

## Sales to First Nations, and the Exempt Fuel Retailer Program

### *Motor Fuel Tax Act and Carbon Tax Act*

Latest Revision: The revision bar ( | ) identifies changes to the previous version of this bulletin dated March 2014. For a summary of the changes, see Latest Revision at the end of this document.

This bulletin provides information to help fuel sellers understand how the motor fuel tax and carbon tax apply on sales to eligible First Nation purchasers. This bulletin also explains when fuel sellers may qualify for the Exempt Fuel Retailer Program and how to register as an exempt fuel retailer.

For general information for all fuel sellers, such as the different registration requirements and fuel seller classifications, see [Bulletin MFT-CT 001](#), *Fuel Sellers*.

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## Definitions

### In this bulletin:

A **band** has the same meaning as in section 2 of the *Indian Act* (Canada).

A **First Nation individual** is an individual who is an Indian under the *Indian Act* (Canada) and whose property is exempt from taxation under section 87 of the *Indian Act* (Canada) or a provision of a final agreement equivalent to that section.

A **First Nation government** is one of two categories of First Nation governments:

1. A First Nation government that qualifies as a band under the *Indian Act* (Canada), or
2. A First Nation government that has a treaty in effect with Canada and BC that sets out a different taxation structure from a band. The following First Nation governments and government entities have a treaty in effect with Canada and BC and **do not qualify** as bands under the *Indian Act* (Canada):

Effective Date of Treaty	First Nation Government or Government Entity
May 11, 2000	Nisga’a Lisims Government Nisga’a Village Governments Other Government Entities of the Nisga’a Nation
April 3, 2009	Tsawwassen First Nation Government and Government Entities
April 1, 2011	Maa-nulth First Nations and Government Entities which include the following distinct Treaty Governments: <ul style="list-style-type: none"> <li>▪ Huu-ay-aht First Nations</li> <li>▪ Ka:’yu:’k’t’h’/Che:k’les7et’h’ First Nations</li> <li>▪ Toquaht Nation</li> <li>▪ Uchucklesaht Tribe</li> <li>▪ Yuułu?if?ath (legally Ucluelet First Nation)</li> </ul>

An **eligible First Nation purchaser** (also referred to as a Status Indian or Indian Band in other publications and forms) is:

- a person who qualifies as an Indian under the *Indian Act* (Canada), or
- a person who makes a purchase on behalf of a band that qualifies as a band (the eligible purchaser) under the *Indian Act* (Canada).

The following **do not** meet the definition of an eligible First Nation purchaser:

- Métis peoples, Inuit or Indians from the United States, as they do not meet the definition of an Indian under the *Indian Act* (Canada),
- corporations or cooperatives with Indian shareholders, tribal councils and band empowered entities, as they do not qualify as Indians under the *Indian Act* (Canada),
- a person who qualifies as an eligible purchaser but is purchasing fuel for another person, or planning to sell or transfer ownership of the fuel to another person for their use, and
- Nisga’a citizens, effective June 1, 2008.

**Exempt fuel retailer (EFR)** is a fuel seller who operates on First Nation land and has received authorization from the ministry to purchase gasoline, diesel and/or propane exempt of security under the Exempt Fuel Retailer Program.

**First Nation land** means reserve land or former reserve land now part of treaty lands. First Nation land does not include Nisga'a lands.

**Former reserve land** of the Tsawwassen First Nation is treated as reserve land for the purpose of the *Motor Fuel Tax Act* and *Carbon Tax Act* until May 1, 2017.

**Former reserve land** of the Maa-nulth First Nation is treated as reserve land for the purpose of the *Motor Fuel Tax Act* and *Carbon Tax Act* until May 1, 2019.

**Former reserve land** of the Nisga'a Nation is **not** treated as reserve land for the purpose of the *Motor Fuel Tax Act* and *Carbon Tax Act*.

**Reserve land** is land that qualifies as a reserve or designated land under the *Indian Act* (Canada).

## **Sales to Eligible Purchasers**

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Fuel purchased by eligible purchasers is exempt from motor fuel and/or carbon tax if title to the fuel passes on First Nation land. This includes fuel purchased on First Nation land as well as purchases negotiated off First Nation land where the fuel is delivered to First Nation land, provided that title to the fuel passes on First Nation land.

