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DEC 03 2009

The Honourable James M. Flaherty  
Minister of Finance  
Department of Finance Canada  
140 O'Connor Street  
Ottawa, Ontario  
K1A 0G5

Dear Minister Flaherty: *Jim!*

Thank you for your recent letter in which you outline your response to the concerns being raised in Ontario about the impact of the Harmonized Sales Tax (HST) on Status Indians.

As you are aware, Ontario supports the request of First Nations to continue Ontario's administrative approach to the sales tax exemption for Status Indians under the federal administration of the HST. You outline in your letter that there are some requirements that would need to be met in order for Ontario's approach to continue under the HST. I believe there are approaches that may address these challenges as well as meet the proposed requirements under the Canada-Ontario Comprehensive Integrated Tax Coordination Agreement.

Ontario officials have been working with representatives of Ontario First Nations to identify possible ways to improve the administration of the HST so that Status Indians purchasing goods off-reserve would continue to be tax-exempt even if they deliver those goods themselves for consumption on a reserve. Officials have identified various data, methodological and administrative considerations and possible solutions as part of this work. We have valued our discussions with First Nations representatives and benefited from their insights.

I have attached this work for your consideration and ask that our respective officials meet with Ontario First Nations representatives in early December to discuss these proposals and incorporate federal government input and advice. Some of these approaches could represent improvements to how the HST would be delivered in Ontario. One example might be the use of a Status Indian's address to confirm that goods purchased off reserve would be consumed on a reserve. Another example might be to expand the existing remote store program that allows the sale of goods tax-free to Status Indians in locations near reserves. I believe all of these ideas merit further discussion and your consideration.

Ontario is committed to working with our First Nations partners to explore ways to address their concerns, and I believe our proposals represent viable ways to do so. I encourage you to review these approaches and I look forward to your earliest response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duncan', with a long horizontal line extending to the right.

Dwight Duncan  
Minister

c: Brad Duguid, Minister of Aboriginal Affairs  
John Wilkinson, Minister of Revenue  
Angus Toulouse, Ontario Regional Chief

# **FIRST NATIONS AND THE HARMONIZED SALES TAX**

## **Preserving Ontario's Current Off-Reserve Point-Of-Sale Exemption**

**Ministry of Finance of Ontario**

## Overview

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- Under Goods and Services Tax (GST) rules, point-of-sale (POS) exemptions are provided for goods acquired by a Status Indian, band, or council:
  - On a reserve;
  - Off a reserve, delivered by a business or its agent to a reserve;
  - Off a reserve at a qualifying remote store by a reserve resident.
  
- Under the GST, a band or band-empowered entity may be able to recover (through a rebate) the GST paid on certain services (e.g., transportation, short-term accommodation, meals and entertainment expenses) purchased off-reserve, for band-management activities.
  
- Ontario's Retail Sales Tax (RST) currently provides a POS exemption to a Status Indian, band, or council who acquires and self-delivers goods to a reserve for consumption on a reserve.
  
- See **Appendix I** for details of Current Approach

## **Overview (Cont'd)**

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- Unless a mechanism can be found quickly, the harmonization of Ontario's RST with the GST would preclude the ability of affected First Nations to "self-deliver" goods to the reserve for consumption on a reserve exempt from tax.
- Under HST, revenue for each HST province is determined through the Revenue Allocation Framework rather than tracking actual tax paid/collected in the province.
- As such, a provincial POS exemption would either have to be based on Statistics Canada data or other mutually agreed-to methodology.
  - This differentiates the HST system from Ontario's RST system.
- The Chiefs of Ontario have expressed a strong desire to maintain the current RST treatment under a harmonized sales tax. First Nations leaders in Ontario have sought assurances from the federal government and province that Ontario's current administration of off-reserve point-of-sale exemptions will continue under the new HST regime.

