

**POLICY FOR
FIRST NATION LOCAL IMPROVEMENT TAX BY-LAWS, 2018**

**PART I
PREAMBLE**

WHEREAS:

- A. Subsection 83(1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property tax;
- B. A Memorandum of Understanding between the First Nations Tax Commission and the Minister of Indian Affairs and Northern Development provides for the Commission to review and recommend section 83 by-laws for ministerial approval; and
- C. Policies are established by the Commission to further the objectives expressed in the Memorandum of Understanding, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues.

**PART II
PURPOSE**

This Policy sets out the requirements that should be met for First Nation local improvement tax by-laws enacted under subsection 83(1) of the Act. This Policy is used by the Commission in its review and recommendation for approval of First Nations' local improvement tax by-laws, pursuant to subsection 2.1 of the Memorandum of Understanding between the Commission and the Minister of Indian Affairs and Northern Development.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. This Policy is intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY**

This Policy is established pursuant to subsection 1.2 of the Memorandum of Understanding between the Commission and the Minister of Indian Affairs and Northern Development.

**PART IV
APPLICATION**

This Policy applies to every local improvement tax by-law submitted to the Commission for review and recommendation pursuant to the Memorandum of Understanding.

**PART V
CITATION**

This Policy may be cited as the *Policy for First Nation Local Improvement Tax By-laws, 2018*.

**PART VI
DEFINITIONS**

In this Policy:

“Act” means the *Indian Act*, R.S.C. 1985, c. I-5, and the regulations enacted under that Act;

“assessment by-law” means a property assessment by-law or a combined property taxation and assessment by-law enacted under paragraph 83(1)(a) of the Act;

“assessment review board” means an independent appeal body established by a First Nation under its assessment by-law to hear and determine assessment appeals;

“By-law” means a local improvement tax by-law enacted under subsection 83(1) of the Act;

“chair” means the chair of a review panel;

“Commission” means the First Nations Tax Commission established under the *First Nations Fiscal Management Act*, S.C. 2005, c. 9;

“complainant” means a person who commences an appeal of an improvement tax;

“Council” has the same meaning as “council of the band” in subsection 2(1) of the Act;

“First Nation” means a band as defined in subsection 2(1) the Act;

“holder” means a person in lawful possession of an interest in land or a person who

- (a) is entitled, through a lease, licence or other legal means, to possess or occupy the interest in land,
- (b) is in actual occupation of the interest in land,
- (c) has any right, title, estate or interest in the interest in land, or
- (d) is a trustee of the interest in land;

“interest in land” or “property” means land or improvements, or both, in a reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

“local improvement” means a work provided by or on behalf of a First Nation for which a local improvement tax will be levied under a By-law;

“local improvement area” means a defined area of a reserve that will benefit from a local improvement;

“local improvement tax” means a tax levied under a By-law in respect of the provision of a local improvement, and includes all penalties, interest and costs added to those taxes;

“local improvement tax roll” means a list of persons liable to pay a local improvement tax under a By-law;

“Province” refers to the province in which a reserve is situated;

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

“reserve” means any land set apart for the use and benefit of a First Nation within the meaning of the Act;

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting;

“review panel” means an independent appeal body established under a By-law to hear and determine local improvement tax appeals;

“tax administrator” means a person appointed by Council to administer and enforce a By-law; and

“taxation by-law” means a property taxation by-law or a combined property taxation and assessment by-law enacted under paragraph 83(1)(a) of the Act.

Except as otherwise provided in this Policy, words and expressions used in this Policy have the same meaning as in the Act.

PART VII POLICY

1. Description of Local Improvement

1.1 The By-law must describe the local improvement to be paid for by the local improvement tax.

1.2 The By-law must impose a local improvement tax only to recover all or a portion of the costs relating to the design and construction of the local improvement.

1.3 The By-law must levy a local improvement tax only for the provision of a local improvement that is within the categories of local improvements listed in the Schedule to this Policy.

2. Estimated Costs of Local Improvement

2.1 The By-law must set out the total estimated cost of the local improvement and the proportion of that estimated cost that the First Nation will recover through the local improvement tax.

