



April 9, 2021

2021 Annual Laws Bulletin

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

Highlights

- National rate of inflation for the 2021 Taxation Year is 0.73%.
- Updated COVID-19 Pandemic Emergency Response Standards

Updated Covid-19 Pandemic Emergency Response Standards

Last year, the Commission approved the *Covid-19 Pandemic Emergency Response Standards, 2020*. These standards provided flexibility for First Nations in responding to the pandemic. Measures included amendments to several standards to enable tax relief measures and alternate notification.

In March 2021, the Commission approved amendments to the *Covid-19 Pandemic Emergency Response Standards, 2020* to extend tax relief measures for the 2021 taxation year and address potential local revenue relief from federal government programs. The amendments include:

1. Amendments to the Annual Tax Rates Law Standards – First Nations can provide tax relief by lowering tax rates without affecting tax rate setting in 2022.
2. Amendment to the Annual Expenditure Law Standards – The annual budget must set out as local revenue any new revenue received from government programs to offset local revenue losses due to the effects of the COVID-19 pandemic.
3. Amendments to the Notification Standards to extend for 2021 the use of alternate notification options (i.e., teleconferences and videoconferences) for public meetings and open houses.

Annual Tax Rates Laws

The annual tax rates law is comprised of the law and the Schedule which identifies the tax rates for each property class.

Tax Rate Setting in the First Year

(Section 6 of the Standards for First Nation Annual Tax Rates Laws, 2017 “Rates Standards”)

In the first year that a First Nation exercises property taxation, tax rates must not exceed those set by the former taxing authority in the *current* year; or where there is no former taxing authority, tax rates must not exceed those set by the reference jurisdiction in the *current* year.

Note – The reference jurisdiction is an adjacent local government jurisdiction. For assistance in determining the appropriate reference jurisdiction, please contact an FNTC advisor.

Tax Rate Setting in Subsequent Years

(Sections 7-10 of the Rates Standards)

In the second and all subsequent years that a First Nation exercises property taxation, tax rate setting must meet the requirements of sections 7, 8, 9, or 10 of the Rates Standards.

Average Tax Bill Comparison

(Section 7 of the Rates Standards)

Tax rates can meet the requirements in section 7 of the Rates Standards in one of two ways:

1. National inflation rate method - the proposed rates in each class will lead to an average tax bill change not exceeding the national rate of inflation. (Please note, the national rate of inflation for the 2021 tax year is 0.73%); or
2. Reference Jurisdiction comparison method - the proposed rates in each class will lead to an average tax bill change not exceeding the average tax bill change in the same class of the reference jurisdiction. First Nations using this method must submit assessment data and tax rate information for the reference jurisdiction.

In using the average tax bill methods described in 1 and 2 above, new properties must be excluded, and the “average” tax bill can be expressed in one of two ways:

1. Mean Tax Bill: divide the total number of folios (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation) into the total revenue collected from that property class. For example, if \$100,000 in taxes were collected from 100 residential properties, the average tax bill would be \$1,000 per residential property; or

2. **Median Tax Bill of a Representative Taxpayer:** place all tax bills in order (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation) from the lowest to the highest in each property class, and then find the tax bill of the representative taxpayer that is exactly in the middle. For example, the median of the following string of numbers is 45: (2, 32, 33, 45, 60, 62, and 70). If there is an even number of folios, the median is the average of the middle two values.

Reference Jurisdiction Rate-Setting

(Section 8 of the Rates Standards)

Reference jurisdiction rate-setting involves the First Nation setting tax rates in each class that are identical to the reference jurisdiction's rates in the current and previous year, and also requires the First Nation to use the same assessment practices as the reference jurisdiction. First Nations wishing to move from using average tax bill comparison to using this method should review section 11 of the Rates Standards and consult with an FNTC advisor.

Rate Setting and Transition Provisions

(Section 9 of the Rates Standards)

Section 9 of the Rates Standards applies where First Nations have included property tax transition provisions in their property tax law. Section 9 enables First Nations to set rates in accordance with their transition provisions, rather than in accordance with sections 7 and 8 of the Rates Standards.

Justification for Rates

(Section 10 of the Rates Standards)

Where a First Nation wishes to establish tax rates that do not meet the requirements of sections 7, 8, or 9 of the Rates Standards, First Nations can seek to justify tax rate increases on one (1) or more of the following bases:

1. **Cost Increases** - there is a significant anticipated increase to the cost of local services such as water, sewer, waste collection, fire protection, and roads;
2. **Reference Jurisdiction Transition Plan** - the proposed rates are consistent with a First Nation's reference jurisdiction transition plan; and
3. **Taxpayer Support** - there is taxpayer support for the increased rates within the affected class.

Cost Increases - First Nations anticipating significant increases in the cost of services can justify tax rates by providing information to the FNTC in the form of a signed service agreement showing cost increases, or a letter provided by the First Nation's chief financial officer outlining the anticipated increase in the cost of services.

