

Minister of Finance



Ministre des Finances

Ottawa, Canada K1A 0G5

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CHIEFS OF ONTARIO

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The Honourable Dwight Duncan, M.P.P.
Minister of Finance
Government of Ontario
7th Floor - Frost Building South
7 Queen's Park Crescent
Toronto, ON M7A 1Y7

The Honourable John Wilkinson, M.P.P.
Minister of Revenue
Government of Ontario
6th Floor - Frost Building South
7 Queen's Park Crescent
Toronto, ON M7A 1Y7

Dear Ministers Duncan and Wilkinson:

Thank you for your correspondence of October 5, 2009 and October 29, 2009 regarding sales tax harmonization and Ontario First Nations.

Your October 5 letter asked that officials continue to explore possible mechanisms that would allow Ontario's current approach to the sales tax exemption for status Indians to continue under the Harmonized Sales Tax. Specifically, Ontario's current exemption applies to property purchased by a status Indian off reserve regardless of whether the property is delivered to a reserve. In your most recent letter, you propose that you and I meet with Ontario Regional Chief Angus Toulouse to discuss the issue.

With respect to the tax treatment of Aboriginal people in Canada, section 87 of the *Indian Act* provides an exemption from taxation for the personal property of a status Indian or Indian band if the property is situated on a reserve. Pursuant to that section, purchases made on a reserve by a status Indian are exempt from the Goods and Services Tax/Harmonized Sales Tax (GST/HST), as are goods purchased off reserve if they are delivered to a reserve by the vendor or the vendor's agent. This approach to the *Indian Act* tax exemption is accepted and followed by Canada, the harmonized provinces and other provinces with a sales tax, except Ontario and Prince Edward Island. Ontario has taken a different approach administratively, even though legislation in your province is consistent with the GST/HST approach to the *Indian Act* tax exemption.

The GST/HST approach is supported by court decisions and it appropriately targets the tax exemption for status Indians in a manner that is consistent with the scope and intent of the *Indian Act* provision on which it is based. This approach has been in effect since the GST was introduced and was in effect when Ontario agreed to undertake harmonization.

Canada

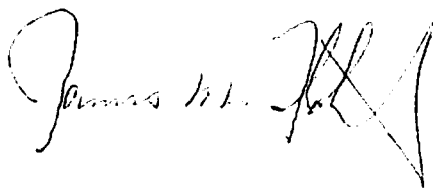
While the Memorandum of Agreement between Canada and Ontario allows Ontario to designate limited point-of-sale rebates for the provincial portion of the HST, these are subject to data availability and definitions used in the Canadian System of National Accounts or other mutually agreed upon data sources, definitions and methodologies. In that regard, it is not clear that information regarding personal expenditures by status Indians could be accurately collected or produced. I am also concerned with amending federal legislation to provide for a point-of-sale rebate that is inconsistent with the scope and intent of the *Indian Act*.

The Government of Canada appreciates that this is a matter of concern for Ontario First Nations. In this regard, Finance Canada and Canada Revenue Agency officials met with the Chiefs of Ontario on August 20, 2009, and have expressed a willingness to meet again with Ontario First Nations representatives to further discuss any questions or concerns they may have pertaining to the current application of the GST/HST to status Indians, including possible misconceptions about the expected impact of the tax. Ontario may also wish to explore other ways to meet the interests of Ontario First Nations outside of the HST Framework, such as expenditure programs or tax room sharing with the Bands. In respect of tax room sharing, federal officials would be willing to work with their Ontario colleagues to further explore this issue.

With respect to your request for a meeting, given my perspective on this issue outlined above, and that federal officials have already met with the Chiefs of Ontario on this matter, I do not believe that such a meeting is necessary at this time. As I noted, federal officials continue to be available to discuss the current sales tax regime, and to help ensure there is a clearer understanding of our respective views, issues and interests.

I would like to take this opportunity to underline progress that has already been accomplished through the efforts and cooperation of our respective officials. Nevertheless, as you are aware, significant policy and legislative work still remains and I trust that you share my view that it will be particularly important that our officials work quickly and focus on priority areas in the coming weeks and months.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Flaherty". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "Flaherty".

James M. Flaherty

- c. The Honourable Jean-Pierre Blackburn, P.C., M.P.
The Honourable Brad Duguid, M.P.P.
Chief Toulouse, Ontario Regional Chief ✓