If the fuel is delivered from a location off First Nation land, for title to pass on First Nation land the fuel must be delivered by the seller or by a common carrier under contract with the seller, and the seller must retain ownership and responsibility for the fuel until it is delivered to the eligible purchaser on First Nation land.

## **Sales to Partnerships Involving First Nations**

### **General Partnerships and Limited Liability Partnerships (LLP)**

General partnerships and LLPs with a First Nation partner(s) are entitled to an exemption from motor fuel tax and carbon tax on their fuel purchases on First Nation land. The exemption is proportional to that First Nation partner's interest in the partnership. Unless a written partnership agreement provides otherwise, each partner is considered to own a proportionate share of the partnership assets equal to that partner's interest in the partnership.

For example, a non-First Nation individual forms a general partnership with a First Nation individual. The First Nation individual has a 50% interest in the partnership. In this case, the partnership is entitled to a 50% exemption on its fuel purchases on First Nation land provided that all the criteria for exemption are met.

### **Limited Partnerships**

Limited partnerships in which **all** of the partners are First Nation individuals or bands are entitled to a full exemption from motor fuel tax or carbon tax provided that all the criteria for the exemption are met.

For example, a band forms a limited partnership to carry on a business in which all of the general and limited partners are First Nation individuals or bands. Because all of the partners are First Nation individuals or bands, the partnership is entitled to a full exemption from motor fuel tax and carbon tax on its fuel purchases on First Nation land provided that all the criteria for exemption are met.

Limited partnerships in which **one or more** of the general or limited partners are First Nation individuals or bands may or may not qualify for exemption from motor fuel tax or carbon tax, depending on the terms of the partnership agreement.

Unless a limited partnership agreement provides otherwise in writing, any transaction involving the limited partnership is considered to be a transaction with the general partner. For example, if the partnership agreement does not identify the ownership of assets and the general partner is a First Nation individual or band, then the entire purchase of fuel on First Nation land is fully exempt from motor fuel tax and carbon tax provided that all the criteria for exemption are met.

If the limited partnership agreement does not state who owns the partnership assets where the limited partner is a First Nation individual or band and the general partner is not, then the purchase of fuel on First Nation land is not exempt from motor fuel tax and carbon tax. With all partnerships, the specific terms of a partnership agreement can affect how motor fuel tax and carbon tax applies to the purchases made by the partnership. The law relating to partnerships is complicated. If you are unsure how motor fuel tax or carbon tax applies, please contact us and we will provide you with an answer that applies to your particular situation.

**Please note:** Motor fuel tax and carbon tax exempt fuel purchases by partnerships involving First Nations must meet all the criteria for the exemption for First Nation individuals or bands.

For an overview on partnerships, see [Bulletin PST 319](#), *Partnerships*.

## Exempt Sale Procedures

### Verifying the Purchaser's Eligibility

When you sell fuel to an eligible purchaser on First Nation land, you must verify that the purchaser is eligible to purchase fuel exempt of tax. To verify the purchaser's eligibility:

- the purchaser must possess and physically present you with their *Certificate of Indian Status* card,
- if the purchaser has recently applied for and has not yet received their *Certificate of Indian Status* card, you may accept their *Temporary Confirmation of Registration Document* (TCRD) issued by Aboriginal Affairs and Northern Development Canada (AANDC). The original TCRD must show their name, registration number, registration date and the expiration date of the TCRD. The purchaser must also show a piece of government-issued photo identification. Acceptable identification includes a passport, driver's licence or BCID card.

For a sample of the TCRD, see AANDC's website at [www.ainc-inac.gc.ca/br/is/bl/ir\\_tmp-eng.asp](http://www.ainc-inac.gc.ca/br/is/bl/ir_tmp-eng.asp)

- if the purchaser is purchasing fuel as an agent on behalf of a band, you must verify that the person is eligible to purchase the fuel on behalf of the band. To verify the person's eligibility, they must provide you with written authorization from the band, which contains the band's name and registry number, and the name, signature and title of the band official who provided the written authorization. The written authorization should state the following:

"This is to certify that the fuel purchased by (*name of the band*) on (*name of First Nation land*) is solely for band management activities and is exempt from motor fuel and carbon tax."