Reference Jurisdiction Transition Plan – First Nations who intend to transition to reference jurisdiction rate-setting must establish a transition plan before the applicable taxation year. This includes notice to taxpayers of the transition, and a public meeting to describe and discuss the transition plan. Tax rates that are consistent with the transition plan can be justified under section 10 of the Standards.

Taxpayer Support – First Nations may seek justification for tax rate increases under Section 10 of the Rates Standards on the basis of taxpayer support. First Nations must provide letters of support from individual taxpayers or their associations representing at least 50% of the taxpayers in the property class and holding at least 50% of the total assessed value in the class to which the tax rate increases under Section 10 will be applicable.

First Nation tax administrators should contact the FNTC as early as possible if the First Nation intends to provide justification for exceeding sections 7,8 or 9 of the Rates Standards.

In seeking justification for proposed rates under rationale #1 or #2, a First Nation must give prior notice to its taxpayers of the proposed rates and the reason(s) for the increase.

Section 1.2 of the *Standards Respecting Notices Relating Local Revenue Laws, 2018* (“*Notice Standards*”), requires a First Nation to include a description of the justification in the notice. Notice to taxpayers can be provided by publication on the First Nation’s website, in the *FNG*, in accordance with a taxpayer representation to council law, or by holding a public meeting.

Minimum Tax

(Sections 4-5 of Rates Standards)

Most First Nations have provisions in their property tax laws that enable the use of a minimum tax. A minimum tax means that a minimum amount of tax is levied on a property, even though its assessed value would result in a lower amount of tax.

The minimum tax, if any, must be set each year in the First Nation’s tax rates law. The Rates Standards provide that a minimum tax must not exceed one hundred dollars (\$100) except where required to create a fair taxation regime because of one or more of the following circumstances:

1. the First Nation had established a higher minimum tax amount in its taxation regime existing at the time of being scheduled under the FMA;
2. to harmonize with minimum tax amounts established in the relevant province or in the reference jurisdiction; or
3. the First Nation’s cost of providing services to properties with lower assessed values exceeds one hundred dollars (\$100).

First Nations may have additional provisions governing the setting of minimum taxes in their property tax law.

Timing of Annual Tax Rates Law Enactment

The First Nation's property taxation law sets out the date when an annual tax rates law must be made, when tax notices are to be sent, and when taxes are due. When developing an annual tax rates law these dates must be considered to ensure compliance with the timelines established 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 the First Nation's annual laws. Tax administrators should submit signed laws and all supporting materials to the FMA Registrar as soon as practicable.

Notification of Annual Tax Rates Laws

(Section 1 of Standards Respecting Notices Relating to Local Revenue Laws, 2018 "Notice Standards")

The FMA and the Notice Standards require First Nations to give notice of their entire proposed annual tax rates law, including its schedule(s), prior to the law submission.

The notice requirement can be met by:

- posting the proposed annual tax rates law on the First Nations Gazette (FNG) or on the First Nation's website;
- using procedures set out in their taxpayer representation to council law; or
- holding a public meeting at which taxpayers may meet with the tax administrator or members of council to discuss the proposed law.

Giving notice of the entire proposed annual tax rates law is consistent with best practices in property tax administration and will enable stakeholders to view provisions before a law is approved (e.g., minimum tax).

Where a First Nation seeks to provide justification for a tax rate under sections 10.1(a) or (b) of the Rates Standards, the First Nation must provide a description of the justification in the notice.

First Nations who wish to use the FNG website to post their annual laws, can email the final Word version of the proposed annual law to editor@fng.ca.

Information Requirements for the Review of Tax Rates Laws

(Section 8 of the FMA and Section 9 of Standards the Submission of Information Required under Section 8 of the Act, 2018 "Submission of Information Standards")

The FMA and the Submission of Information Standards require information to be submitted to review and approve laws. This information supports proper decisions, ensures the First Nation property tax system remains transparent, and maintains taxpayer confidence.

The FNTC may request the following information to accompany the First Nation's annual laws:

- the summary assessment roll for the previous year and current taxation year;
- the number of property occurrences within each property class (this usually appears on the summary assessment rolls provided by the First Nation's assessor);
- the amount of new construction reflected in the current assessment roll, as determined by comparing the folio counts in this year to last year;
- the reference jurisdiction's tax rates for the previous and current taxation year; and
- confirmation that the First Nation has met the requirements of section 1 of the *Standards Respecting Notices Relating Local Revenue Laws, 2018* ("Notice Standards")

Tax Notices

First Nation's property taxation law sets out the date tax notices are to be sent, and tax notices can only be issued after the FNTC approves the annual tax rates law. Confirmation of law approval is sent to First Nations by the FMA Registrar after each Commission meeting. The FMA Registrar can be reached at (250) 828-9895 or (250) 828-9857 ext. 114, or by email at tsimon@fntc.ca.

Annual Expenditure Laws

(Standards for First Nation Expenditure Laws, 2017 "Expenditure Standards")

The annual expenditure law is comprised of the law, the annual budget included as a Schedule, 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 (BAT), penalties, interest and fees.

Payments in Lieu of Taxation

Local revenues include moneys raised under a local revenue law as well as payments received by a First Nation in lieu of taxation (PILT). 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 year's 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 year's leasehold transactions. The estimated PTT revenue is included in the First Nation's Annual Expenditure Law Schedule under Part I, section 1(c).

