

Procedures for Making Exempt Sales or Leases to Indians and Indian Bands

Social Service Tax Act

UPDATE: MAY 2006

These procedures now apply
to sales of liquor to status
Indians on reserve land.

This bulletin outlines the required procedures for sellers or lessors in making sales or leases to persons claiming an exemption as an Indian or Indian Band.

Before providing an exemption, it is the seller's or lessor's responsibility to ensure that the purchaser or lessee is eligible for the exemption, and that the circumstances of the sale or lease qualify for the exemption. The seller or lessor must also retain documentation to substantiate non-collection of tax on such sales or leases. Failure to comply with the procedures outlined in this bulletin could result in the seller or lessor being held liable for an amount equal to the tax that should have been collected on the sale or lease, plus interest. For additional information, sellers and lessors making sales and leases to native Indians or Indian Bands should also refer to [Bulletin SST 046](#), *Exemption for Indians and Indian Bands*.

The procedures outlined in this bulletin do not apply to sales of fuel or tobacco products. If you wish to make exempt sales of such commodities to native Indians or Indian Bands, contact the ministry. For sales of hotel and other accommodation, refer to [Bulletin HRT 004](#), *Hotel Room Tax Exemption for Indians and Indian Bands*.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Social Service Tax Act* and Regulations can be found on the web at www.gov.bc.ca/sbr

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IS THE PURCHASER/LESSEE ELIGIBLE FOR EXEMPTION?

Individuals

Only persons who qualify as an Indian under the *Indian Act* (Canada) and who hold a "Certificate of Indian Status" card, issued by the federal government, are eligible for this exemption. This **does not** include Metis, Inuit, or Indians from the United States, because such people do not meet the definition of an Indian under the federal legislation.

Confirm the eligibility for exemption by requesting to view the purchaser's or lessee's status card. Ensure that the picture on the card is that of the purchaser or lessee. From the information provided on the status card, record the person's name, the band name and number or its registration number, and obtain the purchaser's signature on the sales slip, invoice, or in a log book maintained for this purpose. The seller or lessor must retain this documentation to support the non-collection of tax.

Proprietorships

A native Indian proprietorship is a native Indian individual carrying on an unincorporated business of which the native Indian has exclusive ownership and control. A native Indian proprietorship is eligible for the native Indian exemption provided the individual meets the criteria previously outlined.

Indian Bands

Where a purchase or lease is being made on behalf of a band, the person requesting exemption must provide written authorization from the band to act on its behalf. Verify that the purchaser's identification matches the name of the person authorized by the band. Record the name of the

purchaser, the band name and number, the name of the band member who signed the authorization letter, and obtain the purchaser's signature on the sales slip, invoice, or in a log book. The seller or lessor must retain this documentation to support the non-collection of tax.

Corporations or Cooperatives

Corporations or cooperatives with Indian shareholders, tribal councils, and band-empowered entities do not qualify as Indians under the *Indian Act* (Canada). Purchases and leases by such organizations are therefore subject to tax and applicable levies, even if the organization is located on reserve land, or if the goods are located on such land at the time of sale or lease. The only exception is for purchases of legal services.

More Info: [Bulletin SST 046](#), *Exemption for Indians and Indian Bands*

DO THE CONDITIONS OF THE SALE/LEASE QUALIFY FOR EXEMPTION?

Sales

Once the person's eligibility for exemption has been established, the exemption only applies if the goods are located on reserve land at the time of sale, or if title to the goods only passes to the native Indian purchaser once the goods have been delivered to a reserve location.

For title to pass on reserve land, the goods must be sold F.O.B. a reserve location as a condition of the sale. The goods must be delivered by the seller, or by a common carrier under contract with the seller, and the seller must retain ownership and responsibility for the goods until they are delivered to the purchaser on reserve land.

To qualify as delivered to reserve land, the goods must be taken to the reserve location by the seller or by common carrier under contract with the seller, off-loaded, and left for the native Indian purchaser at the location. At this point, the native Indian purchaser accepts receipt of the goods and the transaction with the seller and common carrier is completed. The commercial reality of the transaction must be that the delivery is to the reserve, not to another location through the reserve.

The seller must retain a copy of the sales invoice which specifies that the delivery to reserve land is a condition of sale and the F.O.B. point is at the

reserve land location, thereby indicating that title to the personal property does not pass to the native Indian until the goods are located on reserve land.

Leases

To qualify for exemption, the lessee must be resident on reserve land. The lessor must obtain evidence that the lessee resides on reserve land, such as a driver's licence or a letter from the band. If the item is leased by a band, the lessee must provide the lessor with written authorization from the band to act on its behalf. The lessee does not have to take possession of the leased item on reserve land.

Where the lessee cannot provide evidence to substantiate that they reside on reserve land, tax applies to the lease payments even if the lessee is an Indian in possession of a Certificate of Indian Status card, the lease is signed on reserve land, and/or the goods are delivered to a reserve location.

Sellers and Lessors Responsibilities

Sellers and lessors are responsible for ensuring that the conditions of the sale or lease meet all of the criteria for exemption as outlined in this bulletin. Under the *Social Service Tax Act*, a seller or lessor who does not ensure that all the requirements for exemption are met, may be assessed a penalty equal to the tax that should have been collected, plus interest on that amount. Therefore, if you have any concerns as to the eligibility for the exemption, collect tax on the full purchase or lease price. Advise your customer that they may apply to the ministry for a refund of the tax paid.

NEED MORE INFO?

This bulletin is provided for convenience and guidance. If you still have questions call us at 604 660-4524 in Vancouver or toll-free at 1 877 388-4440 elsewhere in Canada or refer to the legislation.

Information is also on the web at www.gov.bc.ca/sbr While there, you can subscribe to our free electronic update service.

References: *Indian Act* (Canada), Sections 2, 87 and *Social Service Tax Act*, Sections 1, 5, 6, 20, 93, 117