### Documenting Exempt Sales

For each exempt sale, you must keep a record all of the following information in relation to the sale.

- The date of the sale.
- The purchaser's name and registry number as shown on the *Certificate of Indian Status* card. If the purchase is made on behalf of a band, the purchaser's name, the band's name and band registry number as it appears on the authorization letter from the band, and the name of the band official who signed the letter.
- If the purchaser is a general partnership or LLP, documentation showing the First Nation partner's proportional interest in the partnership.
- The quantity and type of fuel sold exempt of tax.

- The First Nation land name and/or physical address where the exempt fuel was sold. If the fuel seller is not permanently located on First Nation land, a statement from the purchaser that the fuel was delivered by the fuel seller into a receptacle (e.g. fuel tank) located on First Nation land.
- The purchaser's signature confirming the above information.

If you are a fuel seller who is permanently located on First Nation land, for example, a retail gas station or cardlock, you must record the above information on the *Schedule of Sales of Tax-Exempt Fuels to Status Indians or Indian Bands* (FIN 412/2). If the purchase is made on behalf of a band, the band's name and band registry number must be recorded. You must submit the form along with your tax return.

**Please note:** You must report exempt sales from cardlock locations on First Nation land for the month in which the sale occurs (i.e. not the billing or payment date). The FIN 412/2 may be submitted after the tax return, but must be received by the ministry no later than the last day of the month the tax return is due (e.g. for March cardlock sales, the tax return is due April 15 and the FIN 412/2 for these sales must be received no later than April 30). Faxed, or scanned and emailed copies of the FIN 412/2 are acceptable.

If you cannot collect and record the above information, you must collect the motor fuel and/or carbon tax from the purchaser. If the purchaser claims they are purchasing fuel on behalf of a friend or family member who is an eligible purchaser, but the purchaser does not possess a *Certificate of Indian Status* card in their own name, you must collect the motor fuel and/or carbon tax.

If you must collect the tax, as in the situations above, and your customer claims they are eligible for exemption, you should advise them to apply to the ministry for a refund. To apply for a refund of motor fuel tax paid, they submit an *Application for Refund of Motor Fuel Tax - Purchaser of Fuel* (FIN 147). To apply for a refund of carbon tax paid, they submit an *Application for Refund of Carbon Tax - Purchaser of Fuel* (FIN 108).

**Please note:** If you are a fuel seller who operates at a permanent location on First Nation land, e.g. a retail gas station or cardlock, you may qualify to purchase a portion of your fuel exempt of security under the Exempt Fuel Retailer Program (see Exempt Fuel Retailer Program below).

## Refunds

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### Deputy Collectors and Retail Dealers

Deputy collectors and retail dealers must pay a security equal to the amount of tax that would have been collected if the fuel was sold to an end purchaser.

If you are a deputy collector and you sell fuel exempt of security to an EFR, or you are a retail dealer and you sell fuel exempt of tax to an eligible purchaser, you may apply for a refund of the security you paid. The refund amount is based on the difference between the amount of security you paid on the fuel and the amount of security or tax you collected. For information on how to claim a refund, see [Bulletin MFT-CT 001, Fuel Sellers](#).

## **Purchasers**

Under certain circumstances, the following First Nation governments and government entities may apply for a refund of motor fuel tax but not carbon tax:

- Nisga'a Nation and Nisga'a government entities
- Tsawwassen First Nation and Tsawwassen First Nation government entities
- Maa-nulth First Nation and Maa-nulth First Nation government entities

To apply for a motor fuel tax refund, you need to complete an *Application for Refund of Motor Fuel Tax* ([FIN 413/NNMFT](#)).

## **Exempt Fuel Retailer Program**

The Exempt Fuel Retailer Program was introduced to allow retailers to purchase fuel exempt of security that will be resold tax-exempt to eligible purchasers.

As an EFR, you are authorized to purchase a specified percentage of certain types of fuel exempt of security. Your specified percentage is based on the tax-exempt sales that you normally make to eligible purchasers. The specified percentage may vary by the type of fuel and may be adjusted if your percentage of tax-exempt sales changes.