Expenditures

(Schedule to the Expenditure Standards)

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

Contingency Amounts

(Section 2.6 of the Expenditure Standards)

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; and
- Any proceeds of a borrowing from the First Nations Finance Authority.

Accumulated Surpluses/Deficits

(Subsection 13(3) of the FMA)

The accumulated surplus or deficit from the prior year is carried forward to the current budget year and reported in the accumulated surplus/deficit section of the annual budget.

Service Agreements

(Section 2.3 of the Expenditure Standards)

Where a First Nation has service agreements with third-party service providers and amounts from the local revenue account are budgeted to be used to pay for services under the agreement, the Annual Budget must list each service agreement, the amount payable under the agreement for the year, and a brief description of the service provided. These expenditure amounts for service agreements are also included in the appropriate budget expenditure category.

Reserve Fund Purposes Statement

(Section 4 of the Expenditure Standards)

The Expenditure Standards require that where a First Nation is establishing a reserve fund, the expenditure law must contain a provision which establishes the new reserve fund and states the purposes of the new reserve fund.

Establishing Reserve Funds

(Section 4 of the Expenditure Standards)

Reserve funds must be established in a First Nation's annual expenditure law and must comply with reserve fund usage provisions in the First Nation's property taxation law and the restrictions in section 8 of the Expenditure Standards. Reserve funds must also meet the criteria set out in section 5 of the Expenditure Standards, including the requirement for a plan. Section 2.4 of the Expenditure Standards requires the reserve fund balances are reported in an appendix to the annual budget.

Contingency Reserve Funds

(Section 6 of the Expenditure Standards)

Contingency reserve funds may be used by governments to cover unforeseen expenditures, or to stabilize the temporary impacts of cyclical local revenue decreases. First Nations that established contingency reserve funds prior to participating in the FMA, or that wish to establish these reserve funds, must meet the requirements set out in the Expenditure Standards.

- New contingency reserve funds must be established in the First Nation's expenditure law.
- A maximum of 10% of budgeted local revenues in the current year can be transferred into the contingency reserve fund.
- Contingency reserve funds can grow over time but must not exceed 50% of the budgeted current year's local revenues.
- Contingency reserve fund balances must be reported in an appendix to the annual budget.

Special Requirements for First Nations with Development Cost Charges, Service Taxes or Fee Laws

(Section 2.2 of the Expenditure Standards)

First Nations collecting development cost charges ("DCCs"), service taxes or fees must separately set out in the Annual Budget, the revenues and expenditures from DCCs, service taxes and fees, including transfers to reserve funds as required. In estimating revenues from DCCs, tax administrators should consider previous year DCC revenue and expected building permits to be issued or planned developments in the budget year.

In the first year of collecting DCCs, service taxes or fees, the First Nation's annual expenditure law must establish the associated required reserve and report reserve fund balances in an appendix to the annual budget.

Timing of Annual Expenditure Law Enactment

First Nations typically enact their annual expenditure law at the same time as their annual tax rates law. 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 FMA Registrar as soon as practicable.

Notification of Annual Expenditure Laws

(Section 2 of Standards Respecting Notices Relating to Local Revenue Laws, 2018 "Notice Standards")

Similar to the notification requirements for annual tax rates laws, the Notice Standards require First Nations to provide notice of the entire annual expenditure law, including the budget and appendices (if applicable), prior to the law being submitted to the Commission for review and approval.

The notice requirements for the annual expenditure laws are the same as for the annual tax rates law, and can be met by:

- posting the proposed annual expenditure law on the FNG, or on the First Nation's website;
- using procedures set out in the First Nation's taxpayer representation to council law; or
- holding a public meeting at which taxpayers may meet with the tax administrator or members of council to discuss the proposed law.

First Nations who wish to use the FNG website to post their annual laws, can email the final Word version of the proposed annual law to editor@fng.ca.

Amendments to the Annual Budget during the Tax Year

(Section 13 of the FMA)

First Nations who wish to amend their local revenue budgets in the current 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

(Section 14 of the FMA)

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.

The financial reporting standards for local revenues are contained in the First Nations Financial Management Board's *Local Revenue Account Financial Reporting Standards*. These standards can be found on the FNFMB's website [FNFMB](#).

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. This option has been developed to accommodate the needs of those First Nations that are generating taxation revenues at a scale where the costs of preparing separate audited local revenue financial statements may be significant relative to the amount of revenue raised.

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. The primary objective of these financial statements is to report on the results of operations of the local revenue activities for the period and to facilitate a budget-to-actual comparison to be made. This is necessary to fulfil the principles of transparency and accountability over the collection and use of local revenues. These financial statements and the accompanying audit report are to be made available to members of the First Nation, other persons who have an interest in the First Nation's lands (e.g., taxpayers), the FMA institutions, and the Minister of Crown-Indigenous Relations.

Comments or Questions?

Should you have comments or questions concerning this bulletin please contact an FNTC advisor or reach us at mail@fntc.ca.