

Exemption for Indians and Indian Bands

Social Service Tax Act

Under the *Indian Act* (Canada), Indians and Indian bands are exempt from provincial taxation on personal property situated on reserve or designated reserve land. In recognition of the requirements of the federal *Indian Act*, the Province of British Columbia has established procedures to ensure that Indians and Indian bands receive exemption from provincial consumption taxes on purchases that take place on reserve land, including designated reserve land.

The *Social Service Tax Act* imposes tax on purchases and leases of tangible personal property, as well as on purchases of legal, telecommunication, and taxable services. The Act also imposes environmental levies on new pneumatic tires and lead-acid batteries. This bulletin outlines the exemptions from social service tax and environmental levies that are available to Indians and Indian bands.

This bulletin **does not** apply to purchases of motor fuel, hotel accommodation, or tobacco products. For information on exemptions that are available to Indians and Indian bands from provincial fuel taxes and hotel room tax, please refer to [Bulletin MFT 002](#), *Fuel Retail Dealers Operating on Reserve Land*, [Bulletin MFT 006](#), *Fuel Retail Dealers Located Off Reserve: Tax-Exempt Sales of Fuel to Native Indians*, and [Bulletin HRT 004](#), *Hotel Room Tax Exemption for Indians and Indian Bands*. These bulletins are available at all Consumer Taxation Branch and Government Agents offices. For information on exemptions from provincial tobacco taxes, please contact your nearest Consumer Taxation Branch office.

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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DEFINITIONS

Indian

An Indian is a person who qualifies as an "Indian" under the *Indian Act* (Canada) and who is in possession of a *Certificate of Indian Status* card issued by the federal government. This does not

include Métis peoples, Inuit, or Indians from the United States; as such people do not meet the definition of an Indian under the federal legislation.

Effective May 11, 2000, under the Nisga'a Final Agreement, the Nisga'a Nation no longer qualifies as an Indian band and is not eligible for a point-of-sale exemption. However, individual Nisga'a citizens, who qualify as an "Indian" under the *Indian Act* (Canada), continue to be eligible for exemption from provincial taxes provided the sale takes place on former Nisga'a reserves, or reserve land in other areas of Canada.

An Indian proprietorship, where the Indian is carrying on an unincorporated business and has exclusive ownership and control, is eligible for the exemption provided the individual meets the criteria previously outlined.

Reserve Land

Reserve land is land that qualifies as reserve land under the *Indian Act* (Canada), and includes land classified as designated reserve land.

DESIGNATED RESERVE LAND AUTHORITY TO MAKE EXEMPT SALES

Letter of Authorization

Indian bands whose members wish to make exempt purchases from retail outlets situated on their designated lands should submit a written request to the

Consumer Taxation Branch
PO Box 9442, Stn Prov Govt
Victoria, BC, V8W 9V4

identifying the location and boundaries of the designated land and the retail outlets situated thereon. The branch will then contact the retailers and provide them with written authorization to make exempt sales where all criteria outlined in this bulletin are met.

ELIGIBILITY CRITERIA

Qualifying for Exemption

To qualify for exemption, all of the following conditions must be met:

Eligibility

The purchaser or lessee must be either an Indian or an Indian band and the item purchased or leased must be for the personal use of the individual or for the use of the band.

Indian purchasers or lessees must be in possession of a *Certificate of Indian Status* card issued by Indian and Northern Affairs Canada. Persons purchasing or leasing on behalf of an Indian band must have written authorization from the band to act for it, showing the band name and number, and signed by the appropriate band official.

Corporations or co-operatives with Indian shareholders, tribal councils, and band-empowered entities do not qualify as Indians under the *Indian Act* (Canada). Purchases or leases by such organizations are therefore subject to the 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 with respect to purchases of legal services as outlined subsequently in this bulletin.

Purchases

The item purchased must be located on reserve land at the time the sale takes place, or title to the goods must only pass to the purchaser once the goods have been delivered to a reserve location. For title to pass on reserve land, the goods must be

delivered to the Indian purchaser 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.

Leases

To qualify for exemption, the Indian lessee must reside on reserve land.

Delivery to Reserve Land

To qualify as delivered to reserve land, the goods must be taken to the reserve location by the seller or by a common carrier under contract with the seller, off-loaded, and left for the Indian purchaser at the reserve location. At this point, the 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.

If the purchase occurs on designated land, the seller must be in possession of a letter from the Consumer Taxation Branch authorizing exempt sales from that location. Retailers located on designated land may obtain such authorization by contacting their local Consumer Taxation Branch office.

