



FMA Law Notification, Representation, and Submission Guidelines

These guidelines are intended to assist tax administrators and First Nation legal counsel in summarizing requirements concerning notification, representation and the submission of First Nation laws. These Guidelines are divided into two parts: *FMA* Notification Representation Process and Submission of Laws for FNTC Review and Approval.

FMA Notification and Representation Process

Transparency is an important principle for the exercise of property taxation powers under the *First Nations Fiscal Management Act (FMA)*. For this reason, First Nation members, potential taxpayers, and others affected by First Nation taxation are afforded an opportunity to review and comment on the proposed property tax laws. The *FMA* contains specific provisions (sections 6 and 7) to ensure that these individuals and groups are given notice and an opportunity to provide comments before a First Nation Council formally enacts a property tax law.

Defects in notice have the potential of invalidating laws. Therefore, ensuring that the content of the notice, the recipients of notice, and how notice is given is consistent with legislative requirements is very important. For this reason alone, First Nation administrators should seek legal advice in carrying out their duties associated with section 6 and 7 notice provisions.



Types of First Nations Laws Affected

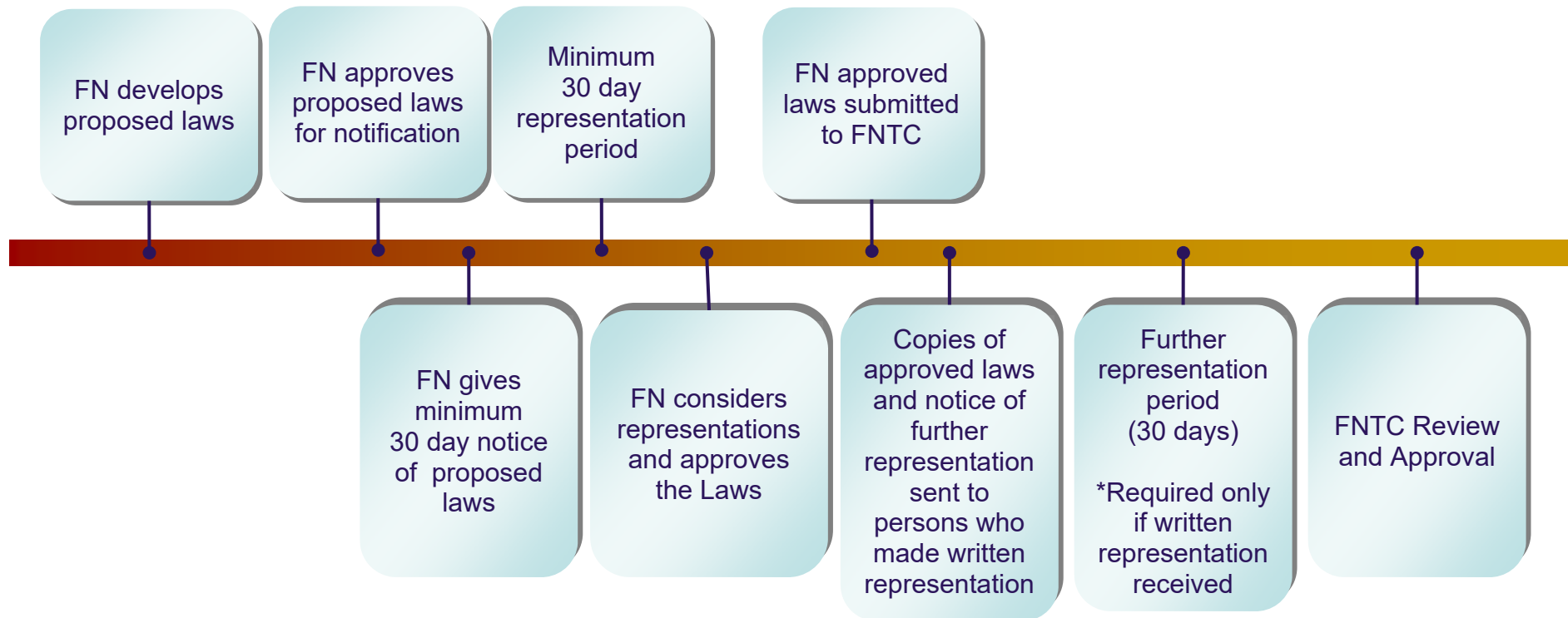
Not all First Nation laws made under the *FMA* are required to undergo the notification and representation process under section 6. Only the following laws are affected:

