

Using This Sample Service Tax Law

The Commission provides sample laws to assist First Nations in developing their own laws. When using sample laws, the First Nation should ensure that its law reflects its circumstances and that it obtains legal and other advice as necessary. If you have any questions as you are preparing this law, please do not hesitate to contact the FNTC staff.

Under paragraph 5(1)(a)(iii) of the *First Nations Fiscal Management Act* (FMA), a First Nation may make laws respecting taxation for the provision of services in respect of reserve lands. This sample law has been developed for First Nations wishing to use their FMA taxation powers to pay for the costs of infrastructure that will be used to provide a service to taxpayers. Generally, the First Nation borrows all or a portion of the moneys required to build the infrastructure, and repays the loan by collecting the service tax each year for the term of the loan.

The following are some notes about the substance and format of the sample law:

1. This sample law assumes that the First Nation has enacted its FMA assessment and taxation laws.
2. This sample law provides alternate wording options to cover a number of different circumstances. When using this sample law, please ensure that the appropriate options are selected to suit the First Nation's specific circumstances and that unused alternate wording is deleted from the final law.
3. Instructions are shown in square brackets and bold. All instructions should be deleted from the final version of the law.
4. Underlines indicate that information is to be entered. Insert the information needed, and delete the underlines from the final version of the law.
5. When deleting an unwanted section, subsection, paragraph or schedule please sequentially renumber/reletter the remaining provisions or schedules and revise, as appropriate, the numbering or lettering of any internal references affected by the deletion.
6. If the First Nation is located in Quebec, please contact the Commission for assistance with modifying the sample law to reflect the civil law jurisdiction.

Please refer to the *Standards for First Nation Service Tax Laws, 2016*, for additional requirements for service tax laws.

FIRST NATION
[INSERT DESCRIPTION OF SERVICE] SERVICE TAX LAW, 20__

WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands and interests in reserve lands, including taxation for the provision of services in respect of reserve lands;

B. The First Nation provides a **[Note to First Nation: insert type of service]** service to the reserve **[OR to a defined area of the reserve]** and Council has determined that it is in the best interests of the First Nation to construct **[Note to First Nation: describe infrastructure]** and to make a law to provide for the costs **[OR a portion of the costs]** of that service infrastructure to be paid for by a service tax on interests in reserve lands **[within a defined area of the reserve]**;

C. The holders of the interests in reserve lands within the defined area that will benefit from the service have shown their support for the service by **[Note to First Nation: This recital is necessary only if the service is to a defined area of the reserve. Insert how holders have shown their support and indicate the proportion of holders that are in favour of the service.]**; and

D. The Council of the _____ First Nation has given notice of this Law and has considered representations received by the Council, in accordance with the requirements of the *First Nations Fiscal Management Act*;

NOW THEREFORE the Council of the _____ First Nation duly enacts as follows:

PART I
CITATION

Citation

1. This Law may be cited as the _____ *First Nation* _____ **[Note to First Nation: insert type or description of service]** *Service Tax Law, 20__*.

PART II
DEFINITIONS AND REFERENCES

Definitions and References

2.(1) In this Law:

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

“Assessment Law” means the _____ *First Nation Property Assessment Law, 20__*;

“chair” means the chair of the Review Panel;

[Note to First Nation: If the First Nation is located in British Columbia, consider including references to the civil resolution tribunal in sections 17 and 43 as indicated. If the references are included, the following additional definition is required: “civil resolution tribunal” means the civil resolution tribunal established under the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25;”.]

“complainant” means a person who commences an appeal of a service tax under this Law;

“First Nation” means the _____ First Nation, being a band named in the schedule to the Act;

“holder”, in relation to an interest in reserve lands, means a person

- (a) in possession of the interest,
- (b) entitled through a lease, licence or other legal means to the interest,
- (c) in actual occupation of the interest, or
- (d) who is a trustee of the interest;

["holders' portion of the cost" means that portion of the total cost of the service that will be paid by the holders of interests in reserve lands [OR local service area] through the service tax;] **[Note to First Nation: This definition is necessary only if the First Nation will recover a portion of the costs of the service from the holders. If the entire cost of the service will be recovered, delete this definition and subsection 5(2).]**

"interest", in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

["local service area" means the area of the reserve in or to which the service is provided, as described in subsection 4(2);] **[Note to First Nation: This definition is necessary only if the service is to be provided to a defined area of the reserve and not the entire reserve.]**

"Notice of Appeal" means a notice containing the information set out in Schedule IV;

"Notice of Refusal to Amend Service Tax Roll" means a notice containing the information set out in Schedule V;

"Notice of Service Tax" means a notice given under section 28 and containing the information set out in Schedule III;

"Notice of Withdrawal" means a notice containing the information set out in Schedule VII;

"Province" means the province of **[Note to First Nation: insert province in which reserve is located]**;

"registered professional" means an individual qualified and licensed as a professional engineer or architect in the Province;

"Request to Amend Service Tax Roll" means a request containing the information set out in Schedule VI;

"reserve" means a reserve of the First Nation within the meaning of the *Indian Act*;

