



## Backgrounder: First Nation Taxation, the First Nations Tax Commission, and the *First Nations Fiscal Management Act*

First Nation tax jurisdiction existed in the pre and early contact periods. It was diminished or removed by the *Constitution Act* and other legislation and First Nations have been working to renew that jurisdiction as the foundation of their governments and economies since then.

### A Brief History

Taxation by First Nation governments can be traced back to the earliest of times. Long before the appearance of Europeans in North America, paying tribute for occupying or using someone's territory was a common practice amongst First Nations in Canada. Historical records from the 19<sup>th</sup> and early 20<sup>th</sup> centuries show that First Nation governments imposed various forms of taxes including possibly hundreds of references to tariffs being imposed on traders in exchange for safe and unimpeded transport of their trade commodities through First Nation territories. First Nations collected taxes or rents from settlers for the privilege of fishing and trapping on their grounds. They charged tolls to individuals who wished to pass along bridges they had constructed. Further, they collected taxes on miners and ranchers for their occupancy and use of portions of the territory.

Another form of taxation involved wealth distribution or redistribution. Potlaches and giveaway dances, for example, were formalized mechanisms for wealth redistribution within First Nation societies. Originally, the media for wealth redistributions via potlaches, giveaway dances and similar mechanisms would have been commodities. Modern potlaches have evolved to include the collection and redistribution of cash as well as commodities. One particularly interesting example is the use of the word "taksis" in the west coast Chinook trading language in the 1890s. There are recorded instances of First Nations paying taksis to their communities to support infrastructure and advance their land claims.

First Nation tax powers, however, were systematically taken away between 1867 and 1927<sup>1</sup>. Federal and provincial governments assumed all tax powers (property, sales, income, and resources) during this time and legislated First Nations governments and people out of the economy and fiscal framework of Canada. Some key events including banning forms of wealth distribution through *Indian Act* amendments and prohibiting early efforts to collect property and labor taxes through federal and provincial policies. These efforts were formalized in the 1927 amendment to the *Indian Act* that made it a

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<sup>1</sup> Another piece of history that may interest readers is the origin of the First Nation tax exemption. In 1841 the Abenaki First Nation petitioned to the then governor of Upper Canada to collect property taxes from their lands instead of municipalities. The governor ruled that First Nations were incapable of governing so to protect their land base from losses through taxation default they should be exempt from taxation. This was eventually included in the *Indian Act* and its legislative basis and scope was the subject of the Supreme Court *Tomah* decision in 1996.

punishable offence for First Nations to raise any public revenues to advance their land claims. The policy intent of this period is best reflected in the following Hansard quote from Calgary MP, Thomas Mitchell Tweedie: “*Well the Indian may be satisfied, or he may not. My personal view with regard to the Indian is that he is the ward of the Government, and being a ward, he is bound to accept the treatment given him.*”

## **Renewing First Nation Tax and Fiscal Powers**

Beginning with changes to the *Indian Act* in 1951, First Nation revenue raising powers began to be renewed. There were efforts to establish First Nation property tax powers in Ontario and BC in the 1960s, but not until the 1988 “Kamloops Amendment” (Bill C-115) to the *Indian Act* that an orderly process to implement First Nation tax powers was established and the Indian Taxation Advisory Board created.

There are three parts to this orderly process: (1) Pass enabling federal and, where necessary, provincial legislation, to provide fiscal room for First Nations; (2) Interested First Nations pass their own legislation to occupy this room; and (3) A national First Nation institution provides implementation and regulatory support to First Nations to effectively coordinate First Nation tax systems within the federation.

This process was formalized and expanded in 2005 through the passage of the *First Nations Fiscal Management Act* (FMA). The FMA created and provided legislative mandates to the First Nations Tax Commission (FNTC), First Nations Financial Management Board (FMB) and First Nations Finance Authority (FNFA). The optional FMA provided more fiscal and financial powers to interested First Nations and allowed them to leverage their tax and other revenues to long-term finance infrastructure.

The growth in First Nation tax systems and participation in the FMA since then has been phenomenal. There are now more than 300 First Nations using the FMA, with close to 200 collecting or interested in collecting taxes using this framework. Some key accomplishments of the FMA include over \$1 billion in First Nation tax revenues collected, over \$3 billion in new investment generated, over 100 First Nations certified for financial management by the FMB, over \$600 million in First Nation debentures issues (and the recent increase in the FNFA credit rating from A to AA).

The FMA approach has proven more effective and efficient than other approaches to implement First Nation tax and fiscal powers, such as self-government agreements, or federal and provincial legislation without First Nation institutional support. There are two broad reasons for this. First, the FNTC is much more effective at communicating fiscal powers to First Nation communities than other governments. Second, the FNTC plays a key role in the FMA framework and has developed a series of innovations to support, implement and regulate First Nation tax systems, including:

- Establishing standards to support First Nation taxation law-making (19 standards developed to date);
- Developing sample law for use by First Nations (over 30 sample taxation laws developed to date);
- Providing individual law development support to First Nations;

- Reviewing and approving First Nation taxation laws (over 1500 First Nation tax laws approved);
- Providing both informal and formal dispute resolution to First Nations, their members and taxpayers;
- Establishing and maintaining the *First Nations Gazette* for the publication of First Nation laws (<http://fng.ca>) and a public notification service;
- The development of the Tax Administrators Software (TAS) to support taxing First Nations;
- Supporting the development of taxpayer representation systems and policies;
- Supporting tax-based service agreement templates (over 25 service agreements completed); and
- Supporting the Tulo Centre of Indigenous Economics, which offers three university accredited programs (24 courses) taken by over 200 First Nation students and administrators (<http://tulo.ca>).

The FNTC has also led the national initiative with FMA First Nations and the other institutions to significantly expand the FMA to support First Nation tobacco, cannabis, sales, and resource taxation and to add the First Nations Infrastructure Institute as the fourth institution under the FMA. The FMA framework has also been instrumental in supporting 10-year federal funding for qualifying First Nations. These initiatives will grow participation in the FMA and provides an opportunity to develop an improved rebalanced fiscal relationship for First Nations, provincial governments, and the federal government. For more information about these new initiatives see <http://fnsleadingtheway.ca>, <http://fnii.ca> and <http://fntc.ca>.