTIFICATION FOR RATE INCREASES

In cases where First Nations establish tax rates that exceed requirements outlined above, the tax rates can be justified on one (1) or more of the following bases:

1. There is a significant anticipated increase to the cost of local services such as water, sewer, waste collection, fire protection and roads
2. The proposed rates are consistent with a First Nation's reference jurisdiction transition plan
3. There is taxpayer support for the increased rates within the affected class

First Nation tax administrators should contact an FNTC advisor as early as possible if the First Nation intends to provide such a justification.



ANNUAL EXPENDITURE LAWS

Each year First Nation councils set budgets for the provision of local services. The annual expenditure law is comprised of the law and the Schedule that sets out the annual budget and any required appendices.

REVENUES

The annual budget includes estimates of property tax revenues and other local revenues such as payments in lieu of taxation ("PILT"), property transfer tax ("PTT"), business activity taxes, penalties, interest and fees.

PROPERTY TAX REVENUES

Revenues from property tax is generally calculated by multiplying the total taxable value within a property class by the proposed rate. The calculations for each class of property are then totaled to determine total property tax revenue. Calculations must take into account any minimum tax, if applicable. In addition, property tax revenues include any penalties, interest and fees.

PAYMENTS IN LIEU OF TAXATION

Local revenues include moneys raised under a local revenue law as well as PILT payments. A PILT is typically made by other governments or government entities like Crown corporations that occupy interests on reserve. Examples of PILTs include payments from the federal government for federal properties, BC Hydro's Community Development Fund, or grants payments made in lieu of railway taxation.

PROPERTY TRANSFER TAX

First Nations collecting PTT must include an estimate of the PTT revenue expected in the current budget year. Estimated revenues may be based on a review of previous years' PTT revenue and/or current market conditions.

Where a First Nation is establishing a PTT in the current year, estimated revenues may be based on previous years' leasehold transfer transactions.



EXPENDITURES

Local revenue budgets must identify planned expenditures using the expenditure categories and sub-categories outlined in the FNTC document *Expenditure Categories for the Annual Expenditure Law Budget* (includes explanatory notes).

First Nations collecting development cost charges ("DCCs"), service taxes or fees have different requirements.

Please consult with an FNTC advisor if it is your first year collecting them.

CONTINGENCY AMOUNTS

The Expenditure Standards require that the local revenue annual budget include a contingency amount between 1% and 10% of the total budgeted local revenues (i.e., revenues raised under a subsection 5(1) law or payments made in lieu of property tax) excluding:

- Any amounts transferred from local revenue to a reserve fund or DCC reserve fund in the current year
- Any amounts transferred from a capital reserve fund or a DCC reserve fund into current year's revenues
- Any revenues from a service tax law
- Any revenues from a fee law
- Any proceeds of a borrowing from the First Nations Finance Authority.

ACCUMULATED SURPLUSES/DEFICITS

Part 3 of the Schedule identifies any surplus or deficit from the prior tax year.

TIMING AND NOTIFICATION OF ANNUAL LAWS

First Nations typically enact their annual expenditure law and their annual tax rates law at the same time. The date when a First Nation's annual rates law must be enacted is set out in the First Nation's property taxation law.

The FNTC recommends that First Nations submit their annual laws at least 15 days in advance of the date tax notices are to be issued. This will allow sufficient time for the review and approval of your First Nation's annual laws. Tax administrators are encouraged to submit signed laws and all supporting materials to the Registrar, Tracey Simon (tsimon@fntc.ca) as soon as practicable.



You must provide notice of the entire annual rates law and annual expenditure law, including the budget and appendices (if applicable), prior to the laws being submitted to the Commission for review and approval. Notice can be provided by:

- Posting the proposed annual laws on First Nations Gazette (www.fng.ca), or on a prominent place on the First Nation's website
- Using procedures set out in the First Nation's taxpayer representation to council law
- Holding a public meeting at which taxpayers may meet with the tax administrator or members of council to discuss the proposed law.

AMENDMENTS TO THE ANNUAL BUDGET DURING THE TAX YEAR

First Nations who wish to amend their local revenue budget in the current tax year must amend their Annual Expenditure Law and submit the law for FNTC review and approval.

Amendments to the local revenue budget are required when a First Nation wishes to make an expenditure that is not included in the local revenue budget or wishes to amend a budget amount.

ANNUAL AUDIT OF THE LOCAL REVENUE ACCOUNT

The FMA requires local revenues to be reported on and accounted for separately from other moneys of the First Nation and audited on an annual basis.

First Nations with annual local revenues of less than \$400,000, can disclose the required financial information in the form of a separate segment in the annual audited consolidated financial statements of the First Nation.

First Nations with annual local revenues in excess of \$400,000 are required to prepare a set of separate annual financial statements for the purpose of reporting relevant financial information pertaining to the collection and use of local revenues during the period.



COMMENTS OR QUESTIONS?

Please get in touch with an FNTC advisor or reach us at mail@fntc.ca.