2.2 In calculating the total estimated cost of the local improvement for the purposes of subsection 2.1, the First Nation must include only the following costs:

- (a) property acquisition costs;
- (b) capital costs;
- (c) professional services costs, including engineering and legal fees;
- (d) debt servicing costs; and
- (e) other costs that will be directly incurred in undertaking and financing the local improvement.

2.3 The total estimated cost of the local improvement set out in the By-law must be reviewed by a registered professional who must certify that the amount

- (a) includes only those costs permitted under subsection 2.2; and
- (b) provides a complete and accurate estimate of the total costs of the local improvement.

3. Basis of Local Improvement Tax

3.1 The By-law must state the basis on which the local improvement tax will be levied, which must be one or more of the following:

- (a) a property value tax based on the assessed value of the property as determined under the First Nation’s assessment by-law;
- (b) a single amount for each property;
- (c) the taxable area of the property; or
- (d) the taxable frontage of the property.

3.2 Where a By-law levies a tax on the basis of the taxable area or taxable frontage of a property, the

By-law must establish how the taxable area or taxable frontage, as the case may be, will be determined based on the physical characteristics of the property.

4. Establishing Local Improvement Tax Rates and Prepayment

4.1 The By-law must establish the local improvement tax rate that will be used to determine the local improvement tax payable in each year the local improvement tax is imposed.

4.2 Where the By-law imposes a local improvement tax based

(a) on a property value tax, the By-law must establish the rate to be paid per unit of assessed value of a property as determined under the First Nation's assessment by-law; or

(b) on a single rate for each property, the By-law must establish the rate to be paid in each year of the local improvement tax.

4.3 Where the By-law imposes a local improvement tax based on the taxable area or taxable frontage of a property, the By-law must establish either

(a) the rate to be paid per unit of taxable area or taxable frontage; or

(b) the rates of tax to be paid for different ranges of taxable areas or taxable frontages.

4.4 In establishing a tax rate, the By-law

(a) may provide for different rates for different property classes established in the First Nation's assessment by-law; and

(b) must provide for the equal application of tax rates within a property class.

4.5 Where the By-law allows a holder to prepay the local improvement tax amount, the By-law must set out the prepayment amount or the formula that will be used to calculate the prepayment amount.

5. Duration

The By-law must set out the number of years that the local improvement tax will be imposed, which must not exceed the lesser of

(a) thirty (30) years; and

(b) the reasonable life expectancy of the local improvement.

6. Construction Schedule

6.1 The By-law must

- (a) set out a construction schedule that includes the proposed dates for the commencement and completion of all design and construction components of the local improvement;
- (b) require the First Nation to commence and complete the construction in accordance with the construction schedule; and
- (c) require the First Nation to commence the construction within one (1) year of the date the tax is due and payable in the first year that it is levied.

6.2 The construction schedule required by subsection 6.1 must be reviewed by a registered professional who must certify that the construction schedule

- (a) includes all necessary design and construction components of the local improvement; and
- (b) provides a reasonable and achievable time frame for the completion of the work.

7. Local Improvement Area

Where the By-law provides for a local improvement that will benefit a local improvement area, the By-law must

- (a) define the boundaries of the local improvement area;
- (b) set out the portion of the costs of the local improvement that will be recovered by the local improvement tax; and
- (c) include a statement indicating the proportion of holders of taxable property within the local improvement area who support the local improvement tax, and how the First Nation determined the level of support.

8. Local Improvement Tax Liability and Exemptions

8.1 The By-law must provide that all interests in land in the reserve or within a local improvement area are subject to the local improvement tax unless

- (a) exempted from the local improvement tax in accordance with the By-law;
- (b) the First Nation waives or reduces the local improvement tax in accordance with the By-law; or
- (c) the interest in land will not have the opportunity to benefit from the local improvement.

8.2 Where a First Nation wishes to provide for exemptions from a local improvement tax, those exemptions must be set out in the By-law.

8.3 Where a By-law exempts interests in land from a local improvement tax on the basis that the interest in land is held by the First Nation, a member of the First Nation, or a corporation in which shares are held by or on behalf of the First Nation or a member of the First Nation, the By-law must require the First Nation to pay from its general revenues the local improvement taxes that would have been levied on the exempted property.