- Property tax
- Property assessment
- Service tax
- Development cost charges
- Taxation of business activities
- Taxpayer representation to council
- Property transfer tax
- Fees

(The Annual Tax Rates and Expenditures laws, Borrowing laws, and Delegation of Authority laws are excluded).



Timeline for FMA Law Notification, Representation, and Submission Process



* The representation period is 45 days for the following laws: DCC, PTT, Service Tax, BAT, Fee, and PTAX laws for first time.



Council Approval of the Proposed Laws

Before the notification and representation process begins, the Council must approve the proposed laws through BCR or some other official approval procedure. The approval of these laws signifies that the Council is prepared to enact these laws subject to the consideration of any representations it may receive from its membership, taxpayers, or other persons.

Although not required, it is a good practice for the Council to approve a representation plan prepared by the tax administrator. A representation plan would typically indicate the period for making representations, dates and locations for any planned public meetings, and the manner and location in which notice of the proposed laws will be published.

Notification and Representation Period

The notification and representation period required under section 6 is **a minimum of 30 days**. During this time, written representations or representations at public meetings may be made concerning the proposed laws. It is important to note that the counting of the 30 days period cannot begin until all notices have been given. In order to ensure the full 30 day period is given, the First Nation should determine in advance the date when all notices will have been given as required, and set the 30 day period from that date.

A minimum requirement of 45 days applies to development cost charges laws, property transfer tax laws, service tax laws, business activity tax laws, fee laws, and to property tax and assessment laws established for the first time.



Forms of Notice

There are three forms of notice that must be completed. Each notice must meet the form and content requirements set out in the section 6 of the *FMA*. This means that the **same notice** should be used for each of the three forms of notices required.

1. Publication in the *First Nations Gazette*

First Nations must publish the notice in the *First Nations Gazette* (FNG). The FNG is a free, online First Nation government publication service. In addition to publishing First Nation notices, the FNG publishes First Nation laws made under the *FMA*, section 81 and 83 by-laws, and other First Nation legislation. The date of the publication must precede or be the same date as the beginning of the representation period. To register to use the FNG notification service, visit www.fng.ca.

2. Public posting

First Nations must also place the notice in a conspicuous location on reserve that is accessible to the public. Posting the notice on a public bulletin board at the Band office would be ideal. The date of posting must precede or be the same date as the beginning of the representation period.

3. Notice to the First Nations Tax Commission

First Nations must send the notice by mail or email to the FNTC. The date of the mailing or emailing must precede or be the same date as the beginning of the representation period. When sending the notice to the FNTC, please ensure that copies of the proposed laws are included. This will enable the FNTC to provide technical assistance more readily if the First Nation requests support.



Content of the Notice

Notices must contain a description of the proposed law. If the notice is for more than one proposed law, the notice must contain a description for each law. The description should identify the proposed law, state its purpose, and summarize generally its provisions.

The notice must indicate where copies of the proposed law may be obtained. This is usually the offices of the tax administrator.

The notice must invite representations regarding the proposed law to be made in writing within representation period. Notices should provide an address where written representations will be received (e.g., office of the tax administrator). If the Council intends to hold a public meeting regarding the proposed law, the notice must state the time, date and location of the meeting.

