

Please note that the following policy statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.

GST/HST Policy Statement

P-230 Application of the *Excise Tax Act* (ETA) to Leases, Licenses and Similar Arrangements of Tangible Personal Property by Indians, Indian Bands and Band Empowered Entities

Note: Goods acquired by Indians and Indian bands off a reserve in Ontario without being delivered to a reserve will generally be subject to the HST as of July 1, 2010. However, the Government of Ontario has announced that, effective September 1, 2010, point-of-sale relief equal to the 8% provincial part of the HST will be provided on eligible purchases by qualifying First Nation purchasers. In the interim, from July 1 to August 31, First Nations purchasers can receive refunds by submitting receipts to the Ontario Ministry of Revenue.

For more information, please see the News Release *Continuing Point of Sale Exemption for Ontario's First Nations* and the Backgrounder *Ontario Point-of-Sale Exemption for Ontario Status Indians and Your Questions Answered: First Nations*. In addition, the Ontario Ministry of Revenue and the Canada Revenue Agency will be releasing further details for vendors and Indian purchasers in the near future.

Vendors and service providers who sell to eligible Ontario First Nations customers should be aware of reporting procedures for the point-of-sale relief of an amount equal to the provincial part of the harmonized sales tax (HST). *GST/HST Info Sheet GI-106, Ontario First Nations Point-of-Sale Relief Reporting Requirements for GST/HST Registrant Suppliers* discusses how GST/HST registrants who provide this credit at the point of sale would be required to report the HST, beginning September 1, 2010.

Date of Issue

Issued : May 13, 1999

Revised : January 15, 2003

Legislative Reference(s)

Subsection 136.1(1) and subsection 136.1(1.1) of the *Excise Tax Act*, R.S., c., E-13, s.1, as amended; section 87 of the *Indian Act*, R.S.C. 1985, c. I-5, as amended

National Coding System File Number(s)

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Effective Date

January 1, 1991 for GST; April 1, 1997 with respect to subsection 136.1(1) and subsection 136.1(1.1) of the *Excise Tax Act* ("ETA"), for HST

Issue and Decision

This policy describes the application of the ETA to leases, licenses and similar arrangements (collectively referred to as “leases”) of tangible personal property (“TPP”) to Indians, Indian bands, and band-empowered entities.

Subsection 136.1(1) of the ETA deems each lease interval to be a separate supply. A “lease interval” refers to a period of time to which a periodic payment is attributable under a lease. For example, in the case of an automobile lease the “lease interval” refers to the period of time covered by each lease payment.

Technical Interpretation Bulletin B-039R (“TIB B-039R”) summarizes Canada Customs and Revenue Agency’s (“CCRA”) policy concerning the treatment of acquisitions by Indians, Indian bands and band-empowered entities under the Goods and Services Tax/Harmonized Sales Tax (“GST/HST”). The treatment of supplies to Indians under the GST/HST is consistent with the *Indian Act* under which personal property of an Indian or an Indian band situated on a reserve and their interest in reserves or surrendered lands are not subject to tax.

The terms “Indian”, “Indian Band” and “band-empowered entity” are collectively referred to as “Indian” throughout this policy and are assigned the same meanings as found in TIB B-039R. The term “reserve” is also assigned the same meaning as found in TIB B-039R.

January 2005

Note

This policy statement does not apply to leases, licences or similar arrangements for a specified motor vehicle made on or considered to have been made on the lands of a First Nation where a FNGST has been imposed.

Example

An Indian individual ordinarily resides on the lands of a First Nation where a FNGST applies. The person temporarily lives on a university campus that is not located on a reserve. The person leases a passenger vehicle for a period of more than three months and has the vehicle delivered to a nearby reserve where a FNGST does not apply.

Given the facts in this example, the FNGST will have to be applied to the lease payments as the supply is considered to be made on FNGST lands because that is where the person ordinarily resides.

If you require further information on whether the FNGST applies to the supply of specified motor vehicle by way of lease, licence or similar arrangement, please refer to the pamphlet RC4365, *First Nations Goods and Services Tax (FNGST)*, or contact your nearest tax services office at 1-800-959-8281 or visit our Web site at: www.cra-arc.gc.ca/.

First Possession

If at the time first possession of TPP is given to the Indian all the conditions outlined in TIB B-039R are satisfied, then all lease intervals for the duration of the lease will be relieved of GST/HST. The subsequent location of the TPP is not a factor in this case as tax relief applies regardless of whether the TPP remains on the reserve or not.

In other words, each and every lease interval in a lease agreement for a supply of TPP to an Indian will be relieved of GST/HST provided that at the time of possession of the TPP is given to the Indian:

- The Indian has the appropriate documentation to show the lessor; and
- The TPP is acquired on reserve (i.e. lessor located on reserve), or
- The TPP is delivered to a reserve by the lessor or the lessor's agent.

Where first possession under the lease is not given on a reserve, the location of the TPP during the lease agreement then becomes relevant in determining the tax obligations related to the lease payments.

- Where possession under the lease is first given off reserve, all lease payments will be subject to GST/HST, unless later during the lease period the TPP becomes located on reserve. Normally, CCRA accepts that the TPP is located on reserve when there is evidence that the Indian is resident on reserve.
- If the Indian were to move onto a reserve at a later point and the Indian provides the lessor with documentary proof that the property is now situated on a reserve the GST/HST on all the remaining lease payments will be relieved. In the case of leasing TPP, the CCRA will normally accept for most property that it is has become situated on reserve where the lessee can establish that a change of residence to a reserve has occurred (e.g. driver's license, invoice for moving service).

