

BUILDING OWN SOURCE REVENUE THROUGH PROPERTY TAXATION

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Why Tax at All?

When most people hear the words “property taxation”, their eyes start glazing over. However, in its own way property taxation can be just as important a means of achieving social justice as the more glamorous Aboriginal rights and title cases.

The dire poverty that exists on most reserves in Canada is well known. Many First Nations communities are tired of the chronic shortages, delayed responses and late payments from INAC, and are taking steps to generate their own revenue. By putting themselves in charge of their finances, these First Nations no longer need permission to move ahead on important projects. They are able to prioritize what is important for their communities and meet the needs of their members. In this way, economic development is a critical component of self-governance, independence, and justice.

Property taxation can be a very lucrative source of revenue for Aboriginal communities, both directly and indirectly. Communities with large on-reserve tax bases can collect hundreds of thousands of dollars in property tax each year; in some cases even more than that. As I will explain later in this paper, property tax revenues can help to jump-start the economy by making development and investment more attractive, which in turn can lead to more revenue for the community.

If that is not enough of an incentive, consider this: if a First Nation does not tax its reserve lands, then the local municipality or regional district will, and will keep all of the tax revenue. So rather than asking “why tax”, maybe the question should be “why wouldn’t you tax”?

Property Taxation Regimes on Reserve

First Nations that wish to tax their reserves have two options:

- 1) They can enact property assessment and taxation bylaws under section 83 of the *Indian Act*; or
- 2) They can enact property assessment and taxation laws under the *First Nations Fiscal and Statistical Management Act* (the “FSMA”).

I have worked with both systems and, in my opinion, the FSMA is a much better system all-around. In particular, the FSMA system offers significant advantages for generating revenue:

- 1) **Flexibility and Responsiveness.** Unlike s. 83, the FSMA was developed and is run by First Nations, for First Nations. Instead of having to wait for the Minister's approval, which can take months, FSMA First Nations deal directly with the First Nations Tax Commission (the "FNTC"). I have found that the FNTC responds very quickly to inquiries, and has been very accommodating and flexible in responding to the unique needs of the various First Nations under the FSMA.
- 2) **Familiarity.** While FSMA First Nations can customize their tax laws to meet their needs to a large degree, this is balanced by the Act, regulations, and firm FNTC standards, which together create some uniformity. The result is property tax systems that are very similar to those off-reserve, which creates a level of familiarity, security and comfort for potential taxpayers and developers. Non-members are much more likely to invest in a system with which they are familiar.
- 3) **Borrowing Capacity.** The most direct advantage of the FSMA in terms of generating revenue is the ability to leverage property tax revenues to secure long-term, low-interest loans, as will be explained later in this paper.

Types of Taxpayers

Many First Nations in Canada have large tax bases on their reserves of which they aren't even aware, allowing the municipality or regional district to collect revenues that the First Nation would otherwise collect.

The most commonly-known taxpayers are residential taxpayers – non-members who live in leased properties on reserve. But there are many other types of taxpayers, including:

- 1) **Businesses.** This may include incorporated companies owned by the First Nation.
- 2) **Industry.** For example, log booms and mills operated on reserve by forestry companies are taxable.
- 3) **Railways.** In certain cases, rail lines running through a reserve are taxable.
- 4) **Utilities.** For example, phone lines and cable drops run through many reserves, and these are all taxable interests. Indeed for many First

Nations, these are the only taxable interests they have when they first begin taxing.

Members are often understandably concerned when their communities consider implementing a property taxation regime. Under both the *Indian Act* and the FSMA, taxing First Nations have the option to give tax exemptions to their members, and most have chosen to do so. Most communities have found that, when their members understand the advantages of taxation, their members are supportive.

How to Increase your Tax Base

Property tax revenues cannot simply go into the First Nation's general account; they must be used to provide services and infrastructure to taxpayers. In addition to services such as water, sewer and fire protection, property taxes can also be used to pay for such things as:

- street lighting;
- sidewalks;
- road resurfacing;
- garbage, recycling and composting pick-up;
- snow removal;
- library privileges; and
- buildings such as a community centre.

As services and infrastructure improve, the community becomes much more attractive to potential residents and developers. As more people and businesses move onto the reserve, the tax base increases, resulting in more tax revenues. Members also benefit from these improvements to services and infrastructure, whether or not they are taxpayers.

Under the FSMA, taxing First Nations may also be able to generate revenue by implementing Development Cost Charges ("DCCs") and Local Improvement Charges.

How to Leverage Property Tax Revenue

Under the FSMA, taxing First Nations can access long-term, low-interest loans. Municipalities have benefited from this for years, through the Municipal Finance Authority. FSMA First Nations who enact a Financial Administration Law, and receive certification from the Financial Management Board (the "FMB") will be able to access debenture borrowing from the First Nations Finance Authority (the "FNFA"). Eligible First Nations will be able to borrow up to ten times their annual tax revenues, at very competitive interest rates.

Considerations before Implementing Property Tax

Cedar Law is dedicated to providing high quality legal services to First Nations and Aboriginal organizations.

If you are considering entering into property taxation, there are some things you should consider:

- 1) If you are a BC First Nation, do you have a property taxation certificate? If not, you will need to apply for one under the *Indian Self Government Enabling Act*, R.S.B.C. 1996, c. 216.
- 2) Do you have someone who can take on the role of tax administrator? In many cases this does not need to be a separate position, but can be taken on by an existing employee such as the Administrator, Finance Manager or Lands Manager. It may also be possible to hire an independent contractor to perform this role.
- 3) Do you have an existing tax base? As explained above, many First Nations have been surprised to learn that there are taxable interests on their reserves – commonly utilities. BC Assessment may be able to provide you with helpful information.
- 4) If you are already taxing under s. 83 of the *Indian Act*, should you transition your existing bylaws into laws under the FSMA?

Questions?

If you have any questions arising from my paper or presentation, please feel free to contact me:

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