## **How to Apply**

You may apply to the ministry to register as an EFR, if you sell:

- one or more of the following types of fuel:
  - clear or coloured gasoline,
  - clear or coloured diesel fuel, and
  - propane, effective April 1, 2013,
- from a permanent location on First Nation land (a retail gas station or an unmanned location, e.g. cardlock or keylock), and
- sell at least 10% of a type or types of fuel listed above exempt of tax to eligible purchasers.

To apply for registration as an EFR, you need to complete an *Application for Registration as an Exempt Sale Retail Dealer (ESRD) and/or Exempt Fuel Retailer (EFR)* ([FIN 262](#)) for each physical location that you operate on First Nation land.

If you are conditionally approved as an EFR, the ministry will send you two copies of a draft agreement outlining the duties and conditions of your registration. You must sign and return both copies of the agreement to the ministry. The ministry will return one copy of the agreement to you for your records along with:

- an *Exempt Fuel Retailer Permit* with your name, address and permit number, as well as the type(s) of fuel and specified percentage of each type of fuel that you can purchase exempt of security, and
- tax return forms and information you need to report and remit tax.

**Please note:** EFR permits are not transferrable from one person to another and apply only to a specific location.

If you are not approved as an EFR, the ministry will send you a letter explaining why your application was refused and how to appeal the decision if you disagree. If your application is refused, you are not authorized to purchase any gasoline and/or diesel exempt of security in BC.

## **Suspension and Cancellation of EFR Permits**

If your permit is suspended or cancelled for not meeting the conditions of your EFR permit agreement, you will not be eligible to purchase any fuel exempt of security. However, if your permit is suspended or cancelled, you must continue to file your monthly returns until all of your fuel that was purchased exempt of security has been sold.

**Please note:** The ministry has a [website](#) for fuel sellers to monitor the status of EFR permits. For more information, see [Bulletin MFT-CT 001, Fuel Sellers](#).

## **Display of Permits**

You must display your EFR permit at each location where you sell fuel. The permit indicates the specific type(s) of fuel and the percentage of each fuel type the location is authorized to purchase exempt of security.

## **Purchasing Fuel for Resale**

To purchase the specified percentage of each fuel type listed on your EFR permit exempt of security, at the time of purchase you must provide your fuel supplier with your EFR number, fuel type(s) and specified percentage, or a copy of the permit.



## Exempt Sales

To provide an exemption, you must verify that your customer is eligible to purchase fuel exempt of tax and document certain information (see Exempt Sale Procedures above).

## Taxable Sales

You must collect the motor fuel and/or carbon tax at the appropriate rate on all types of fuel sold to purchasers who do not qualify to purchase fuel exempt of tax.

## Reporting and Remitting Tax

You must report your inventory, purchases and sales, for the types of fuel for which you have been appointed an EFR, on a *Tax Return – Exempt Fuel Retailer* ([FIN 412](#)) and remit any tax that is due on those sales to the ministry by the 15<sup>th</sup> day of the month following the month that you sold the fuel. For example, if you sell fuel anytime during the month of November, you must file the return and remit any tax due by December 15. You must also submit your *Schedule of Sales of Tax-Exempt Fuels to Indians or Indian Bands* ([FIN 412/2](#)). If you have no sales, you are still required to submit your tax return.

You may file returns and schedules by mail, in person or by courier. If you send in your return and payment by mail, it is considered on time if the envelope is postmarked by Canada Post on or before the due date. A business postage meter mark is not sufficient. If you hand deliver your tax return or send it by courier, it must be received by the ministry by the close of business (4:30 pm) on the due date to be considered on time. If your return and payment are not received on time, penalty and interest may be applied. If the due date falls on a weekend or statutory holiday in BC, your return and payment are due by 4:30 pm on the first business day after the due date.

Although you may not file returns or schedules online using eTaxBC, you may remit taxes due online using [eTaxBC](#). Payments are considered on time if they are posted to [eTaxBC](#) by 11:59 pm (Pacific Time) on the due date.

If you identify an error in a tax return from a previous reporting period, **you must submit** an amended return for that reporting period.

