

POLITICAL OFFICE:
Fort William First Nation
R.R. #4
Suite 101, 90 Anemki Drive
Fort William First Nation Office Complex
Thunder Bay, Ontario P7J 1A5
(807) 626-9339
(807) 626-9404 Fax



ADMINISTRATION OFFICE:
111 Peter Street, Suite 804
Toronto, Ontario
M5V 2H1
(416) 597-1266
Fax (416) 597-8365
1-877-517-6527
Website: www.chiefs-of-ontario.org

CHIEFS OF ONTARIO

Bulletin

Update on the Harmonized Sales Tax

Angus Toulouse, Ontario Regional Chief

June 8, 2010

To: Leadership, Grand Chiefs, Tribal Councils

RE: JUNE 7, 2010 Tripartite Meeting of Senior Officials

This is a report regarding the tripartite meeting of senior officials from the Ontario Government, Federal Government and First Nations which took place on June 7, 2010 in Ottawa.

The purpose of the meeting, as provided in the Memorandum of Agreement between Ontario and First Nations (MOA) was to engage the federal government to ensure the preservation of the First Nation – Point of Sale Exemption (FN-POS) under the HST framework on July 1, 2010. As per the MOA, Ontario had given notice to federal Finance Minister Flaherty that Ontario wished to exercise its rights under its HST agreement with Canada -- the Comprehensive Integrated Tax Coordination Agreement (CITCA) -- to provide the FN-POS effective July 1st. However, this needs the cooperation of the federal government, who will be administering the HST. The CITCA agreement requires that before the FN-POS can be provided, the federal government needs to be able to calculate the financial impact of the exemption.

This is mainly a “data issue”, i.e., is there sufficient information to be able to calculate the total value of the exemption? Because the exemption applies to all goods, the information needs to indicate the spending patterns of First Nations across the province on a range of various goods.

Ontario presented a proposal to address the data issue. This would involve using existing data to estimate the total value of the FN-POS; but it also doing some additional surveys on spending patterns of First Nations people. The First Nation HST Committee supported in principle the option that the Ontario Government introduced at the June 7th meeting, as it provided a possible solution that would ensure the FN-POS continued within the HST framework. This is mandated by the MOA and the resolution passed by the Chiefs in Assembly, which ratified the MOA.

At the June 7th meeting Federal Finance officials presented what they believed to be a workable option as well, but this option would see FN-POS exemption be addressed outside the HST framework in the interim or permanently. From the outset of the tripartite meeting, the Federal Government insisted on pushing its option. The Federal Government strongly maintained this

position throughout the meeting. While federal officials acknowledged they were legally obligated under CITCA to consider Ontario's desire to maintain the FN-POS, they clearly did not like Ontario's proposal which is focused on continuing the FN-POS under the HST framework. The Federal Government provided an explanation of what they view as a workable solution that the Government of Ontario can implement by July 1, 2010. Below is a brief description of the option the Federal Government proposed:

Basically this option would involve a First Nations person presenting proof of Indian Status when purchasing goods from a retailer. The retailer would not charge the First Nation person for the provincial portion of the HST. However, the retailer would then remit the full 13% tax to the Federal Government, thereby keeping the national revenue pool from being negatively impacted. In order for retailers to recoup the lost revenue, they would file for a rebate from the Ontario Government.

It is important to note that the Federal Government places priority on ensuring the national revenue pool for GST/HST is as accurate as possible so as not to result in overpayments or underpayments to member provinces of the HST zone.

Several concerns were raised in regards to the option proposed by the Federal government. One that retailers would not be in favour of this option as they would be out of pocket the provincial portion of the HST until they could be provided with a rebate by Ontario; and further that this option would affect their cash management and has the potential to create tension with First Nation consumers at the local level.

