

MEMORANDUM OF AGREEMENT CONCERNING A COMMITMENT TO CONTINUE
THE FIRST
NATION POINT OF SALE TAX EXEMPTION UNDER THE HST

BETWEEN:

The Government of Ontario ("Ontario"), as represented by the Minister of Revenue, and the Minister of Aboriginal Affairs

AND:

The Political Confederacy of the Chiefs of Ontario ("Political Confederacy"), as represented by the Regional Chief, Angus Toulouse

WHEREAS Canada and Ontario have entered into a Canada-Ontario Comprehensive Integrated Tax Co-ordination Agreement ("CITCA"), and Canada will begin the implementation and administration of the HST effective July 1st 2010;

WHEREAS, aside from this Memorandum of Agreement, after June 30, 2010, Ontario First Nations and those Ontario First Nation people who are defined as an "Indian" under the Indian Act ("First Nation people") will not have to pay HST on goods purchased on a reserve, goods purchased off reserve from qualifying remote stores, and goods purchased off reserve where the goods are delivered to a reserve by the vendor or vendor's agent;

WHEREAS Annex "B" of the CITCA provides Ontario with flexibility to designate property or services to be eligible for a provincial value added tax – point of sale (PVAT-POS) rebate, subject to certain conditions, which relate to the ability to determine the amount of the expenditure in the province attributable to the supply of that property or service;

WHEREAS Ontario currently provides for a point of sale tax exemption under the Retail Sales Tax (RST) system on the sale of goods to First Nations and First Nation people in Ontario who are Status Indians, which extends to purchases off reserve (the exemption is hereinafter referred to as the "First Nation point-of-sale tax exemption");

WHEREAS Ontario First Nations assert that the point of sale tax exemption is based on their treaty and inherent rights;

WHEREAS Ontario asserts that the First Nation point of sale tax exemption is based on its administrative policy, which provides for a point of sale tax exemption for goods purchased off a reserve and "self delivered" by a Status Indian to a reserve;

WHEREAS Ontario and the Political Confederacy may disagree on the basis of the First Nation point-of-sale tax exemption; however, they are committed to the principle of reconciliation and to the continuation of the First Nation point-of-sale tax exemption under the HST, as the exemption is currently applied in practice in Ontario under the RST system;

WHEREAS in a letter dated February 1, 2010, from Prime Minister Harper to Premier McGuinty, the Prime Minister acknowledged Ontario's request to continue the First Nation point-of-sale tax exemption, and said:

The Government of Canada respects Ontario's autonomy to make policy decisions in its jurisdiction. This includes decisions with respect to the provincial portion of the HST ...

WHEREAS the Prime Minister's letter further stated:
The Agreement allows Ontario to introduce rebates under specified conditions, including that they can be supported by sufficient data. I understand that Ontario's current approach would be difficult to accurately measure for the purpose of determining its impact on provincial revenues. This could in turn affect the Government of Canada's ability to make accurate HST payments to the provinces. Should you wish to continue the exemption, I would encourage your officials to develop administrative options for addressing these measurement issues that are consistent with the terms of the CITCA.

WHEREAS officials designated by the Political Confederacy (pursuant to resolution of the Ontario Chiefs in Assembly) and Ontario officials have been engaged in a Working Group regarding the First Nation point-of-sale tax exemption and HST;

WHEREAS the Working Group is working to address the data and measurement issues referred to in the Prime Minister's letter of February 1, 2010, and is developing administrative options, that would accommodate the CITCA, and for agreement by the federal government, including the current approach of presenting an Indian status card, as well as a secured card option;

WHEREAS Ontario acknowledges that under the CITCA, it may advise Canada of its desire to designate particular property or services eligible for a PVAT-POS rebate under the HST, including the First Nation point-of-sale tax exemption;

WHEREAS, Annex B of the CITCA sets out conditions for providing point of sale rebates, and because Canada will be administering the HST, it will be necessary to engage Canada on the data and measurement issues, more particularly for the purpose of determining the amount of the expenditure in the province attributable to the supply of the property and service eligible for the PVAT-POS Rebate;

THEREFORE THE PARTIES HEREBY ENTER INTO THIS AGREEMENT AS A STRONG COMMITMENT TO CONTINUE A FIRST NATION POINT-OF-SALE TAX EXEMPTION UNDER THE HST:

1. Ontario and the Political Confederacy agree to work together to press Canada toward realizing the continuation, under the HST, of the First Nations point-of-sale tax exemption currently provided under the RST.

2. Ontario agrees to exercise its flexibility under the CITCA and to take steps under the CITCA to pursue the continuation of the First Nations point-of-sale tax exemption under the HST, including the following:

- Ontario shall advise Canada, pursuant to paragraph 3 of Annex B of the CITCA, of its desire to designate the sale of goods to Indians off reserve as eligible for a PVAT-POS Rebate effective July 1, 2010 for the purpose of continuing the First Nation point of sale exemption; and
- Subject to the CITCA, Ontario shall take the necessary measures as soon as possible to give effect to the PVAT-POS Rebates under the HST to ensure the continuation of the First Nation point-of-sale exemption. The parties agree that the continuation of the First Nation point-of-sale tax exemption is subject to federal agreement, and that such agreement cannot be unreasonably withheld under CITCA.

3. Ontario and the Political Confederacy agree to work collaboratively to address the data and measurement issues referred to in the Prime Minister's letter of February 1, 2010, and provided for in paragraph 2 of Annex B of the CITCA. In this regard, the parties agree to continue work, and to engage Canada, for the purpose of determining the amount of the PVAT-POS Rebate in the province attributable to the First Nation point-of-sale tax exemption under the HST.

4. Ontario and the Political Confederacy will make it a priority, and make best efforts within their respective authorities, to ensure that the First Nation point-of-sale exemption is in place on July 1, 2010. However, in the event that it is not possible to finalize discussions with Canada and to complete the administrative measures to continue the First Nation point-of-sale tax exemption prior to July 1st, the parties agree to work on interim measures pending the full restoration and implementation of the First Nation point-of-sale tax exemption. The objective of the interim measures is to provide relief while the restoration and implementation of the First Nation point of sale exemption is being finalized.

5. Ontario agrees to provide reasonable resources to the Chiefs of Ontario Office for the Political Confederacy for the sole purpose of supporting joint discussion and agreed research outlined above.

6. Ontario and the Political Confederacy agree to coordinate communications whenever possible, including communications that will promote a peaceful resolution of differences, and the Political Confederacy agrees to communicate the work of the technical table to their respective communities.

7. The parties will review progress on these efforts at regular intervals.

8. The Political Confederacy and Ontario acknowledge that the outcome of the work under this Memorandum of Agreement, including any administrative options or agreements for the implementation of the First Nation point-of-sale tax exemption, or any interim measures, is subject to all necessary approvals, including the approval of the Ontario Chiefs in Assembly.

9. This Agreement is without prejudice to both parties and to the Aboriginal and treaty rights of Ontario First Nations.

SIGNED BY THE RESPECTIVE PARTIES ON THE 3rd DAY OF May, 2010

POLITICAL CONFEDERACY:

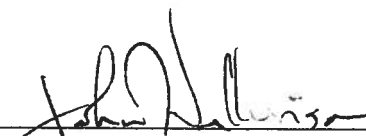


Regional Chief Angus
Toulouse

ONTARIO:



Minister Christopher Bentley



Minister John Wilkinson