## Reconciling Exempt Sales with Purchases

If the actual percentage of fuel that you sold exempt of tax is **greater** than the percentage of fuel that you purchased exempt of security, you are eligible for a refund of security on the difference in sales volumes. If the actual percentage of fuel that you sold exempt of tax is **less** than the percentage of fuel that you purchased exempt of

security, you must remit the additional tax you collected to the ministry. You can either claim your refund or remit any additional tax collected on your tax return form.

For example, you purchase 10,000 litres of clear gasoline exempt of security. You sell 9,000 litres to eligible purchasers exempt of tax and 1,000 litres to taxable customers during the month of November 2012. The table below shows how to calculate the amount of tax you are required to remit to the ministry.

	Security-Exempt Purchases in Litres	Tax-Exempt Sales in Litres	Taxable Sales
Volume of Fuel	10,000	9,000	1,000 litres
Tax Rates			
Motor Fuel Tax	n/a	n/a	14.50
Carbon Tax	n/a	n/a	+ 6.67
			= 21.17 cents per litre
Tax to remit	Exempt	Exempt	1,000 litres x 21.17 cents per litres = \$211.70

The tax rates used above are examples only. The motor fuel tax rates vary depending on where you sell fuel in BC, for example, inside the South Coast British Columbia transportation service region or the Victoria regional transit service area. For more information, see [Bulletin MFT-CT 005](#), *Tax Rates on Fuels*.

## Tax Rates

The tax rates on fuel products change periodically. For the current motor fuel and carbon tax rates that apply to the various types of motor fuels used in internal combustion engines, and information on the carbon tax rates that apply to other fuels and combustibles, see [Bulletin MFT-CT 005](#), *Tax Rates on Fuels*. The tax rates are also printed on the *Tax Return – Exempt Fuel Retailer (FIN 412)* and are mailed monthly to each EFR retailer.

## Tax Rate Changes

If there is a tax rate change, you must report and remit any additional security due to the ministry on fuel inventory that you own, or are deemed to own, on which you have paid, or will be paying, security to your supplier (i.e. acting as a deputy collector or retail dealer).

When motor fuel tax rates change, you use the *Motor Fuel Tax Inventory Return* to report your inventory and pay the amount of additional security due. This return is available online through your [eTaxBC](#) account or as a printable form (**FIN 154**) on our website.

When carbon tax rates change, you use the *Carbon Tax Inventory Return* to report your inventory and pay the amount of additional security due. This return is available online through your [eTaxBC](#) account or as a printable form (**FIN 103**) on our website.

If you are authorized to purchase 100% of a type of fuel exempt of security using your EFR permit, you are not required to submit an inventory return for that type of fuel. For more information, see [Bulletin MFT-CT 001](#), *Fuel Sellers*, or contact the ministry.

### **Reporting Tax on Sales Invoices**

You must report the amount of motor fuel and/or carbon security or tax charged on your sales invoices if you sell fuel:

- from a bulk storage facility, cardlock or terminal rack,
- for resale to another fuel seller,
- to a registered consumer, registered air service or registered marine service, or
- to a customer who requests an invoice.

You must provide an invoice to your customer showing:

- the date of the sale,
- your name and address,
- the location of the sale if different than above, and, if applicable, where the fuel was delivered,
- the name and address of the person you sold the fuel to,
- the quantity of each type of fuel sold, and
- the rates for motor fuel tax and/or carbon tax for each type of fuel sold, as separate lines or columns on the invoice.

There are additional invoice requirements if you sell coloured fuel. For more information, see [Bulletin MFT-CT 003](#), *Coloured Fuels*.

## **Need more info?**

Online: [gov.bc.ca/consumertaxes](http://gov.bc.ca/consumertaxes)

Toll free in Canada: 1 877 388-4440

Email: [CTBTaxQuestions@gov.bc.ca](mailto:CTBTaxQuestions@gov.bc.ca)

Access our forms, publications, legislation and regulations online at [gov.bc.ca/consumertaxes](http://gov.bc.ca/consumertaxes) (go to **Motor Fuel Tax and Carbon Tax** and then **Forms** or **Publications**).

Subscribe to our **What's New** page to receive email updates when new information is available.

The information in this bulletin is for your convenience and guidance and is not a replacement for the legislation.

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### **Latest Revision**

September 2014

- Added information on sales to partnerships involving First Nations
  - Added information on the need to submit an amended tax return upon identification of an error from a previous reporting period
-