

Administrative Office:
111 Peter St., Suite 804.
Toronto, ON
M6V 2H1
Ph: (416) 597-1266
Fx: (416) 597-8365



Political Office:
Fort William First Nation
Suite 101, 90 Anemki Drive
R.R. #4, Thunder Bay, ON.
P7C 4Z2
Ph: (807) 626-9339
Fx: (807) 626-9404

Website: www.chiefs-of-ontario.org

* Association of Iroquois & Allied Indians * Grand Council Treaty #3 * Independent First Nations * Nishnawbe-Aski Nation * Union of Ontario Indians

Chiefs of Ontario Bulletin

DATE: June 12, 2010
TO: Chiefs & Councils, Grand Chiefs, PTO's and Tribal Councils
FROM: Angus Toulouse, Ontario Regional Chief
RE: **TRIPARTITE SENIOR OFFICIAL'S MEETING ON HST – JUNE 11, 2010**

SUMMARY OF RESULTS

During the June 11th Tripartite meeting, First Nation representatives reaffirmed their position that the First Nation point of sale exemption (FN-POS) needed to be in place by July 1st “under the Harmonized Sales Tax (HST)”. First Nation representatives made it clear that this was mandated by the Chiefs-in-Assembly and that First Nations would be prepared to back it up with action. The June 11th Tripartite meeting did not come to a resolution. However, as a result of the meeting, Ontario announced that it was going to move the discussions to the Ministerial level. As a result, Ontario and Canada said they would be engaging in around-the-clock discussions with the involvement of their Ministers to try and find a solution. It was agreed that the Chiefs of Ontario would be kept informed of this progress and that a further Tripartite meeting of officials would take place no later than Tuesday June 15th. Ontario and Canada were clear that First Nations would have to agree to their solution if it could be found.

REPORT ON TRIPARTITE MEETINGS

This is a report on the second Tripartite HST meeting of Senior Officials from Ontario, Canada and Ontario First Nations held on June 11, 2010 in Toronto. As you recall, the first Tripartite meeting occurred on June 7, 2010, and was reported in a Bulletin on June 8, 2010. As pointed out in that Bulletin, the parties agreed to two processes/meetings: (1) a Tripartite meeting of senior officials on HST, to meet on June 11th; and (2) a meeting of a Data Working Group to address the “data issue”, i.e., to examine if sufficient data was available to estimate the impact of the FN-POS exemption on provincial revenues. The report of the Data Working Group is provided in the context to the Tripartite meeting on June 11th.

Agenda

The Tripartite meeting agenda was as follows:

1. Mandates – to clarify the mandates of the parties at the table and to determine if they included continuation of a FN-POS exemption within HST Framework;
2. Presentation of the GST/HST Revenue Allocation Framework
3. Report of the Data Working Group;
4. Options to implement Ontario’s decisions to provide Point-of-Sale exemptions for First Nations within the HST Framework:
 - Inside the HST framework,
 - Interim measures
5. CRA-May 2010 GST-HST Info Sheet/Bulletin - to determine whether the federal government would rescind or revise its GST/HST Info Sheet requiring Ontario businesses to charge Ontario First Nations GST and now HST at the point of sale, thereby removing the exemption.
6. Next Steps

1. Mandates

- The Federal rep said her mandate was to discuss the FN-POS exemption under the HST system, including an interim solution. She said if a consensus could be reached on a solution, she would recommend it to Minister Flaherty who had the ultimate decision. Nevertheless, it was clear from the meeting that federal representatives’ authority to agree to a FN-POS exemption inside the HST Framework was limited.
- The First Nations reiterated their mandate to ensure the FN-POS exemption continues on July 1 under the HST framework in accordance with the Memorandum of Agreement (MOA) entered into with Ontario Government, and ratified by the Chiefs’ Resolution 10-55, passed on May 27, 2010.
- The Ontario Government said they had a mandate to pursue a FN-POS exemption inside the HST Framework and reiterated their position that this option was in accordance with the Comprehensive Integrated Tax Coordination Agreement (CITCA).

2. Data Working Group

- The Data Working Group reported on their meeting of June 10th.
- The Chiefs of Ontario (COO) were able to secure Professors Fred Lazar of York University and Edward Doolittle (Six Nations Citizen) of First Nations University (both PhDs in their respective fields) to assist First Nations on the data issue.
- The parties confirmed that the interim data methodology proposed by Ontario of using existing Statscan data (including spending patterns of non-First Nation individuals in similar income brackets) and INAC data was consistent with CITCA.
- The big concern for the federal government was a longer-term data methodology to be able to back-up the accuracy of the numbers derived from the interim methodology. Federal officials said they could not agree to the interim methodology without a satisfactory long-term solution. This of course meant they could not agree to the FN-POS exemption inside the HST unless they were satisfied with the long-term solution.
- Two ways of getting the long-term data were proposed by Ontario: (1) Statscan surveys with vendors and First Nation consumers to identify spending patterns; and/or (2) using/reviewing administrative data collected by vendors – both existing data from past purchases and new data from future purchases.
- The First Nation reps pointed out that there was a “margin of error” in the system related to non-First Nation data and compared to this, the value of the FN-POS exemption was minimal. All parties agreed that the system had a margin of error.
- The First Nations’ representatives also suggested modifying the existing GST/HST retailers reporting form to add a line or box stating the amount of the FN-POS exemption per reporting period. Federal reps resisted this as creating a burden for retailers. Yet, it was pointed out that once the system was in place (which could take 18 months) it would be simple to maintain. Moreover, the federal interim solution (discussed below) would be more burdensome for retailers.
- In the course of the meeting, it was clear to all parties that the data did exist – even federal reps agreed. The only problem was to find the most feasible method for accessing the data. Based on this, First Nations reps urged the federal reps to accept the Ontario proposal as being consistent with CITCA.
- Unfortunately, the federal reps did not agree. After a great deal of discussion, they took the position that neither Ontario’s interim data solution, nor the longer-term data solution was consistent with CITCA.