"Review Panel" means a Review Panel established under this Law to hear and determine appeals respecting the service tax roll;

"service" means the **[Note to First Nation: insert type of service infrastructure to be provided. See Commission Standards for a list of services.]** service described in subsection 4(1);

"service tax" means the tax imposed in respect of the provision of the service as set out in this Law;

"service tax roll" means the service tax roll prepared under section 14 and any amendments or updates to the roll under this Law;

"tax administrator" means the person appointed by Council under subsection 3(1) for the purposes of this Law;

"Tax Notice" means a notice given under section 15;

"Taxation Law" means the _____ *First Nation Property Taxation Law, 20__*; and

"taxes" includes all taxes imposed, levied, assessed or assessable under this Law or a local revenue law of the First Nation, and all penalties, interest and costs added to those taxes.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) Except where otherwise defined, words and expressions used in this Law have the meanings given

to them in the Assessment Law and the Taxation Law.

(4) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 14(3)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III ADMINISTRATION

Tax Administrator

3.(1) Council must appoint a tax administrator to administer this Law on the terms and conditions set out in the resolution. **[Note to First Nation: The following wording may be used for subsection (1): The person appointed as the tax administrator under the Taxation Law is appointed as the tax administrator under this Law.]**

(2) The tax administrator must fulfill the responsibilities given to the tax administrator under this Law.

(3) The tax administrator may, with the consent of **[insert title]**, assign the performance of any duties of the tax administrator to any officer, employee, contractor or agent of the First Nation.

PART IV SERVICE AND SERVICE TAX LEVY

Service Described

4.(1) The service to be provided to the residents of the reserve **[OR local service area]** that will be paid for by the service tax is **[Note to First Nation: describe details of service infrastructure.]**

(2) [The local service area is that portion of the reserve shown outlined on the map attached as Schedule VIII and includes those interests listed in Schedule VIII.] **[Note to First Nation: This subsection is required only where the service is to be provided to a defined area of the reserve and not the entire reserve. Where included, complete Schedule VIII. Where deleted, delete Schedule VIII as well.]**

Estimated Cost of Service

5.(1) The estimated cost of the service is _____ dollars (\$ _____). **[Note to First Nation: Costs can include land acquisition, capital costs, professional service costs, debt servicing costs and other expenses incidental to undertaking and financing the service. Costs must be certified by a registered professional in accordance with the Commission Standards.]**

[(2) The holders' portion of the cost is _____ percent (___%) of the total cost of the service.]

Service Tax Levy

6.(1) A service tax is hereby imposed on all interests in reserve lands [in the local service area] as set out in this Law.

(2) Service taxes are due and payable under this Law notwithstanding any proceeding initiated or remedy sought by a taxpayer respecting his or her liability to taxation under this Law or any other property taxation law.

(3) A person liable for a service tax imposed under this Law is liable for the tax even if

(a) that person is also liable to pay taxes imposed under other property taxation laws of the First Nation; or

(b) a person with an interest in the same reserve lands is exempt from tax under this Law or from any taxes under other property taxation laws enacted by the First Nation.

(4) Any person who is a holder of an interest in reserve lands subject to taxation under this Law is

jointly and severally liable to the First Nation for all service taxes imposed under this Law during the taxation year, and for all unpaid service taxes imposed in a previous taxation year, including for clarity interest, penalties and costs.

Basis for Service Tax Levy

7.(1) The service tax is based on [**Note to First Nation: select the basis for the tax and insert the rates, as applicable. Delete all other options.**]

- a property value tax on the assessed value of the interest in reserve lands as determined under the Assessment Law, at a rate of _____ dollars (\$ _____) per one thousand dollars (\$1000) of assessed value [**OR** at the following rates for each class of property: class 1 – _____ dollars (\$ _____) per one thousand dollars (\$1000) of assessed value, etc.].
- a fixed amount of _____ dollars (\$____) for each interest in reserve lands.
- the taxable area of the interest in reserve lands, at a rate of _____ dollars (\$____) per square metre of area.
- the taxable area of the interest in reserve lands, at a rate of _____ dollars (\$____) per square metre for interests of up to _____ (____) square metres, _____ dollars (\$____) per square metre for interests between _____ (____) square metres and _____ (____) square metres, and _____ dollars (\$____) per square metre for interests greater than _____ (____) square metres.
- the taxable frontage of the interest in reserve lands, at a rate of _____ dollars (\$____) per metre of frontage.
- the taxable frontage of the interest in reserve lands, at a rate of _____ dollars (\$____) per metre for interests of up to _____ (____) metres of frontage, _____ dollars (\$____) per metre for interests with between _____ (____) metres and _____ (____) metres of frontage, and _____ dollars (\$____) per metre for interests with more than _____ (____) metres of frontage.

[(2) The taxable area [**OR** frontage] of an interest in reserve lands must be determined by the tax administrator using the formula set out in Schedule I.]

(3) The service tax rate or formula set out in this section must not be amended other than by an amendment to this Law.

Duration of Service Tax

8. The service tax will be imposed in each taxation year for not more than _____ (____) years.

Construction Schedule

9.(1) A construction schedule for the service, certified by a registered professional, is attached as Schedule II to this Law.