SALES AND LEASES THAT DO NOT MEET THE CRITERIA

Taxable Transactions

All sales and leases to Indians or Indian bands that do not meet the criteria previously outlined are subject to tax and applicable environmental levies.

Sales to Indians or Indian bands at stores or other commercial establishments not located on reserve land are subject to tax and levies because title to the goods passes to the purchaser at an off-reserve location. This applies even though the goods may later be delivered or taken by the vendor or purchaser to a location on reserve land.

The only exception is sales made F.O.B. reserve land, where delivery to a reserve is a condition of the sale, and the delivery meets the criteria for exemption outlined above.

The seller is required to collect and remit tax and applicable levies on all sales and leases which do not qualify for exemption. If the seller fails to do so, the seller may be held liable for an amount equal to the tax and levies that should have been collected.

SOCIAL SERVICE TAX EXEMPTIONS

General Sales

The following types of sales to Indians or to Indian bands are not subject to tax or levies provided the items purchased are intended for the personal use of the purchaser.

- Private sales between Indians of goods situated on reserve land at the time of sale.
- Sales to Indians/Indian bands from stores located on reserve land.
- Sales to Indians or Indian bands where sellers have brought goods onto reserve land to solicit sales from Indians or Indian bands for immediate delivery at the time of sale.
- Sales made F.O.B. reserve land, provided that the goods are delivered by the seller or by a common carrier under contract with the seller, to reserve land as a condition of the sale. Title to the goods cannot pass to the purchaser until the goods are located on reserve lands. To qualify as delivered to reserve land, the goods must be taken to the reserve location by the seller or by a common carrier under contract with the seller, off-loaded, and left for the Indian purchaser at the reserve location. At this point, the 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.
- Sales of items which are exempt under the *Social Service Tax Act*.

Leases (Rentals)

The application of tax to leased goods depends upon whether the interest in the lease is located on reserve land. Therefore, where the lessee is an Indian or Indian band resident on reserve land, the lease payments are exempt from the tax. This applies whether the lessee takes possession of the leased item on or off reserve.

Where the lessee cannot provide evidence to substantiate residency on a reserve or designated 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, and/or the goods are delivered to a reserve location.

Legal Services

Indians are exempt from tax on purchases of legal services if the legal services relate to real property

situated on reserve, or the legal services are performed on a reserve. Purchases of legal services related to Aboriginal treaty or land claims negotiations are also exempt from tax if the services are purchased by an Aboriginal organization representing the interests of Indians and Indian bands in such negotiations.

Taxable Services

A taxable service is any service provided to install, assemble, dismantle, repair, adjust, restore, recondition, refinish, or maintain tangible personal property. Social service tax applies to purchases of these services.

No tax is payable in respect of a taxable service purchased by an Indian or an Indian band if all the taxable service is provided on reserve.

Electricity and Natural Gas

Electricity and natural gas delivered to a location on reserve land and billed to an Indian or Indian band are exempt from tax.

Pay Television

Charges for pay television, specialty service channels, and non-programming channels are exempt from tax provided the cablevision outlet is located in a building situated on reserve land and the charges for the service are billed to an Indian or Indian band.

Telecommunication Services and Equipment

Residential telephone services, excluding long distance telephone charges, are exempt from tax under the *Social Service Tax Act*.

Charges for other telecommunication services, including non-residential telephone services, long distance charges, data transmission, fax and cellular phone services, are exempt from tax when placed from, or charged to, equipment located on reserve land and billed to an Indian or Indian band. Services charged to non-subscriber calling cards, where there is no service at the location to which the charges are billed, are subject to the tax.

Purchases and leases of telecommunication equipment are exempt if the conditions for the sale or lease meet the criteria for exemption as outlined in this bulletin.

Contracts to Improve Real Property

Where Indians or Indian bands enter into contracts with non-Indian contractors for the construction, improvement, or repair of real property on the reserve, they may only obtain the benefit of the

exemption if they are the actual purchasers of the tangible personal property that becomes real property upon installation.

Under a lump sum or fixed price contract to improve real property, contractors are the purchasers and consumers of all tangible personal property used in carrying out the terms of the contract. It is the contractor who is responsible for payment of tax on the tangible personal property. The exemption for which the Indian customer may otherwise be eligible is not transferable to the contractor.

For an Indian or Indian band to obtain the benefit of the exemption, the contract to improve real property must be structured as a time and material or cost-plus contract. Under such a contract, the customer is the purchaser and user of the materials incorporated into the real property.

The contractor is not required to collect tax on the sale of materials to the Indian customer provided that **all** of the following conditions are met.