8.4 The By-law may permit the First Nation to waive or reduce the amount of a local improvement tax in respect of an interest in land only where the holder or a previous holder of that interest in land has

- (a) provided all or part of the local improvement at the holder's expense, or
- (b) already paid towards the costs of the local improvement,

in accordance with the terms and conditions specified in the By-law.

9. Local Improvement Tax Roll

9.1 The By-law must provide for the tax administrator to create a local improvement tax roll in the first year that a local improvement tax is levied.

9.2 The By-law must require the local improvement tax roll to include the following information:

- (a) the name and last known address of the holder of the interest in land;
- (b) a short description of the interest in land;
- (c) where the local improvement tax is imposed on the basis of the assessed value of the interest in land, the total assessed value of the interest in land as shown on the First Nation's assessment roll;
- (d) where the local improvement tax is imposed on the basis of taxable area or taxable frontage, the taxable area or taxable frontage of the interest in land, as applicable;
- (e) the local improvement tax imposed on the interest in land in the current taxation year;
- (f) any unpaid local improvement taxes, penalties, interest and arrears in respect of the interest in land; and
- (g) if the name of a holder of a charge is included on the First Nation's assessment roll for an interest in land, the name and address of that person.

9.3 Where the local improvement tax is levied on the basis of taxable area or taxable frontage, the By-law must require the local improvement tax roll to be reviewed by a registered professional who must certify that the calculation of the taxable area or taxable frontage of each property is correctly shown on the local improvement tax roll.

9.4 The By-law must

- (a) provide a process for the local improvement tax roll to be certified that it was completed in accordance with the requirements of the By-law;
- (b) require the local improvement tax roll to be available for public inspection at the office of the First Nation during regular office hours; and
- (c) include a process for updating the local improvement tax roll in each year that the local improvement tax is levied under the By-law.

10. Tax Notice and Payment

10.1 The By-law must

- (a) set the date on which the local improvement tax is due and payable; and
- (b) set out where tax payments must be made and the acceptable forms of payment.

10.2 The By-law must require the tax administrator to mail a tax notice in each year to

- (a) each holder of an interest in land subject to the local improvement tax, and
- (b) each person whose name appears on the local improvement tax roll in respect of a property,

by a date set out in the By-law, which date must be at least thirty (30) days before the date that the local

improvement tax is due.

10.3 The By-law must require the tax notice to include

- (a) the information shown on the local improvement tax roll in respect of the property; and
- (b) where payment must be made, the manner of payment and the date the local improvement tax is due.

10.4 Where the By-law provides that the local improvement tax may be prepaid, the By-law must require the tax notice that is given in the first year the local improvement tax is levied to set out the amount of the prepayment and the date by which the prepayment must be made.

10.5 The By-law may provide for a tax notice under a By-law to be combined with a tax notice under the First Nation's taxation by-law.

11. Revenues

11.1 The By-law must provide that all revenue collected by the First Nation from the local improvement tax, and interest earned on it, is used only for the provision of the local improvement.

11.2 The By-law must require the tax administrator to establish a separate account for the local improvement tax revenues.

12. Penalties and Interest

12.1 Where a By-law provides for a penalty to be imposed in respect of unpaid local improvement taxes, the By-law must set out

- (a) the manner in which the penalty will be calculated;
- (b) the amount of the penalty, which must not exceed ten percent (10%) of the amount of the unpaid local improvement taxes; and
- (c) the date on which a penalty will be imposed if the local improvement taxes remain unpaid.

12.2 Where a By-law provides for interest to be charged in respect of unpaid local improvement taxes, the By-law must set out

- (a) the manner in which interest will be calculated; and
- (b) the rate of interest, which must not exceed fifteen percent (15%) per year.

13. Enforcement

The By-law must set out the enforcement measures that may be taken by the First Nation to collect unpaid local improvement taxes.

14. Establishing a Review Panel

14.1 The By-law must provide for Council to establish a review panel to hear and determine local improvement tax appeals.