3. Presentation of the GST/HST Revenue Allocation Framework (RAF)

- The federal reps gave a presentation of how the revenue pool works for monies collected from GST/HST.
- Apparently, all GST/HST tax monies collected from each province goes into a single national pool. Each province gets out of the pool its share of tax revenue collected from that province. For example, Ontario would get back its 8% share of the 15% total amount collected in Ontario.
- Under CITCA, Ontario is allowed to provide point of sale exemptions, including the FN-POS exemption. However, in doing so the amount of the exemption needs to be calculated so that it does not affect the revenues due to the federal government or the other provinces out of the pool.
- The “data issue” is being able to obtain sufficient data (First Nation population and spending data) to calculate or estimate the amount of the FN-POS exemption for the province of Ontario.

4. Options to implement Ontario’s decisions to provide Point-of-Sale exemptions for First Nations within the HST Framework

- Ontario tabled a proposal to address the data issue and other issues at the June 7th meeting. The Ontario reps tabled a revised document which addressed concerns raised by Canada on June 7th -- their option was for a federally administered FN-POS exemption under the HST system.
- Again, the federal government rejected Ontario’s interim data solution, combined with its longer-term data solution as being inconsistent with CITCA. Federal officials indicated that they could not support the Ontario proposal because they just received the revised version. The federal objection seemed to be related to being overly protective about the GST/HST Revenue Allocation Framework.
- To First Nations representatives, the federal position seemed unreasonable, and strongly asserted that the data exists as Ontario retailers already collect this information from First Nations citizens. The Ontario Government agreed with the First Nations that the data source exists and that it is simply a matter of collecting it.

5. Interim administrative options required to realize a longer-term point of sale exemption for First Nations under CITCA

- The federal government presented its option of a FN-POS exemption outside the HST framework. This would involve Ontario rebating retailers for the cost of the FN-POS exemption directly, so that the GST/HST Revenue Allocation Pool would not be affected. Federal officials noted that this version had one improvement from the option they presented on June 7th. Under this version, retailers would be allowed to delay their remittances to the federal government (CRA) until after they were rebated by Ontario. This was put forward as an interim measure, but it was clear that Canada preferred this as a long term-solution.
- First Nation reps clearly stated their opposition to the option based on the mandate from the Resolution of the Chiefs.
- Ontario stated its objections and detailed its reasons. They said the purpose of HST was to create a system administered by one authority. A Federal administered FN-POS exemption would be quicker and more seamless to institute, and further that the option proposed by the Federal Government would actually create a greater administrative burden on retailers/vendors which would be completely contradictory to the intent of the CITCA.

6. Did the federal government intend to rescind or revise their GST/HST Info Sheet requiring Ontario businesses to charge Ontario First Nations HST

- First Nation reps asked if the federal government was prepared to rescind their Bulletin/Info Sheet issued in May which stated that under the HST First Nations would be required to pay HST unless goods were purchased on or delivered to the reserve.
- The federal response was: No.

7. Next Steps

- It became clear that the Ontario Government was not budging from their position for the point of sale to continue within the HST framework, using the option that they developed. First Nations representatives continued to insist upon the continuation of the point of sale within the HST framework by July 1, 2010. On the other hand, the Federal Government continued to state firm opposition to this option.

- First Nations representatives clearly relayed their frustration to the governments for this situation and to the federal representatives for their inflexibility, the delay in meeting with First Nations to resolve this issue and their continued uncooperativeness in trying to find a workable solution. It was noted that federal officials appeared to be simply putting up obstacles rather than trying to find solutions or positive ideas to contribute to the discussions so that the FN-POS exemption could be preserved by July 1, 2010. It was emphasized that First Nations across the province are closely monitoring these discussions and are willing and prepared to take direct action to demonstrate to governments their commitment to ensuring the First Nation point of sale continues.
- The First Nation reps noted that political level engagement would likely be necessary to solve this impasse. They asked the Provincial officials whether they would exercise their rights under CITCA to trigger the dispute resolution within the CITCA, which would then require a political level dialogue to resolve the issue. The Provincial Official confirmed that he would be making that recommendation to his Minister and that his Minister was awaiting the results of the meeting for that purpose.
- After the conclusion of the meeting, federal officials made an overture to provincial officials to continue to dialogue on solutions in conjunction with Ministerial level involvement. Immediately following this bilateral discussion, federal and provincial officials met with First Nations, and both Ontario and Canada indicated a willingness to work around the clock to find a solution, and further to engage their Minister's over the weekend to discuss and work out details.
- It was agreed that contact would be made with First Nations by Sunday June 13 to provide an update on progress, and a commitment was made to a third tripartite meeting on June 15th at the latest. They said there was a "glimmer of hope" that a solution would be found; but acknowledged that First Nations would have to agree to their solution if it could be found.
- If a proposed solution is developed that is acceptable and consistent with the First Nations and Ontario MOA and COO Resolution No. 10/55, our First Nations representatives will ensure that the commitment is in writing, in a format which is secure and assures the continuation of the FN-POS exemption.
- Following the June 15, 2010 tripartite meeting, a follow up bulletin will be prepared and shared with all First Nations.