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Chiefs of Ontario Bulletin

DATE: April 30, 2010

TO: Leadership, Grand Chiefs, Tribal Councils

FROM: Angus Toulouse, Ontario Regional Chief

RE: UPDATE ON THE HARMONIZED SALES TAX AND THE EFFORTS BY
FIRST NATIONS LEADERSHIP TO ENSURE THE FIRST NATION
POINT OF SALE EXEMPTION IS CONTINUED

Following the announcement by Ontario to harmonize the 8% provincial retail sales tax (PST) with the 5% federal goods and services tax (GST) in the spring of 2009, First Nations leadership in Ontario have been engaged in discussions with government, with the primary objective being to maintain the current practice of exempting the 8% provincial retail sales tax at the point of purchase.

Premier McGuinty, and the Ministers responsible, have all indicated their support for the continuation of the point of sale exemption at the point of sale under the HST, and have committed to stand “shoulder to shoulder” with First Nations in ensuring that this happens.

First Nations have been strong in advocating that Canada and Ontario failed to meet their obligation to consult with them prior to the announcing the decision to harmonize the taxes. This is in contravention to governments’ obligation to consult and accommodate First Nations when a particular action may infringe upon Aboriginal or Treaty rights. First Nations have asserted their right to tax exemption based on the fact that they never ceded the authority to tax their people to government through Treaties, or any other mechanism. To date, the governments of Ontario and Canada have been blaming each other for this situation and First Nations are caught in the middle of this game of “ping pong” and endless finger pointing.

Should an understanding or agreement not be reached by July 1, 2010, First Nations are seeking a commitment from Ontario that they will continue to work with First Nations in developing a plan to pressure the federal government to fully restore the point of sale exemption. The federal government has repeatedly pointed to the lack of data on what the point of sale exemption amounts to in lost revenue on an annual basis as the reason why it cannot be included as an exemption (or what is referred to as a point of sale rebate) under the Comprehensive Integrated Tax Coordination Agreement (CITCA). First Nations have argued that this data does exist, is currently collected by retailers, and thereby the First Nation point of sale exemption should be included as an exemption/rebate under the HST framework. Please note that under the CITCA agreement certain items such as diapers, newspapers, and coffee have been exempted from the HST. These items are referred to as items eligible for a rebate at the point of sale and no receipts need to be kept and filed for a reimbursement.

The Ontario Regional Chief and the Political Confederacy will be meeting with Chris Bentley, Ontario Minister of Aboriginal Affairs, and John Wilkinson, Ontario Minister of Revenue, on May 3, 2010, in order to discuss the seriousness of the Ontario governments' commitment to resolve this issue in a fair and just manner.

The federal Minister of Finance, Jim Flaherty, remains unwilling to meet with First Nations leaders to discuss options that have been developed to address the concerns of all parties despite repeated requests to meet.

Additionally, First Nations have been organizing rallies and protests across the province in an effort to show their opposition to the aggressive strategy by governments to impose the HST. The Chiefs in Ontario approved a plan of action in December 2009 which outlines direct action activities that would be undertaken should efforts at reaching an agreement through dialogue fail. Parts of this action plan have been implemented and a more aggressive and coordinated effort is planned should this latest round of talks fail to bring about an acceptable resolution.

Report Released – Impact of the HST on First Nations

A report completed by Dr. Fred Lazar, of the Schulich School of Business, York University, on behalf of the Chiefs of Ontario was released on April 21, 2010. This report indicates that as a result of the HST, and loss of the First Nation point of sale exemption, First Nations will pay approximately \$100 million annually.

Other key findings of the report include:

- The negative impact of the HST on First Nations will further widen the already significant income gap between First Nations and everyone else in Ontario
- The current income gap between First Nations' citizens and the general Ontario population is at least \$2.1 billion
- Conversely, the government of Ontario stands to reap a windfall of \$2.8 billion in 2010-11 and \$4 billion in 2011-12 in additional tax revenues from the HST because of its application to a larger number of goods and services than the present PST

- On top of this future windfall, the province will receive \$3 billion on July 1, 2010 and \$1.3 billion on July 1, 2011 from the federal government in transition funding to assist in the implementation of the HST
- Despite the position of the Federal Government, there is no obvious problem for accurately measuring the impact of the point of sale exemption for all First Nations' citizens on the Government of Ontario's PST revenues
- The Canadian and Ontario Governments entered into a Comprehensive Integrated Tax Coordination Agreement (CITCA). The CITCA enables Ontario to provide point of sale rebates for the Ontario component of the HST for up to 5% of the estimated GST base in Ontario
- The aggregate expected benefits for consumers of the proposed point of sale rebates has been estimated by the Government of Ontario at about \$655 million, or about 2.9% of the projected gross provincial revenues in fiscal 2011-12 - this is well below the 5% threshold in the CITCA, leaving ample room for the continuation of the point of sale exemption for First Nations, estimated at approximately \$100 million annually
- First Nations' peoples should not be subject to an income tax or its GST substitute since economic development is critical to reduce and eventually eliminate the large income gaps that exist between First Nations' citizens and the general population
- It makes no sense from an economic perspective to try to raise tax rates for First Nations' people, many of whom fall below low income cut-off levels, when tax incentives continue to be integral to the federal and provincial governments' policies to make the country, and Ontario, more competitive and wealthier

The Chiefs of Ontario commissioned this report as neither the federal or provincial government conducted an economic impact assessment showing what effect the HST would have on the First Nations population in Ontario.

This report is available on the Chiefs of Ontario website at www.coo.org.

HST Transition rules take effect May 1, 2010

Under the transition rules outlined in the CITCA that Ontario and Canada entered into in November 2009, purchases made for services that will not be used until after July 1, 2010 will be subject to the full 13% HST as of May 1, 2010. For example, if you are planning to fly to Vancouver in August and make your purchase on or after May 1, this purchase will be charged the full 13% tax. Other examples include tickets to concerts or theatre productions post July 1.