

# information

## STATUS INDIANS AND TAXES

February 2002

In general, Aboriginal people in Canada are required to pay taxes on the same basis as other people in Canada, except where the limited exemption under Section 87 of the *Indian Act* applies. Section 87 says that the "personal property of an Indian or a band situated on a reserve" is tax exempt. Métis and Inuit are not eligible for this exemption.

The exemption in Section 87 of the *Indian Act* has existed since before Confederation. It reflects the unique constitutional and historic place of Aboriginal people in Canada. The courts have held that the exemption is intended to preserve the entitlements of Indian people to their reserve lands, and to ensure that the use of their property on their reserve lands is not eroded by taxation.

The *Indian Act* prevents non-Aboriginal governments from taxing the property of Status Indians on a reserve. However, section 83 of the *Indian Act* gives First Nations the power to impose property taxes on interests in land in the reserve. These property tax by-laws must be reviewed by the Indian Taxation Advisory Board and approved by the Minister of Indian Affairs and Northern Development.

Individual tax circumstances may vary as some self-government and land claims (both settled claims and

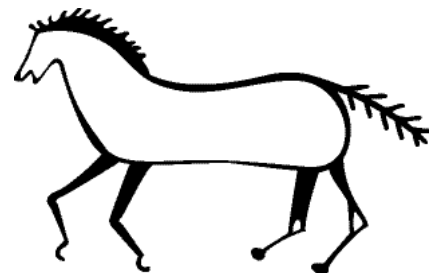
those currently under negotiation) may also provide First Nations with expanded tax powers, or may affect their tax treatment. Some First Nations have negotiated tax powers with the Department of Finance Canada and are imposing sales taxes on selected products.

The Minister of Finance is responsible for federal tax policy and the Minister of National Revenue administers the tax laws through the Canada Customs and Revenue Agency. The Minister of Indian Affairs and Northern Development defines the words "Indian," "reserve" and "band" for all governments to use when addressing taxation issues. (See Terminology.)

Employment income earned by a Status Indian working on a reserve will be considered tax exempt. The courts have stated that connecting factors, such as the location of the duties and residence of the employee and employer, must be considered to determine whether the income will

be considered tax exempt. For example, if 90% or more of the employment duties of a Status Indian are performed on a reserve, the income from that employment will usually be exempt from tax.

The Goods and Services Tax or Harmonized Sales Tax (GST/HST) generally does not apply to purchases by Status Indians if the purchase is made on a reserve or is delivered to a reserve by the vendor or the vendor's agent.



## Terminology\*

### Aboriginal peoples:

The descendants of the original inhabitants of North America. The Canadian Constitution recognizes three groups of Aboriginal people - Indians, Métis people and Inuit. These are three separate peoples with unique heritages, languages, cultural practices and spiritual beliefs.

### Band:

A group of First Nation people for whom lands have been set apart and money is held by the Crown. Each band has its own governing band council, usually consisting of one or more chiefs and several councillors. Community members choose the chief and councillors by election, or sometimes through traditional custom. The members of a band generally share common values, traditions and practices rooted in their ancestral heritage. Today, many bands prefer to be known as First Nations.

### First Nation:

A term that came into common usage in the 1970s to replace the word "Indian," which some people found offensive. Although the term

First Nation is widely used, no legal definition of it exists. Among its uses, the term 'First Nations peoples' refers to the Indian people in Canada, both Status and Non-Status. Some Indian people have also adopted the term 'First Nation' to replace the word 'band' in the name of their community.

### Indian Act:

Canadian federal legislation, first passed in 1876, and amended several times since. It sets out certain federal government obligations and regulates the management of Indian reserve lands. Among its many provisions, the *Indian Act* currently requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to First Nations and Indian lands and to approve or disallow First Nations by-laws. In 2001, the national initiative *Communities First: First Nations Governance* was launched, to consult with First Nations people and leadership on the issues of governance under the *Indian Act*. The process will likely take two to three years before any new law is introduced.

### Reserve:

Land set apart and designated as a reserve for the use and occupancy of an Indian group or band.

### Status Indian:

An Indian person who is registered under the *Indian Act*. The act sets out the requirements for determining who is a Status Indian.

\*These terms are listed in *Words First: An Evolving Terminology Relating to Aboriginal Peoples in Canada*, compiled by the department's Communications Resources Directorate.

### Publications and Public Enquiries

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This general information is provided as a brief overview only. The provisions of the *Indian Act*, its regulations, other federal statutes and their interpretation by the courts take precedence over the content of this information sheet.