- The Ontario government is in full support of having Ontario's current administrative treatment of the point-of-sale exemption continue after the transition to a federally-administered HST.
- Ontario, led by the Ministries of Finance, Revenue and Aboriginal Affairs, has been working directly with representatives of the Chiefs of Ontario to develop options that would allow the current exemption to continue under a harmonized sales tax system.

## **Background**

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- Prior to September 1, 1980, Status Indians could purchase taxable goods off the reserve exempt from RST only if the vendor or the vendor's agent delivered the goods to the reserve.
- Effective September 1, 1980, Ontario's policy was revised to ease the vendor "delivery to the reserve" requirement. As a result of this easement, Status Indians are permitted to purchase most personal goods off-reserve RST exempt as long as the goods are to be consumed on a reserve.
- In order to receive the exemption, Status Indians must present their "Certificate of Indian Status" identification card.

# Options

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- Ontario officials, in partnership with representatives of the Chiefs of Ontario have developed options that would help preserve Ontario's administrative policy under federal administration.
  1. Maintain current Ontario approach of self-delivery for consumption on a reserve.
  2. Amend the current approach by introducing new measures to confirm goods are consumed on a reserve:
    - a. Status Indian self-declares that s/he lives or works on a reserve by stating his/her postal code, and businesses could *record but not validate* the postal code to support the exempt sale; or
    - b. Status Indian self-declares that s/he lives or works on a reserve by stating his/her postal code, and businesses could *record and validate* the postal code against a listing of postal codes relating to Ontario reserves; or
    - c. Some form of address documentation would be issued to Status Indians living or working on a reserve, and businesses would keep a record of relevant information.
  3. Allow goods acquired off-reserve to be eligible for the POS exemption only if bought from a store in a "qualifying zone" similar to one reserve in Quebec.

- Please refer to **Appendix II** for details of these options.

# Appendix I

## Point Of Sale Exemption – Current Approach

	Conditions for Point of Sale Exemption	Documentation	How it is Validated at Point of Sale <sup>1</sup>	Considerations
1. Goods Acquired on a Reserve	1.1 Must be a Status Indian, Indian Band, or Band Council	Status Indian - card issued by Indian and Northern Affairs Canada (INAC) <sup>2</sup>  Band or band council – written certification (similar to a PEC or GST/HST certification)	<ul style="list-style-type: none"> <li>• Businesses are required to document the INAC card # or obtain certification in order to validate exempt sale.</li> <li>• CRA ensures businesses document the INAC card # or obtain certification to support the exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>• Same practice followed today for both Ontario and the federal government.</li> <li>• Ontario would continue to parallel the federal government on July 1, 2010.</li> </ul>
2. Goods Acquired off Reserve and Delivered by the Business or its Agent to a reserve	2.1 Must be a Status Indian, Indian Band, or Band Council	Status Indian - card issued by Indian and Northern Affairs Canada (INAC) <sup>2</sup>  Band or band council – written certification (similar to a PEC or GST/HST certification)	<ul style="list-style-type: none"> <li>• Businesses are required to document the INAC card # or obtain certification in order to validate exempt sale.</li> <li>• CRA ensures businesses document the INAC card # or obtain certification to support the exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>• Same practice followed today for both Ontario and the federal government.</li> <li>• Ontario would continue to parallel the federal government on July 1, 2010</li> </ul>
	2.2 Business or its agent must deliver the goods to a reserve	Records documenting delivery to a reserve	<ul style="list-style-type: none"> <li>• Businesses retain records to prove the goods were delivered to a reserve.</li> <li>• CRA ensures businesses retain adequate documentation to support exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>• Same practice followed today for both Ontario and the federal government.</li> <li>• Ontario would continue to parallel federal government on July 1, 2010.</li> </ul>
3. Goods Acquired off a Reserve from a	3.1 Must be a Status Indian, Indian Band or Band Council	Status Indian - card issued by INAC <sup>2</sup>	<ul style="list-style-type: none"> <li>• Businesses would be required to document the INAC card # or obtain certification in order to</li> </ul>	<ul style="list-style-type: none"> <li>• This is the same practice Ontario follows today re documentation of Indian</li> </ul>

<sup>1</sup> Validation must include a process that is verifiable and measurable in order to support HST allocation formula.