Documentation

For an Indian individual, appropriate documentation refers to proof of registration under the *Indian Act*. CCRA will accept as proof of registration under the *Indian Act* a Certificate of Indian Status card, as described in TIB B-039R.

For an Indian band or band-empowered entity, appropriate documentation refers to a certificate provided to the lessor of the TPP specifying that the goods are being acquired under conditions that qualify for tax relief as outlined in TIB B-039R.

Leases by non-Indians on Reserve

Leases of property that occur on reserve by non-Indians will continue to be subject to the normal GST/HST rules.

Options to Purchase

Subsection 136.1(1.1) specifies the time and place at which a recipient who had been leasing property is treated as receiving delivery of it as a purchaser when the recipient exercises a purchase option and maintains physical possession of the property. It is the same time and place

at which the recipient begins to have possession of the property as purchaser and ceases to have possession as lessee.

In other words, at the time of purchase, the time of possession is not when the lessee first obtained the TPP but is deemed to be when the lessee takes possession as purchaser. As well, the location of the TPP is not necessarily where the lessee first took possession of the TPP but where the TPP is situated when the purchase occurs.

Consequently, if TPP is on a reserve when the Indian begins to have possession of the property as purchaser, the supply resulting from exercising an option to purchase by the Indian lessee is relieved of tax provided the other requirements under TIB B-039R are met.

Possession of the TPP may be provided on a reserve to the Indian as purchaser where the property is already on the reserve at the time the option is exercised, or where the property is delivered to the reserve before possession is given as purchaser.

Of course if the TPP is not on reserve at the end of the lease or is not delivered to the reserve when the Indian lessee begins to have possession as purchaser, the acquisition of the property by the Indian will be subject to tax.

Examples

Example No. 1:

Statement of Facts

1. An Indian band leases a motor vehicle, located off reserve, from a registered car dealership.
2. At the time that the lease agreement is entered into the Indian band provides the dealership with the appropriate documentation as described in TIB B-039R.
3. The motor vehicle is delivered to a reserve before the Indian band obtains first possession of the motor vehicle.
4. Subsequently, the use of the motor vehicle by the Indian band is off reserve.

Application of GST/HST

Based on the facts set out above, each and every lease interval under the agreement for the lease of the motor vehicle by the Indian band from the dealership is relieved of GST/HST since the requirements for GST/HST relief outlined in TIB B-039R are met at the time possession of the motor vehicle is first given to the Indian band. The place of supply of the property, whether on or off reserve, for the second and subsequent lease intervals, is unaffected by the location of the property during such lease intervals.

Example No. 2:**Statement of Facts**

1. An Indian leases a motor vehicle, located off reserve, from a registered car dealership.
2. At the time that the lease agreement is entered into the Indian is residing off reserve.
3. The Indian obtains first possession of the motor vehicle off reserve.
4. Several months into the lease, the Indian becomes a resident on a reserve and moves the motor vehicle to the reserve.
5. The Indian subsequently provides the dealership with the appropriate documentation, as described in TIB B-039R as well as a copy of his updated address on his driver's license as proof that he now resides on a reserve.

Application of GST/HST

Based on the facts set out above, only the lease intervals where the motor vehicle was not located on the reserve are subject to GST/HST provided the appropriate evidence that the motor vehicle is now located on reserve is given to the dealership. After the Indian resides on the reserve, all future lease payments will be relieved of the tax. What is acceptable evidence is a question of fact to be determined by the nature of the transaction. As noted earlier CCRA usually accepts that TPP is located on reserve when there is evidence that the Indian is resident on reserve. In the case of a motor vehicle a copy of the individual's driver license would normally be acceptable as proof the individual and the vehicle are on reserve.

Example No. 3:**Facts**

1. A Yukon resident Indian leases office equipment, located on reserve, from a supplier in the Yukon.
2. The lease is for a one-year period and commences January 1, 2002.
3. At the time the lease agreement is entered into the Indian provides the supplier with the appropriate proof of registration as an Indian under the *Indian Act*.
4. The Yukon resident is a member of a First Nation with a final land claim settlement agreement effective April 1, 2002.

Application of GST/HST

Based on the facts set out above, each and every lease interval under the agreement for the lease of office equipment by the Indian from the supplier is relieved of GST/HST since the requirements for GST/HST relief outlined in TIB B-039R are met at the time first possession of the TPP is given. The place of supply of the property, whether on or off reserve, for subsequent lease intervals is unaffected by the location of the property during such lease intervals. Therefore, leases of TPP entered into before April 1, 2002, that met the requirements under TIB B-039R at the time first possession of the TPP was given, continue to be relieved of GST/HST for the balance of all lease intervals under the lease agreement even if the lessor is a Yukon resident Indian who is a member of a First Nation with a final land claim settlement agreement in place.

Example No. 4:

Facts

1. An Indian individual enters into an agreement to lease heavy equipment. At the time when the lease agreement is entered into the Indian provides the lessor with the appropriate proof of Indian status under the Indian Act. Before the Indian obtains first possession of the heavy equipment, the lessor delivers it to a reserve.
2. At the end of the lease agreement, the Indian exercises the option to purchase the heavy equipment.
3. At the time when the option to purchase is exercised, the Indian provides the lessor with third party documentation certifying that the heavy equipment is situated on a reserve.

Application of GST/HST

Based on the facts set out above, the purchase of the heavy equipment under the agreement of purchase and sale by the Indian is relieved of GST/HST since the requirements for GST/HST relief outlined in TIB B-039R are met. As the lessor has evidence that the heavy equipment is situated on a reserve at the time when the option to purchase is exercised by the Indian, it does not have to be delivered to the reserve for a second time.