The FNTC has developed sample section 6 notices that are available for the use of First Nations. These are available from the *FMA* Registrar and on the FNTC website, www.fntc.ca. *The FNTC recommends that the First Nation seek legal advice in the preparation and delivery procedures of notices.*

Additional Notice Requirements

The FNTC has established additional notice requirements in its Notice Standards. These Standards affect the form and content of the notice of the following laws:

- development cost charges law;
- property transfer tax law;
- service tax law;
- business activity tax law; and
- a fee law
- property taxation and assessment laws (seasonal occupation)



Please consult with an FNTC advisor on the notification requirements concerning these laws.

Considering Representations

If during the representation period, a First Nation receives a written representation concerning the law or if it receives an oral representation during a public meeting concerning the law, it must consider the representation. This does not mean that the Council is required to change the proposed law; it means that Council must review the representation and determine if in its view any changes to the law are warranted.

If written representations are received within the representation period, the Council must, when it sends the proposed law to the FNTC for review and approval,

- provide a copy of the law to any persons who made a written representation, and
- invite those same persons to make written representations to the FNTC within 30 days after the day on which they receive the copy of the law.

This is the “section 7 notice”. The *FMA* does not require that delivery of the laws and invitations be done by a specific method, so a First Nation can choose whether to use hand delivery, mail or another method. However, the counting of the 30 day period only begins when the section 7 notice is received. If the First Nation chooses to use mail delivery, it should allow extra time for the law and invitation to be received, by allowing at least 5 days for delivery. In this way, First Nations would set the deadline for making representations to the FNTC at 35 days from the date of mailing. For example, a section 7 notice dated and mailed April 30 would advise that the deadline is June 4 for making written representations to the FNTC.



All deadlines for making further representations to the FNTC should be the same. Where the First Nation has received more than one written representation, the First Nation must set a 30 day deadline that applies to all persons receiving the section 7 notice. This means that the First Nation will need to begin the 30 day period as soon as **all** persons who made written representations to Council have received the section 7 notice.



Submissions of *FMA* Laws for FNTC Review and Approval (Section 8 Requirements and Additional Documentation)

Property Tax Laws (Taxation, Assessment, Service Tax, Development Cost Charges, Fees, and Property Transfer Tax)

First Nations submitting their property tax laws (including amendments¹) for FNTC Review must ensure the following requirements are met.

All submitted laws must be in the original signed form, enacted at a duly convened meeting on a date later than the last day of the representation period. The following information must accompany the submitted laws:

- a description of the lands, interests or rights subject to the law(s) (i.e., First Nations must provide their civic address, Indian Reserve number, and general classification of the types of taxable property on the reserve);
- a description of assessment practices to be applied (i.e., First Nations must indicate that they are using provincial assessment methods, and have elected to use the *FMA* assessment appeal procedures or provincial assessment appeal procedures.);
- information regarding services to be provided from local revenues, existing service agreements, and any service agreement negotiations underway (e.g., First Nations should indicate the types of services – access, road maintenance, general administration, protective services – that will be provided with their local revenues, whether there is an agreement in place to provide local government services, or whether the First Nation is negotiating a service agreement.);

¹ First Nations that are making minor amendments to these laws may be exempted from this requirement upon request to the FNTC.



- a description of the notices that were given, any consultation undertaken; and
- evidence that the law was duly made (This requirement is satisfied with a specific provision in the law – see Sample Law).

To assist First Nations, the FNTC has sample letters which can be used to confirm that section 8 requirements, mentioned above, have been met.

Additional Documentation

- First Nations must provide a letter of certification that the section 6 notice requirements have been met. The FNTC has sample certification letters that First Nations can use.
- First Nations in BC and Quebec are required to show evidence that the province has vacated the field of property taxation. In BC, a tax certificate under the *Indian Self Government Enabling Act* is issued by the province. In Quebec, the province issues an Order in Council as per 14.8.1 of the *Municipal Code of Quebec*.
- The FNTC may request additional documentation as evidence that the First Nation's law was made in accordance with the Act, its regulations, and the FNTC standards.