<sup>2</sup> An "Indian" is a person who is registered under the federal *Indian Act*. An Indian does not have to live or maintain a residence on a reserve. Some First Nation communities issue the status card as delegated by INAC.

	Conditions for Point of Sale Exemption	Documentation	How it is Validated at Point of Sale <sup>1</sup>	Considerations
Remote Store by a Reserve Resident		Band or band council – written certification (similar to a PEC or GST/HST certification)	validate exempt sale. <ul style="list-style-type: none"> <li>• CRA would need to ensure businesses documented the INAC card # or obtained certification to support the exempt sale.</li> </ul>	status.
	3.2 Must be a store participating in the Federal governments remote store policy	Currently, the federal government waives the requirement for the delivery of goods to a reserve where a business qualifies as a remote store under one of the following three options <sup>3</sup> : <ol style="list-style-type: none"> <li>1. Where the regular trading zone of the business includes a reserve and, the business is located in a remote location and during the previous 12-month period, the business' sales were made primarily (more than 50%) to Status Indians/bands/etc.</li> <li>2. The business is within 10 km of a reserve and during the previous 12-month period, all or substantially all (90% or more) of the business' sales were made to Status Indians/bands/etc.</li> <li>3. The business has no prior sales history of their own on which to base their calculations, a sales history for a period of less than 12 months, or a sales history for a period of more than 12 months and there is a newly created reserve in their sales area and these businesses meet other specific criteria.</li> </ol>		<ul style="list-style-type: none"> <li>• The existing federal rules for remote stores would apply to Ontario as of July 1, 2010.</li> </ul>
4 Goods Acquired off Reserve and Self Delivered by Status	4.1 Must be a Status Indian, Indian Band, or Band Council	Status Indian – card issued by Indian and Northern Affairs Canada (INAC) <sup>2</sup>  Band or band council – written	<ul style="list-style-type: none"> <li>• Businesses are required to document the INAC card # or obtain certification in order to validate exempt sales.</li> </ul>	<ul style="list-style-type: none"> <li>• This is the practice Ontario follows today re documentation of Indian status.</li> </ul>

<sup>3</sup> The Federal government has a GST/HST Policy Statement (P-246) for remote stores or off-reserve stores with significant sales to Indians, Indian bands and band-empowered entities.

	<b>Conditions for Point of Sale Exemption</b>	<b>Documentation</b>	<b>How it is Validated at Point of Sale</b>	<b>Considerations</b>
<b>Indian to a Reserve</b>		certification (similar to a PEC )		
	4.2 Must consume goods on the reserve	Ontario assumes the goods will be self delivered and consumed on a reserve	<ul style="list-style-type: none"> <li>• By presentation of INAC card or written certification (similar to a PEC ).</li> </ul>	<ul style="list-style-type: none"> <li>• Ontario's policy states that the goods must be consumed on a reserve.</li> </ul>

# Appendix II

## Options for Maintaining Point Of Sale Exemption for Status Indians

	Conditions for Point of Sale Exemption	Documentation	How will it be Validated at Point of Sale?	Design Considerations
<b>1. Maintain current Ontario tax exemption</b>  <b>Goods acquired off-reserve and self-delivered by Status Indians to a reserve for consumption on a reserve</b>	1.1 Must be a Status Indian, Indian Band or Band Council	Status Indian – card issued by Indian and Northern Affairs Canada (INAC) <sup>5</sup>  Band or band council – written certification (similar to a Purchase Exemption Certificate (PEC) or GST/HST certification)	<ul style="list-style-type: none"> <li>Businesses are required to document the INAC card # or obtain certification in order to validate exempt sales.</li> <li>Canada Revenue Agency (CRA) would ensure businesses documented INAC card # or obtained certification to support the exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>This is the same practice Ontario follows today re documentation of Indian Status.</li> </ul>
	1.2 Must consume goods on the reserve	Ontario assumes the goods will be self delivered and consumed on a reserve	<ul style="list-style-type: none"> <li>By presentation of INAC card or written certification (similar to a PEC or GST/HST certification)</li> </ul>	<ul style="list-style-type: none"> <li>Ontario's policy states that the goods must be consumed on a reserve.</li> </ul>