(2) The First Nation must commence and complete the construction of the service in accordance with the construction schedule and must in any event commence construction within one (1) year from the date the service tax is due and payable in the first year it is imposed.

Exemptions and Exclusions from Service Taxes

10.(1) The following interests in reserve lands are exempt from the service tax because the holders of the interests have provided all or a part of the cost of the service or have already paid towards the cost of the service: [**Note to First Nation: insert description of interests**].

(2) The following interests in reserve lands are exempt from the service tax and the service tax that would have been paid by the holders of these interests will be paid by the First Nation from general revenues: [**Note to First Nation: insert description of interests**].

(3) The following interests in reserve lands are excluded from the service tax because the interests will not have the opportunity to benefit from the service: **[Note to First Nation: insert description of interests]**.

Payment

[Note to First Nation: The sample law provides for annual collection of the service tax on the same timetable as the property taxes. A First Nation can choose to follow a different time frame by making appropriate changes to this Law.]

11.(1) The service tax is deemed imposed January 1 of each year in which the service tax is imposed.

(2) The service tax forms part of the taxes due and owing in respect of each interest in reserve lands in each year, and is due and payable by the holder on or before **[Note to First Nation: insert same date as general property tax due date (July 2 in B.C.)]** in each year in which it is levied.

(3) Payments for taxes must be credited by the tax administrator, first, to unpaid taxes from previous taxation years, with taxes imposed earlier being discharged before taxes imposed later, and, second, to unpaid taxes for the current taxation year.

(4) Service taxes must be paid at the office of the First Nation during normal business hours, by cheque, money order or cash.

(5) Payment of service taxes made by cheque or money order must be made payable to the _____ First Nation.

(6) Where a person is taxed in excess of the proper amount in a taxation year, the tax administrator must refund to that person any excess taxes paid by that person, in the same manner as taxes are refunded under the Taxation Law.

Prepayment

[Note to First Nation: Allowing prepayment is optional but recommended. If it is allowed, it will reduce the amount the First Nation will need to finance for the project and will reduce administration in future years.]

12.(1) A holder of an interest in reserve lands subject to the service tax may prepay the service tax imposed on the interest by paying, on or before **[Note to First Nation: suggest using same date as tax due date]** in the year the service tax is first imposed, the prepayment amount determined by the tax administrator in respect of that interest.

(2) The tax administrator must calculate the prepayment amount by multiplying the number of years the service tax is payable, by the amount payable in each year, by a factor of _____ (____). **[Note to First Nation: This factor should be calculated to eliminate the financing component of the service tax.]**

Revenues and Expenditures

13.(1) All revenue collected by the First Nation from the service tax, and interest earned on it, must be placed into the local revenue account and used only for the provision of the service.

(2) The tax administrator must account separately for the service tax revenues within the local revenue account.

(3) An expenditure of revenue raised under this Law must be made under the authority of an expenditure law made under section 5(1)(b) of the Act or in accordance with section 13.1 of the Act.

PART V

SERVICE TAX ROLL AND TAX NOTICE

Service Tax Roll

14.(1) On or before _____ in the first year of the service tax, the tax administrator must prepare a service tax roll for the purposes of imposing the service tax.

(2) On or before _____ in each subsequent taxation year, the tax administrator must update the service tax roll in accordance with Part IX.

(3) The service tax roll must be in paper or electronic form and must contain the following information in respect of each interest in reserve lands:

- (a) the name and last known address of the holder of the interest;
- (b) a short description of the interest;
- (c) if the tax is imposed on the basis of the assessed value of the interest, the total assessed value of the interest as shown on the assessment roll; **[Note to First Nation: Delete if this paragraph is not applicable.]**
- (d) the taxable area or the taxable frontage of the interest, if applicable;
- (e) the service tax to be imposed on the interest in the current year;
- (f) any unpaid service taxes, penalties, interest and arrears in respect of the interest;
- (g) whether all or a portion of the interest is exempt from the service tax; and **[Note to First Nation: Delete this paragraph if no exemptions are given in the Law.]**
- (h) if the name of a holder of a registered charge is included on the assessment roll for an interest, the name and address of that person.

(4) Where the service tax is levied on the basis of taxable area or taxable frontage, the calculation of the taxable area or taxable frontage of each interest in reserve lands must be reviewed by a registered professional who must certify that these amounts are correctly shown on the service tax roll. **[Note to First Nation: Delete this subsection if it is not applicable.]**

(5) The tax administrator may correct errors on the service tax roll at any time before the service tax roll is certified in each year.

(6) Once it has been prepared by the tax administrator, the service tax roll must be available for public inspection at the offices of the First Nation during regular office hours.

(7) If requested by a holder, the tax administrator must amend a service tax roll available for public inspection by omitting or obscuring the address of the holder or other information about the holder in order to protect the privacy and security of the holder.

Tax Notice

15.(1) If property taxes are levied on the interest in reserve lands under the Taxation Law, the service tax must be

- (a) included in the annual Tax Notice given under the Taxation Law; and
- (b) shown separately from other taxes on the Tax Notice.

