



CHIEFS OF ONTARIO

MEMORANDUM

TO: ALL CHIEFS AND COUNCILS IN ONTARIO

FROM: Regional Chief Angus Toulouse

DATE: May 4, 2010

RE: POINT OF SALE TAX EXEMPTION

On May 3, 2010, the Political Confederacy (PC) signed a Memorandum of Agreement (MOA) with Chris Bentley, Minister of Aboriginal Affairs, and John Wilkinson, Minister of Revenue, on behalf of the Government of Ontario. The main purpose of the MOA is to ensure that the First Nations point of sale tax exemption is maintained under the HST system, and that the exemption is in place by the time the HST comes into effect on July 1, 2010.

The PC has been clear with Ontario that this Memorandum of Agreement (MOA) must be presented to the Chiefs in Assembly for their ratification and will be presented at the earliest possible opportunity. As you are aware, Chiefs will be gathering on May 27, 2010 for the Ontario First Nations Limited Partners (OFNLP) Annual Meeting in Toronto, and this may provide the opportunity to call a Chiefs Assembly to discuss the HST issue. The decision to call an Assembly during the OFNLP meeting is at the discretion of the Partners, and if this does occur my office will ensure a full briefing is available. The MOA is enclosed for your information and review.

In accordance with the mandate you provided to me and the Political Confederacy through resolutions, this MOA is focused on ensuring the continuation of the point of sale exemption as the priority. We have Ontario's commitment; now we need the agreement of the federal government, who will be administering the HST. Of course, the federal government wants to eliminate the point of sale exemption. Minister Flaherty wants the exemption applied in the same way they apply it under the GST – which means that goods would have to be delivered to the reserve. This would create hardship for First Nations people.

This MOA commits the Government of Ontario to take all necessary steps under the tax agreement it entered into with Canada, called the Comprehensive Integrated Tax Coordination Agreement (CITCA), to ensure the point of sale exemption is in place by July 1st, when HST comes into effect. The MOA commits Ontario to work with us to press the federal government to do everything it has to do to preserve the point of sale exemption. The federal government still has to agree as well because it will be administering the HST.

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To clarify, the MOA calls for a “point of sale rebate” -- this is a rebate given at the point of sale, which means that no tax is charged. In other words, it is, in effect, the same thing as an exemption. Ontario has the flexibility under the CITCA to provide point of sale rebates and although the federal government must agree, it cannot unreasonably withhold its consent.

The Government of Ontario has publicly supported the First Nation position on numerous occasions and this MOA commits them to demonstrate the seriousness of their commitment by working with us to compel the federal government to meet with us and consider the administrative options that have been developed that would enable the First Nation point of sale exemption to be continued under the HST.

To date, Minister Flaherty has refused to allow the First Nation POS exemption under CITCA in spite of Ontario’s willingness. Both the First Nations in Ontario and the government of Ontario are willing to work on administrative options to ensure the First Nation point of sale exemption is in place on July 1st. To date the federal government has taken an uncooperative position and has refused to meet to discuss the options that have been developed and have demonstrated a general unwillingness to pursue possible solutions.

Please be assured that the PC has been working diligently to implement the mandate that you have provided, and we are cognizant of the requirement to ensure that the continuation of the First Nation point of sale exemption is the priority. We have worked hard to represent your views in the face of many challenges and will continue to press forward to realize our objective.

A PC motion was passed to proceed with the MOA with the understanding that it be presented to the Chiefs in Assembly for ratification at the earliest opportunity. Please be advised that the Nishnawbe-Aski Nation was not represented at the PC meeting, although Grand Chief Stan Louttit from the Mushkegowuk Council was in attendance. The Grand Chiefs of Grand Council Treaty #3 and Association of Iroquois and Allied Indians requested that their abstentions be noted for the record on the PC motion.

I view the signing of this MOA with Ontario as a significant step. However, the battle is not over, we still need to get the federal government on board. Therefore, we need to keep the pressure on the federal government to do the right thing.

A comprehensive update on the activities related to the HST, including seeking ratification of the enclosed MOA, will be provided at the earliest possible opportunity. This will likely occur during the OFNLP Annual Meeting on May 27, 2010 if you so determine.

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