<sup>4</sup> Validation must include a process that is verifiable and measurable in order to support HST allocation formula, and the methodology must be mutually agreed to between the provincial and federal government.

<sup>5</sup> An "Indian" is a person who is registered under the federal Indian Act. An Indian does not have to live or maintain a residence on a reserve. Some First Nation communities issue the status card as delegated by INAC.

	Conditions for Point of Sale Exemption	Documentation	How will it be Validated at Point of Sale?	Design Considerations
<p><b>2. Goods Acquired off a Reserve and Self Delivered by Status Indian to a Reserve</b></p>	<p>2.1 Must be a Status Indian, Indian Band or Band Council</p> <p>2.2 Status Indian must live or work on a reserve – also available to Indian Bands and Band Councils</p>	<p>Status Indian - card issued by INAC<sup>5</sup></p> <p>Band or band council – written certification (similar to a PEC or GST/HST certification)</p> <p>If the living or working address of Status Indian is on a reserve then the assumption is that the goods will be self delivered and consumed on a reserve.</p>	<p><b>Sub Option A</b></p> <ul style="list-style-type: none"> <li>• Status Indian self-declares that he or she lives or works on a reserve by stating his/her postal code.</li> <li>• Businesses would record the postal code to support the exempt sale. The businesses would not validate the postal code.</li> <li>• CRA would need to ensure businesses documented the postal code to support the exempt sale.</li> <li>• Businesses would be required to document the INAC card # or obtain certification in order to validate exempt sale.</li> <li>• CRA would need to ensure businesses documented INAC card # or obtained certification to support the exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimal impact on businesses</li> <li>• Exempt sales cannot be validated.</li> <li>• "Working on a reserve" would be defined by the First Nations.</li> </ul>

	Conditions for Point of Sale Exemption	Documentation	How will it be Validated at Point of Sale?	Design Considerations
<p><b>2. Goods Acquired off a Reserve and Self Delivered by Status Indian to a Reserve (continued)</b></p>	<p>2.1 Must be a Status Indian, Indian Band or Band Council</p> <p>2.2 Status Indian must live or work on a reserve – also available to Indian Bands and Band Councils</p>	<p>Status Indian - card issued by INAC<sup>5</sup></p> <p>Band or band council – written certification (similar to a PEC or GST/HST certification)</p> <p>If the living or working address of Status Indian is on a reserve then the assumption is that the goods will be self delivered and consumed on a reserve.</p>	<p><b>Sub Option B</b></p> <ul style="list-style-type: none"> <li>• Status Indian self-declares that he or she lives or works on a reserve by stating his/her postal code.</li> <li>• Businesses would validate the postal code against a listing of postal codes relating to Ontario reserves. Businesses would then record the reserve postal code to support the exempt sale.</li> <li>• CRA would need to ensure businesses documented the postal code to support the exempt sale.</li> <li>• Businesses would be required to document the INAC card # or obtain certification in order to validate exempt sale.</li> <li>• CRA would need to ensure businesses documented INAC card # or obtained certification to support the exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>• Places additional burden on the businesses to validate the postal code against a listing.</li> <li>• The federal government would need to ensure the reserve postal code listing is kept current.</li> <li>• “Working on a reserve” would be defined by the First Nations.</li> </ul>