(2) If property taxes are not levied on an interest under the Taxation Law, the tax administrator must, in each year in which the service tax is levied, mail a Tax Notice to the holder in the same manner as a tax notice would be given under the Taxation Law.

(3) A Tax Notice must be mailed on or before _____ to **[Note to First Nation: Must be at least thirty (30) days before the taxes are due.]**

- (a) each holder of an interest subject to the service tax, and
- (b) each person whose name appears on the service tax roll in respect of an interest.
- (4) A tax notice must include
 - (a) the information shown on the service tax roll in respect of the interest; and
 - (b) where payment must be made, the manner of payment and the date the service tax is due.
- (5) In the first year that the service tax is levied, the Tax Notice must include a statement that the holder may prepay the service tax amount, the amount of the prepayment and the date by which the prepayment must be made. **[Note to First Nation: Delete this subsection if prepayment is not offered.]**
- (6) The mailing of the Tax Notice constitutes a statement of and demand for payment of the service taxes.
- (7) The tax administrator must enter on the service tax roll the date of mailing a Tax Notice.

PART VI

PENALTIES, INTEREST AND ENFORCEMENT

Penalties and Interest

16. If all or any portion of the service tax remains unpaid after **[Note to First Nation: insert tax due date]** of the year in which it is levied, the unpaid portion will be subject to the same penalties and interest charges levied on unpaid taxes under the Taxation Law.

Tax Collection and Enforcement

17.(1) Taxes levied under this Law are a debt owed to the First Nation by the holder, recoverable by the First Nation in a court of competent jurisdiction **[Note to First Nation: If the First Nation is located in British Columbia, consider adding “or in a proceeding before the civil resolution tribunal,” to enable collection of unpaid taxes using the tribunal.]**, and may also be recovered by any other method authorized under the Taxation Law or other applicable laws, and for this purpose Parts XIII, XIV, XV and XVI **[Note to First Nation: Confirm these Parts accurately refer to the collection and enforcement provisions in the First Nation’s Taxation Law]** of that law apply to the collection and enforcement of unpaid service taxes, including with respect to the recovery of the costs of enforcement incurred by the First Nation.

(2) The use of one method of collection and enforcement does not prevent seeking recovery by one or more other methods.

(3) A copy of the Tax Notice that refers to the taxes payable by a person, certified as a true copy by the tax administrator, is evidence of that person’s debt for the taxes.

PART VII

REVIEW PANEL

Council to Establish Review Panel

18.(1) Where there is an appeal under Part VIII or IX of this Law, Council must, by resolution, appoint at least three (3) persons as members of the Review Panel to hear and determine appeals and certify the service tax roll as provided in this Law.

(2) Each member of the Review Panel must hold office for a period of three (3) years unless the member resigns or is removed from office in accordance with this Law.

(3) If a member of the Review Panel is absent, disqualified, unable or unwilling to act, Council may appoint another person, who would otherwise be qualified for appointment as a member, to replace the

member until the member returns to duty or the member's term expires, whichever comes first.

Appointment of Chair

19.(1) Council must, by resolution, appoint one of the members of the Review Panel as chair.

(2) The chair must

- (a) supervise and direct the work of the Review Panel;
- (b) determine procedures to be followed at hearings that are consistent with this Law;
- (c) administer an oath or solemn affirmation to a person or witness before his or her evidence is taken; and
- (d) preside at hearings of the Review Panel.

(3) If the chair is absent or incapacitated, Council must designate a member of the Review Panel as acting chair for the period that the chair is absent or incapacitated.

Remuneration and Reimbursement

20. The First Nation must

- (a) remunerate a member of the Review Panel, other than the chair, for his or her services at a rate of _____ dollars (\$_____) per day for time spent on activities related to the Review Panel;
- (b) remunerate the chair of the Review Panel for his or her services at a rate of _____ dollars (\$_____) per day for time spent on activities related to the Review Panel; and
- (c) reimburse a member of the Review Panel for reasonable travel and out of pocket expenses necessarily incurred in carrying out his or her duties.

Conflicts of Interest

21.(1) A person must not serve on the Review Panel if the person

- (a) has a personal or financial interest in the interest in reserve lands that is the subject of an appeal;
- (b) is the Chief or a member of Council;
- (c) is an employee of the First Nation; or
- (d) has financial dealings with the First Nation which might reasonably give rise to a conflict of interest or impair that person's ability to deal fairly and impartially with an appeal as required under the terms of this Law.

(2) For the purposes of paragraph (1)(a), membership in the First Nation does not in itself constitute a personal or financial interest in the interest in reserve lands that is the subject of an appeal.

Duty of Member

22. In performing their duties under this Law, the members of the Review Panel must act faithfully, honestly and impartially and to the best of their skill and ability, and must not disclose to any person information obtained by them as a member, except in the proper performance of their duties.

Removal of Member

23. Council may terminate the appointment of a member of the Review Panel for cause, including where a member

- (a) is convicted of an offence under the Criminal Code;
- (b) fails to attend three (3) consecutive hearings of the Review Panel; or
- (c) fails to perform any of his or her duties under this Law in good faith and in accordance with the

terms of this Law.