- The value of the time (labour) and the value of the material must be separately stated or accounted for in the contract.
- Under the terms of the contract, title to the material passes to the customer prior to installation or incorporation into real property.
- Title to the material passes to the Indian customer at a location on reserve land.

Where the above conditions are met, the Indian or Indian band is the purchaser of the tangible personal property and may acquire the property without payment of tax. The contractor may also obtain the materials exempt from tax on the basis that they are being purchased for resale.

More Info: [Bulletin SST 072](#), *Real Property Contractors*

PROCEDURES FOR MAKING EXEMPT SALES OR LEASES

Certificate of Indian Status Cards

Indian and Northern Affairs, Canada, issues a *Certificate of Indian Status* card to each person qualifying as an Indian under the *Indian Act* (Canada). Only persons who hold such a card are eligible to purchase or lease goods, taxable services, telecommunication services, or legal services without payment of tax and levies. The card bears the cardholder's photograph, name, registry number, and signature.

A sample of the card is provided below.

Front

Indian and Northern Affairs Canada / Affaires Indiennes et du Nord Canada 700301
CERTIFICATE OF INDIAN STATUS - CERTIFICAT DE STATUT INDIEN
 This is to certify that - Le présent atteste que
 Family name - Nom de famille
 Given names - Prénoms
 Registry no. - N° de registre
 is an Indian within the meaning of the Indian Act, chapter 27, Statutes of Canada (1985).
 est un Indien au sens de la Loi sur les Indiens, chapitre 27 des Statuts du Canada (1985).

REVERSE

Date of birth - Date de naissance Height - Grandeur Weight - Poids Eyes - Yeux
 Sex - Sexe Registry group - Groupe d'enregistrement Expiry date - Date d'expiration
 Holder's signature - Signature du titulaire
 Issuing officer's signature - Signature de l'officier émetteur Issue date - Date d'émission
 Finder please return postage free to INAC Ottawa, Ontario, Canada K1A 0H4
 Quiqu'unque trouve le présent est prié de le retourner franco de port, au AINC, Ottawa (Ontario) Canada, K1A 0H4
 83-004 (10-98) 7530-21-023-3673

Verifying Eligibility for Exempt Purchases and Leases

When presented with a *Certificate of Indian Status* card by a person requesting exemption as an Indian, the vendor or lessor must ensure the purchaser or lessee meets the criteria for exemption. Document the transaction as follows.

- **Purchases or Leases by Individuals**
 Confirm the eligibility for exemption by requesting to view the purchaser's or lessee's status card. From the information provided on the card, ensure that the photograph is that of the purchaser/lessee. Record the person's name, the band's name and number or the registration number, and obtain the purchaser's signature on the sales slip, invoice, or in a log book maintained for this purpose. Ensure that this signature matches the signature on the card.
- **Purchases or Leases 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's 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 maintained for this purpose.

If the seller has brought merchandise onto reserve land for immediate sale, the location at which the sale took place must be noted on the sales invoice.

To substantiate the non-collection of tax on a qualifying sale from a vendor located off reserve land, vendors must retain a copy of the sales invoice which specifies:

- the goods were delivered (as defined on page 2) to reserve land as a condition of sale, and
- that the F.O.B. point is at a reserve land location, thereby indicating that title does not pass to the Indian or Indian band until the goods are located on reserve land.

In addition, lessees must demonstrate that they reside on reserve land. The lessee may do so by presenting their driver's licence which shows their current address as a reserve land location, or a letter from their band certifying that the lessee resides on reserve land. Businesses must record the driver's licence number and address shown on the licence, or retain a photocopy of the driver's licence or letter from the band.

Providing the Exemption or Collecting the Tax

Sales or leases may be made without collection of tax and applicable levies provided the above

procedures have been followed. Retain the sales and lease records to substantiate the non-collection of tax.

If the non-collection of tax and levies cannot be substantiated as outlined above, the seller may be liable for payment of an amount equal to the tax and levies which should have been collected, plus interest on that amount. As this exemption is restricted to purchases or leases for an Indian's own use, vendors are also responsible for ensuring that quantities sold on an exempt basis are reasonable.

Vendors or lessors who question the identity of the card holder, and those located on designated reserve land who have not received authorization from the Consumer Taxation Branch to make exempt sales to Indians or Indian bands, must collect tax and environmental levies at the time of the sale. Under these circumstances, eligible purchasers or lessees may apply to the Consumer Taxation Branch for a refund of the tax and levies 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: *Social Service Tax Act*, Sections 1, 5, 6, 20, 40, 46, 47, 53, 67, 82 and Regulations 2.45, 2.46, 2.47, 8.4, 8.5; *Indian Act (Canada)*, Sections 2, 87