	Conditions for Point of Sale Exemption	Documentation	How will it be Validated at Point of Sale <sup>6</sup>	Design Considerations
<b>2. Goods Acquired off a Reserve and Self Delivered by Status Indian to a Reserve (continued)</b>	<p>2.1 Must be a Status Indian, Indian Band or Band Council</p> <p>2.2 Status Indian must live or work on a reserve – also available to Indian Bands and Band Councils</p>	<p>Status Indian - card issued by INAC<sup>5</sup></p> <p>Band or band council – written certification (similar to a PEC or GST/HST certification)</p> <p>If the living or working address of Status Indian is on a reserve then the assumption is that the goods will be self delivered and consumed on a reserve.</p>	<p><b>Sub Option C</b></p> <ul style="list-style-type: none"> <li>Some form of address documentation issued to Status Indians living or working on a reserve. The address documentation could take the form of an address card, letter or sticker<sup>6</sup> and be issued by: <ul style="list-style-type: none"> <li>- First Nations</li> <li>- Federal government</li> <li>- Ministry of Revenue, or</li> <li>- some sort of jointly authorized agency</li> </ul> </li> <li>Businesses would be required to document card/letter/sticker reference #.</li> <li>CRA would need to ensure businesses documented the card/letter/sticker # to support the exempt sale.</li> <li>Businesses would be required to document the INAC card # or obtain certification in order to validate exempt sale.</li> <li>CRA would need to ensure businesses documented INAC card # or obtained certification to support the exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>Only additional work for businesses would be recording two numbers versus one.</li> <li>First Nations would be willing to issue the address documentation and take full responsibility for the accuracy and maintenance of the list.</li> <li>If the federal government or Ministry of Revenue issues the card, the First Nations would be willing to provide a list of those living or working on a reserve subject to FOI &amp; relevant legislation.</li> <li>If either government issues the card, First Nations or Status Indians would be required to notify the government of any address changes that impact their eligibility.</li> <li>"Working on a reserve" would be defined by the First Nations.</li> <li>The exemption would be limited to Ontario residents.</li> <li>Cards would be reissued every 5 years. Criteria for card/letter/sticker would need to be established jointly by the First Nations and the government.</li> </ul>

<sup>6</sup> Need to look at long term solutions utilizing modern technologies.

	Conditions for Point of Sale Exemption	Documentation	How will it be Validated at Point of Sale?	Design Considerations
<b>3. Goods Acquired off a Reserve from a Store in a Qualifying Zone by a Reserve Resident</b>	3.1 Must be a Status Indian, Indian Band or Band Council	Status Indian - card issued by INAC <sup>5</sup>  Band or band council – written certification (similar to a PEC or GST/HST certification)	<ul style="list-style-type: none"> <li>Businesses would be required to document the INAC card # or obtain certification in order to validate exempt sale.</li> <li>CRA would need to ensure businesses documented the INAC card # or obtained certification to support the exempt sale.</li> </ul>	<ul style="list-style-type: none"> <li>This is the same practice Ontario follows today re documentation of Indian status.</li> </ul>
	3.2 Must be a business located in a qualifying zone	The federal government or Ministry of Revenue in conjunction with the First Nations would need to define the municipalities and/or regions that fall within a qualifying zone	<ul style="list-style-type: none"> <li>If the business is within the designated qualifying zone, then it would not be required to charge the Ontario portion of the HST on goods purchased by a Status Indian and self-delivered to the reserve provided the Status Indian lives or works on a reserve – also available to Indian Bands and Band Councils. .</li> </ul>	<ul style="list-style-type: none"> <li>This would be an expansion of the current federal remote store policy and would be more in line with the Quebec model. The Quebec model currently applies to one reserve, but it allows specific municipalities in the area of the reserve to sell exempt of the QST without requiring the business to deliver the goods to the reserve.</li> <li>This would require working closely with the First Nations to establish reasonable qualifying zones and it may involve a community by community review.</li> </ul>