Assessment Review Board Sitting as the Review Panel

24.(1) Despite section 18, Council may, by resolution, appoint the Assessment Review Board established under the Assessment Law to be the Review Panel.

(2) Where Council appoints the Assessment Review Board under subsection (1),

(a) the members of the Review Panel must be the same members that comprise the Assessment Review Board;

(b) the chair must be the same person appointed as chair of the Assessment Review Board;

(c) the members must follow the requirements and procedures set out in this Law when acting as the Review Panel under this Law;

(d) the members must be remunerated and reimbursed for their work on the Review Panel as provided for the Assessment Review Board in the Assessment Law; and

(e) the removal of a member of the Review Panel under section 23 is a removal of that member from the Assessment Review Board.

PART VIII

APPEALS TO REVIEW PANEL

[Note to First Nation: Under this model, the Review Panel hears appeals, if any, respecting the service tax roll in the first year the tax is imposed. Thereafter there is an annual opportunity for holders to appeal the service tax to the Review Panel.]

Appeals to Review Panel

25. Before a service tax is imposed for the first time, the Review Panel must hear and determine any appeals respecting the service tax roll and must certify the roll in accordance with this Part.

Tax Administrator to Certify Where No Appeals

26. Where no appeals are filed in accordance with this Part, the tax administrator must

(a) certify in writing that the service tax roll completed under section 14 was completed in accordance with the requirements of this Law; and

(b) deliver a copy of the certified service tax roll to Council.

Review Panel Sitting

27.(1) At least twenty-one (21) days before the service tax is due in the first year the tax is imposed, Council must establish the proposed date, time and place for the sitting of the Review Panel to hear appeals respecting the service tax roll.

(2) At least fourteen (14) days before the proposed date of the sitting of the Review Panel, the tax administrator must post a notice of the date, time and place of the proposed sitting on the First Nation's website and at the First Nation's administrative offices.

Notice of Service Tax

28. At least fourteen (14) days before the date proposed for the sitting of the Review Panel, the tax administrator must mail to the holder of every interest in reserve lands that is to be taxed a Notice of Service Tax stating

- (a) the service in relation to which the service tax is to be imposed;
- (b) the taxable area or the taxable frontage of the interest, if applicable;
- (c) the service tax rate or formula applicable to the interest;
- (d) the date, time and place of the sitting of the Review Panel if appeals are received; and
- (e) that the service tax roll is available for inspection at the offices of the First Nation during its regular office hours.

Grounds for Appeal

29.(1) A person may appeal the service tax to the Review Panel on one or more of the following grounds:

- (a) there is an error or omission respecting a name or address on the service tax roll,
- (b) there is an error or omission respecting the inclusion of an interest in reserve lands,
- (c) there is an error or omission respecting the taxable area or the taxable frontage of an interest, and **[Note to First Nation: Delete this ground for appeal if the tax is not based on area or frontage.]**
- (d) an exemption has been improperly allowed or disallowed, **[Note to First Nation: Delete this ground for appeal if the Law does not provide for any exemptions from the tax.]**

by delivering a completed Notice of Appeal and a copy of the Notice of Service Tax to the tax administrator within seven (7) days after the Notice of Service Tax was delivered to the holder of the interest.

(2) Where an appeal is received under this section, the tax administrator must immediately advise the Council and the chair, and confirm the sitting of the Review Panel as scheduled.

(3) A Review Panel hearing an appeal under this section only has authority to amend the service tax roll in relation to interests in respect of which an appeal under this section has been made.

Withdrawal of Appeal

30.(1) A complainant may withdraw an appeal under this Part by delivering a Notice of Withdrawal to the tax administrator.

(2) On receipt, the tax administrator must forward a Notice of Withdrawal to the chair of the Review Panel.

(3) Where a Notice of Withdrawal is received before a hearing has commenced, the chair must accept the withdrawal and cancel the hearing for that appeal.

(4) Where a Notice of Withdrawal is received after a hearing has commenced, the Review Panel must dismiss the appeal.

Hearings

31.(1) A majority of the members of the Review Panel constitutes a quorum.

(2) Where a quorum of the members of the Review Panel is not present at the time at which a hearing is to be held, the hearing must be adjourned to the next day that is not a holiday, and so on from day to day until there is a quorum.

(3) The Review Panel may conduct its proceedings by any combination of written, electronic and oral hearings.

(4) The Review Panel must give all parties a reasonable opportunity to be heard at a hearing.

(5) In an oral hearing, a party may call and examine witnesses, present evidence and submissions and conduct cross-examination of witnesses as reasonably necessary for a full and fair disclosure of all matters relevant to the issues in the appeal.

(6) A party may be represented by counsel or an agent and may make submissions as to facts, law and jurisdiction.

(7) The Review Panel may reasonably limit further examination or cross-examination of a witness if it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the appeal.

(8) The Review Panel may question any witness who gives oral evidence at a hearing.

(9) The Review Panel may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(10) The burden of proof in an appeal is on the person bringing the appeal.

(11) An oral hearing must be open to the public unless the Review Panel, on application by a party, determines that the hearing should be *in camera*.