The Ontario Government proposal would ensure that the FN-POS continues but under the HST framework, not outside of it as proposed by Canada. The Ontario option would involve the following:

The FN-POS exemption would continue to apply to off-reserve goods, with no further requirement of self-delivery. A First Nation citizen would provide proof of Indian Status at the point of purchase and would not be charged the provincial portion of the HST. To address Federal concerns that the revenue pool may be negatively impacted without more specific existing data, Ontario proposes to "top up" or provide payment into the national revenue pool, representing the value of the FN-POS exemption. This interim estimate would be based on consumption data from Statistics Canada and First Nation population statistics from Indian and Northern Affairs Canada. The interim estimate would need to be reconciled after work is completed by Statistics Canada to provide detailed consumption estimates.

The Government of Ontario has already asked Statistics Canada to prepare a feasibility study to determine if the necessary data can be collected. If it is determined to be feasible by Statistics Canada, they will gather the necessary information to provide a detailed plan to survey the business community and First Nation individuals to gather the necessary information. It was noted that this work would need to be completed within four years from the implementation date of the HST to comply with the revision cycle set out in the CITCA. Ontario is confident that their proposal is consistent with CITCA and could be addressed within the HST framework and that their position is consistent with their commitment under the MOA with the Political Confederacy ratified by Chiefs-in-Assembly May 27, 2010.

As a result of the tripartite meeting, it is clear that the Federal Government does not believe they can include the FN-POS as an exemption under the HST framework prior to July 1, 2010. Further, the Federal Government is resisting the Ontario option mainly on the basis of the data issue. Ontario disagrees with Canada's position regarding their option and will continue to

actively pursue and prove their position is consistent with CITCA to ensure that FN-POS is addressed in the HST Framework.

Although an agreement has not yet been achieved to ensure that the FN-POS continues beyond July 1, 2010, it is positive that the Federal government is now finally at the table. Both Ontario and Canada appear committed to work to find a solution on a priority basis through a tripartite process with First Nations. A big problem is the July 1st deadline. Federal Finance Minister Flaherty has issued a Bulletin to Retailers telling them to start collecting the HST from First Nations in off reserve purchases effective July 1st. First Nation representatives and Ontario asked federal officials to withdraw or re-issue a Bulletin to clarify that the FN-POS will continue. Federal officials have thus far refused.

1. To summarize, two agreements were achieved at the June 7th meeting: The federal government agreed to participate in a tripartite level officials process with Ontario and First Nations; and
2. A technical group will be set up to look at the data issue, to report by the end of this week.

First Nations were adamant that they would insist on the mandate provided by the Chiefs on May 27, 2010 through this process. First Nation representatives were clear that real efforts need to be put into continuing the FN POS by July 1 without interruption. It was emphasized throughout the meeting that First Nations should not bear the harm of Federal and Provincial jurisdictional battles any further.

Next Steps

It was agreed that a small Tripartite Data Working Group be struck immediately to focus specifically on the data issues and concerns of the Federal Government, and that this Working Group would report back to a larger Tripartite Working Group by June 11, 2010.

It was further agreed that a larger Tripartite Working Group be established to focus on the other key issues relating to the achievement of an agreement before July 1, 2010. The next meeting of this Working Group is set for Friday June 11 at a location to be determined. The key issues to be discussed by the Tripartite Working Group can be summarized as follows:

- Clarification of Federal and Provincial Government Mandates to provide the flexibility to come to an agreement before July 1, 2010;
- Results from the Tripartite Data Working Group;
- GST Bulletin Issued by Feds on May 2010 needs to be Rescinded or Revised;
- Discussion on Interim Solutions within the CITCA and other possibilities

The First Nation priority at this point continues to be on achieving an agreement that would preserve the FN-POS within the HST Framework by July 1, 2010.

Following the June 11, 2010 tripartite meeting, an information bulletin will be provided to all First Nations in Ontario.

One of the most important things that First Nations people can do now is to insist that Minister Flaherty withdraw or rescind the Bulletin to Retailers that says First Nations will be subject to HST come July 1st.