14.2 The By-law must

- (a) require the review panel to have at least three (3) members and provide for the appointment of those members by Council resolution;
- (b) provide for a term of appointment of members of the review panel of not less than two (2) years;
- (c) fix the remuneration for members of the review panel;
- (d) prohibit a person from serving on the review panel where the person
 - (i) has a personal or financial interest in the subject of the appeal,
 - (ii) is the Chief or a member of Council, or
 - (iii) has financial dealings with the First Nation that could reasonably give rise to a conflict of interest or impair that person's ability to deal fairly or impartially with an appeal;
- (e) set out when and how members of the review panel may be removed from office;
- (f) provide for the appointment of a chair of the review panel and set out the powers, duties and functions of the chair;
- (g) establish practices and procedures for the conduct of review panel hearings, including respecting
 - (i) a party's right to be heard, have representation, present evidence and call witnesses,
 - (ii) the manner by which the review panel may conduct a hearing, and
 - (iii) the evidentiary rules that apply during a hearing;
- (h) require the review panel, within ten (10) days after completion of a hearing, to make a record of its decision and advise the tax administrator of the decision; and
- (i) require the tax administrator to notify the holder of the property and the complainant of a decision of the review panel.

14.3 In establishing practices and procedures of the review panel, the By-law may

- (a) provide for additional practices and procedures to be established in a practices and procedures manual approved by Council resolution; and
- (b) permit the review panel to determine its own procedure during a hearing to the extent not inconsistent with the By-law.

14.4 Despite subsection 14.2, the By-law may allow Council, by resolution, to establish a review panel by appointing the First Nation's assessment review board as the review panel.

15. Appeal to Review Panel

15.1 The By-law must

- (a) provide an opportunity for holders to appeal a local improvement tax before it is imposed for the first time, on one or more of the following grounds:
 - (i) there is an error or omission respecting a name or address on the local improvement tax roll,
 - (ii) there is an error or omission in the inclusion of a property,
 - (iii) where the local improvement tax is levied on the basis of taxable area or taxable frontage, that there is an error or omission respecting the taxable area or taxable frontage of a property, and
 - (iv) where the By-law provides for exemptions, that an exemption has been improperly allowed or disallowed; and
- (b) provide an opportunity in each subsequent year that a local improvement tax is levied for a holder of taxable property to appeal
 - (i) a change in the local improvement tax levied against that holder's property, or
 - (ii) the tax administrator's refusal to make a change to the local improvement tax roll respecting a matter referred to in paragraph (a) that is requested by the holder.

15.2 The By-law must not impose a fee for appealing a local improvement tax.

15.3 The By-law must provide for the complainant, the tax administrator and the holder of the property (if other than the complainant) to be parties to the appeal.

15.4 The By-law must set out procedures for updating the local improvement tax roll to reflect decisions of the review panel.

16. Confidentiality

The By-law must provide for the confidentiality of information and documents obtained by the tax administrator, the review panel and any other person who has custody or control of records obtained or created under the By-law, except that disclosure may be made

- (a) in the course of administering the By-law or performing functions under it;
- (b) in proceedings before the review panel, a tribunal having jurisdiction, a court of law or pursuant to a court order;
- (c) where a holder gives written authorization for his or her agent to obtain confidential information relating to a property; or
- (d) by Council to a third party for research (including statistical) purposes.

PART VIII
EFFECTIVE DATE

This Policy is established and in effect as of September 18, 2018.

PART IX
ENQUIRIES

All enquiries respecting this Policy should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857

or

First Nations Tax Commission
202 – 190 O’Connor Street
Ottawa, ON K2P 2R3
Telephone: 613) 789-5000

SCHEDULE
LOCAL IMPROVEMENT CATEGORIES

The categories for local improvements are as follows:

1. The design and construction of transportation infrastructure, including roads, boulevards, sidewalks, bridges, overpasses, curbs, traffic islands, lighting and ferries.
2. The design and construction of water treatment and supply facilities, including water supply, purification, intake and storage facilities, treatment plants, pumping stations and pipe systems.
3. The design and construction of sewage collection, treatment and disposal facilities, including liquid waste disposal planning, collection systems, trunk systems, treatment plants and discharge facilities.
4. The design and construction of dikes, erosion control structures, retaining walls, drainage ditches, flood boxes, sea and harbour walls, waterfront walkways, and wharves and floats.