(12) The Review Panel may

(a) hear all appeals on the same day or may adjourn from time to time until all appeals have been heard and determined;

(b) hear an appeal whether the complainant is present or not; and

(c) at any time during a proceeding, adjourn the proceeding.

(13) If two (2) or more appeals involve the same or similar questions, the Review Panel may combine the appeals, or any part of them, hear the appeals at the same time or one immediately after the other, or stay one or more of the appeals until after the determination of another one of them.

(14) Subject to this Law, the Review Panel has the power to control its own processes to facilitate the just and timely resolution of the matters before it.

Parties to an Appeal

32. The parties to an appeal are

(a) the complainant;

(b) the holder of the interest in reserve lands, if not the complainant;

(c) the tax administrator; and

(d) any other person who the Review Panel determines may be affected by the appeal, on request by that person.

Maintaining Order at Hearings

33.(1) The Review Panel may, at an oral hearing, make orders or give directions that it considers necessary to maintain order at the hearing.

(2) Without limiting subsection (1), the Review Panel may, by order, impose restrictions on a person's continued participation in or attendance at a hearing and may exclude a person from further participation in or attendance at a hearing until the Review Panel orders otherwise.

Summary Dismissal

34.(1) At any time after a Notice of Appeal is received by the Review Panel, the Review Panel may dismiss all or part of the appeal where it determines that any of the following apply:

(a) the appeal is not within the jurisdiction of the Review Panel;

(b) the appeal was not filed within the applicable time limit; or

(c) the complainant failed to diligently pursue the appeal or failed to comply with an order of the

Review Panel.

(2) Before dismissing all or part of an appeal under subsection (1), the Review Panel must give the complainant an opportunity to make submissions to the Review Panel.

(3) The Review Panel must make a record of its decision for any dismissal made under subsection (1) and provide a copy of the record to all parties.

Decisions of the Review Panel

35.(1) A decision of the majority of the members is a decision of the Review Panel and, in the case of a tie, the decision of the chair governs.

(2) If a member is unable for any reason to complete the member's duties, the remaining members may continue to hear and determine the appeal and the vacancy does not invalidate the hearing.

(3) The chair must, within ten (10) days after completion of a hearing, make a record of the Review Panel's decision and provide the tax administrator with the information necessary to amend the service tax roll and provide the notices required under section 37.

(4) Within ten (10) days of receipt of the information provided under subsection (3), the tax administrator must amend the service tax roll in accordance with the chair's directions and return the amended service tax roll to the chair.

Certification of Service Tax Roll by Chair

36.(1) The chair must review the amended service tax roll returned under subsection 35(4) to confirm that the directed amendments have been made.

(2) If the chair confirms that the directed amendments have been made, the chair must certify the service tax roll and deliver a copy of the certified service tax roll to the tax administrator.

(3) On receipt of the certified service tax roll under subsection (2), the tax administrator must deliver a copy of the service tax roll to the Council.

Notices to Complainants

37.(1) Within ten (10) days after a service tax roll is certified under section 36, the tax administrator must deliver a notice of the decision made by the Review Panel to

- (a) the holder of the interest in reserve lands to which the decision relates; and
- (b) the complainant, if the complainant is not the holder of the interest.

(2) The notice under subsection (1) must include a statement that the complainant has the right to judicial review of the Review Panel's decision by a court of competent jurisdiction.

PART IX

UPDATING THE SERVICE TAX ROLL

Tax Administrator Must Update Service Tax Roll

38. In each year after the first year in which the service tax is imposed, the tax administrator must update the service tax roll to

- (a) reflect any changes from the previous year in relation to matters referred to in subsection 14(3);

and

- (b) reflect changes where there is
 - (i) a subdivision affecting an interest in reserve lands, or
 - (ii) a consolidation of two (2) or more interests,

such that each of the new interests bears an appropriate share of the service tax.

Annual Notice to Holders

39. In each year after the first year in which a service tax is imposed, the tax administrator must post a notice on the First Nation's website and at the First Nation's administrative offices stating

- (a) that the service tax roll for that year is available for inspection at the First Nation offices during its regular office hours;
- (b) that a person who holds an interest in reserve lands included on the service tax roll may request that the roll be amended respecting a matter referred to in subsection 29(1); and
- (c) the date and time by which a request must be made in order to be considered for that year.

Requests for Amendment to the Service Tax Roll

40.(1) A person who holds an interest in reserve lands included on a service tax roll may request that the roll be amended respecting a matter referred to in subsection 29(1), by delivering a Request to Amend Service Tax Roll to the tax administrator before the time specified in the notice given under section 39.

(2) A request under subsection (1) may be made only in relation to the person's own interest.

(3) A request under subsection (1) must not be made in respect of an amendment that a holder has requested in a previous year.

(4) If the tax administrator does not make the amendment requested under subsection (1), the tax administrator must deliver a Notice of Refusal to Amend Service Tax Roll to the holder of the interest in respect of which the request was made.

Appeals to Review Panel

41.(1) A holder who receives a Notice of Refusal to Amend Service Tax Roll may appeal the decision by delivering a completed Notice of Appeal to the tax administrator within thirty (30) days after the date on which the notice was given, provided that the appeal is

- (a) on one or more of the grounds set out in subsection 29(1); and
- (b) in respect of an interest in reserve lands held by that person.

(2) If the tax administrator receives an appeal in accordance with subsection (1), the tax administrator must advise Council, and Council must convene a Review Panel to hear and determine the appeal, and for these purposes Part VIII applies.

(3) A Review Panel hearing an appeal under this section only has authority to amend the service tax roll in relation to interests in reserve lands in respect of which an appeal under this section has been made.

(4) If no appeals are received under this section, the tax administrator must

- (a) certify in writing that the service tax roll as it is amended under this Part was completed in accordance with the requirements of this Law; and
- (b) deliver a copy of the certified service tax roll to Council.

Validity of Service Tax Roll

42. Despite

- (a) any omission, defect or error committed in or with respect to a service tax roll,
- (b) any defect, error or misstatement in any notice given, or
- (c) any omission to mail or deliver a notice,

the initial service tax roll, as certified by the tax administrator or the chair, is valid and binding on all parties concerned until updated in accordance with this Law in each subsequent year, and each update to the service tax roll certified by the tax administrator or the chair is valid and binding on all parties concerned until the next certified service tax roll under this Law.

PART X GENERAL PROVISIONS

Disclosure of Information

43.(1) The tax administrator or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

- (a) in the course of administering this Law or performing functions under it;
- (b) in proceedings before the Review Panel [**Note to First Nation: Add “, the civil resolution tribunal” if this change was made above.**] or a court of law; or
- (c) in accordance with subsection (2).

(2) The tax administrator may disclose to the agent of a holder confidential information relating to the interest in reserve lands if the disclosure has been authorized in writing by the holder.

(3) An agent must not use information disclosed under subsection (2) except for the purposes authorized by the holder in writing referred to in that subsection.

Disclosure for Research Purposes

44. Notwithstanding section 43,

- (a) the tax administrator may disclose information and records to a third party for research purposes, including statistical research, provided the information and records do not contain information in an individually identifiable form or business information in an identifiable form;
- (b) Council may disclose information and records to a third party for research purposes, including statistical research, in an identifiable form where
 - (i) the research cannot reasonably be accomplished unless the information is provided in an identifiable form, and
 - (ii) the third party has signed an agreement with Council to comply with Council’s requirements respecting the use, confidentiality and security of the information.

Validity

45. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay tax or any other amount under this Law be affected by

- (a) an error or omission in a determination made by the tax administrator;
- (b) an error or omission in a service tax roll or any notice given under this Law; or
- (c) a failure of the First Nation, the tax administrator or the Review Panel to do something within the required time.

Limitation on Proceedings

46.(1) No person may commence an action or proceeding for the return of money paid to the First

Nation, whether under protest or otherwise, on account of a demand, whether valid or invalid, for taxes or any other amount paid under this Law, after the expiration of six (6) months from the date the cause of action first arose.

(2) If a person fails to start an action or proceeding within the time limit prescribed in this section, then money paid to the First Nation must be deemed to have been voluntarily paid.

Notices

47.(1) Where in this Law a notice is required to be delivered, given by mail or where the method of giving the notice is not otherwise specified, it must be given

- (a) by mail to the recipient's ordinary mailing address or the address for the recipient shown on the service tax roll;
- (b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or
- (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address or the address for the recipient shown on the service tax roll.

(2) Except where otherwise provided in this Law,

- (a) a notice given by mail is deemed received on the fifth day after it is posted;
- (b) a notice posted on property is deemed received on the second day after it is posted; and
- (c) a notice given by personal delivery is deemed received upon delivery.

Interpretation

48.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of this Law and must be construed as being inserted for convenience of reference only.

Coming into Force

49. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the ____ day of _____, 20____, at _____, in the Province of _____.

A quorum of Council consists of (____) () members of Council.

[Name] _____

[Name] _____

Chief [please spell out the name]

Councillor [please spell out the name]

[Name] _____

[Name] _____

Councillor [please spell out the name]

Councillor [please spell out the name]

SAMPLE

SCHEDULE I
CALCULATION OF TAXABLE AREA [FRONTAGE]

[Note to First Nation: Delete if not applicable.]

[Note to First Nation: If applicable, set out any rules for calculating frontage or irregular interests or other physical characteristics which may affect the calculation.]

SAMPLE

SCHEDULE II
CONSTRUCTION SCHEDULE

[Note to First Nation: The Construction Schedule must be certified by a registered professional that it includes all necessary design and construction components of the service and that it provides a reasonable and achievable time frame for the completion of the service.]

SAMPLE

SCHEDULE III
NOTICE OF SERVICE TAX

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN RESERVE LANDS: _____

TAKE NOTICE that, pursuant to the _____ *First Nation* _____ *Service Tax Law*, 20____, a service tax roll has been prepared by the Tax Administrator for the _____ First Nation.

AND TAKE NOTICE: **[Note to First Nation: complete this part to correspond to the Law.]**

The service tax is imposed in relation to the service of [describe service].

The service tax is to be imposed on the basis of [the assessed value / the taxable frontage / the taxable area / a fixed amount per interest].

[The taxable area [frontage] of the interest is: _____ (_____) [square] metres.]

AND TAKE NOTICE that the service tax roll is available for inspection at the offices of the _____ First Nation, located at [address], during regular office hours.

AND TAKE NOTICE that you may make an appeal to the Review Panel in respect of the imposition of this service tax on your interest on one or more of the following grounds:

1. there is an error or omission respecting a name or address on the service tax roll,
2. there is an error or omission respecting the inclusion of an interest,
3. there is an error or omission respecting the taxable area or the taxable frontage of an interest, and
4. an exemption has been improperly allowed or disallowed,

by delivering, within seven (7) days of delivery of this Notice, a Notice of Appeal in the form specified in the _____ *First Nation* _____ *Service Tax Law*, 20____, along with a copy of this Notice of Service Tax, to the Tax Administrator at the following address [insert address]. The Notice of Appeal must be signed by the holder of the interest or his or her agent, and must set out a mailing address to which all notices to the complainant may be sent.

AND TAKE NOTICE that the following date, time and place has been set for the Service Tax Review Panel to hear appeals respecting the service tax roll:

_____, 20____ at _____ (A.M./P.M.) at _____ [location]

You may contact the Tax Administrator for the _____ First Nation directly if you have any questions or concerns respecting this Notice and the service tax that will be imposed on your interest for the [describe service] service.

Tax Administrator for the _____ First Nation

Dated: _____, 20____.

SCHEDULE IV
NOTICE OF APPEAL

TO: Tax Administrator for the _____ First Nation
[address]

PURSUANT to the provisions of the _____ *First Nation* _____ *Service Tax Law, 20*____, I hereby make an appeal about the imposition of a service tax on an interest in reserve lands described as _____.

A copy of the Notice of Service Tax is enclosed.

My appeal is on the following grounds:

- (1)
- (2)
- (3)

(describe the grounds for the appeal in as much detail as possible)

Complainant's mailing address to which all notices in respect of this appeal are to be sent:

Name and address of any representative acting on complainant's behalf in respect of this appeal:

Name of Complainant (please print)

Signature of Complainant (or representative)

Dated: _____, 20____.

NOTE: A copy of the Notice of Service Tax or Notice of Refusal to Amend Service Tax Roll, as applicable, must be enclosed with this Notice of Appeal.

SCHEDULE V
NOTICE OF REFUSAL TO AMEND SERVICE TAX ROLL

TO: _____

ADDRESS: _____

DESCRIPTION OF INTEREST IN RESERVE LANDS: _____

TAKE NOTICE that, pursuant to your Request to Amend the Service Tax Roll, dated _____, 20__, the Tax Administrator has not made the requested amendment.

AND TAKE NOTICE that you may make an appeal respecting this refusal to amend the service tax roll to the Review Panel. An appeal may only be made by a holder of the interest and on one or more of the following grounds:

- (1) there is an error or omission respecting a name or address on the service tax roll;
- (2) there is an error or omission respecting the inclusion of an interest;
- (3) there is an error or omission respecting the taxable area or the taxable frontage of an interest; and
- (4) an exemption has been improperly allowed or disallowed.

To make an appeal, you must deliver, within thirty (30) days of mailing of this Notice, a Notice of Appeal in the form specified in the _____ *First Nation* _____ *Service Tax Law*, 20__, along with a copy of this Notice, to the Tax Administrator at the following address: [insert address]. The Notice of Appeal must be signed by the holder of the interest or his or her agent, and must set out a mailing address to which all notices to the complainant may be sent.

AND TAKE NOTICE that you will receive a further notice advising you of the date, time and place of the hearing at which the Review Panel will hear your appeal respecting the service tax roll.

Tax Administrator for the _____ First Nation

Dated: _____, 20__.

SCHEDULE VI
REQUEST TO AMEND SERVICE TAX ROLL

TO: Tax Administrator for the _____ First Nation
[address]

PURSUANT to the provisions of the _____ *First Nation* _____ *Service Tax Law, 20__*, I hereby request that the service tax roll be amended in respect of the following interest in reserve lands:

[description of the interest as described in the service tax roll]

This request for an amendment to the service tax roll is based on the following grounds:

- (1)
- (2)
- (3)

(describe the reasons in support of the request in as much detail as possible)

Holder's mailing address to which the amendment decision is to be sent:

Name of Applicant (please print)

Signature of Applicant

Dated: _____, 20__.

SCHEDULE VII
NOTICE OF WITHDRAWAL

TO: Tax Administrator for the _____ First Nation
[address]

PURSUANT to the provisions of the _____ *First Nation* _____ *Service Tax Law*, 20____, I hereby withdraw my appeal respecting the imposition of a service tax on the following interest in reserve lands:

[description of interest as described in the Notice of Service Tax]

Name of Complainant (please print)

Signature of Complainant (or representative)

Dated: _____, 20____.

SAMPLE

SCHEDULE VIII
MAP OF LOCAL SERVICE AREA AND LIST OF INTERESTS

SAMPLE