

# TAXATION ON THE LITTLE PORTAGE RESERVE: *An Issue for First Nation Governance*

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Through the late October rain Emil recognized the approaching van as Arnason's. Sandy Arnason owned the groceteria and gas station on the provincial road at the edge of town eleven miles away. As the van passed, young Donny Arnason nodded and smiled at Emil from behind the wheel. Emil was surprised to see his sister's grandson in the van with Donny. "Bernie doesn't even smoke" the old man thought as he turned his truck onto the main road through the reserve and headed toward the band office.

Donny Arnason was doing his rounds, buying cigarettes on reserve for resale from his dad's place and a few other stores stretched along the provincial road. He'd been doing it for about a year now. Emil figured Donny must be making money at it because he wasn't the type to stick with a business through any hard times.

This particular part of Donny's work was based on a tax exemption in the *Indian Act*. Section 87 of the *Indian Act* provides a tax exemption for the property of Indians and Indian bands if the property is situated on an Indian reserve. Because of the section 87 exemption, there was no provincial tobacco tax on cigarettes sold to the Indian-owned retail outlet on reserve if the cigarettes were going to be used by regis-

tered Indians. Also, because of the section 87 exemption, no GST or provincial sales tax was collected at the time of sale, if the purchaser was a registered Indian and the transaction occurred on reserve. The benefit of the section 87 tax exemption went well beyond provincial tobacco taxes and sales taxes but it was the exemption from tobacco tax that set Donny Arnason's scheme in motion.

A quota of these tax-free cigarettes was made available for the store on the Little Portage reserve to sell to registered Indians. The quota was calculated to be sufficient, even generous, for all the Indian smokers on the reserve. The removal of the provincial tobacco tax made a big difference in the price.

Donny came through the reserve every few weeks, driving youngsters like Bernie down to the reserve store and giving them the money to buy tax-free cigarettes for him. For their trouble, Donny offered his teen-aged accomplices a little money or, more frequently, something from his dad's store like the old cassette tapes that never got sold even from the discount counter. Emil also suspected that Donny occasionally paid the kids with soft drugs like marijuana or hashish. After buying the cigarettes, Donny drove down

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Revised from a submission to Indigenous Futures 2000, International Case Writing Competition, University of Lethbridge. The case is intended for academic study. Publication and reference, in part or whole, is restricted to the B.E.S.S. Program and the University of Lethbridge, unless otherwise authorised by the author in writing.

the road and sold them to his dad or a few other retailers. He marked up the cigarettes enough to make a good profit for himself and could still sell them to the retailers for less than the usual wholesale price.

On the surface, everybody seemed pretty satisfied with the arrangement. Teenagers on reserve, many of whom didn't smoke anyway (quite a difference from Emil's generation), made a little pocket money or got something for selling their quota cigarettes to Donny. Donny made a little money selling to the retailers and the retailers made a little more money from each pack they sold because the cigarettes cost them less. Nevertheless, Emil muttered to himself as his truck rattled along the washboard road, it really didn't seem right. Why was Donny Arnason of all people benefiting from the Indian tax exemption? Why were non-Indian businessmen who live off reserve and who live comfortably by reserve standards, benefiting from a tax exemption meant for Indians living on reserve?

Emil knew of other situations where Indians were deprived of the benefit of the tax exemption. In some cases, retailers on reserves had adopted a two-price system for certain products. They charged non-Indians one price. For sales to registered Indians on the reserve, however, they charged a higher price. By increasing their prices on sales to registered Indians the retailers were able to effectively skim away much of the benefit of the Indian tax exemption. That also struck Emil as being fundamentally wrong.

In fact, quite a few odd situations had developed over time in connection with the section 87 tax exemption. In eastern Canada, some reserve-based retailers refused to collect provincial or federal sales tax even when they sold goods to non-Indian customers. To attract more customers, these retailers were extending the benefit of the section 87 exemption to persons who weren't registered Indians and who weren't entitled to the tax exemption. There were also some well-organized car-flipping schemes in the east designed for evading sales tax on vehicles. And there was a lot of well-publicized smuggling activity involving cigarettes, alcohol and other products. None of this seemed right to Emil.

Emil had been born in his grandparent's house on the Little Portage reserve sixty-two years earlier, just before the war started. He was married on the reserve and had raised his family there. He helped his children raise their children there. He'd been chief of Little Portage for six

years and was a councilor for eight years before that. Now he was nearing the end of his third term as chief and wasn't thinking of running for office again.

His grandparent's house was still standing but the large lot it occupied was now part of the reserve's municipal services compound. Much of the front wall of the old log house had been sawed out and reframed to fit a double garage door. The house he was born in was now a garage for the community's backhoe and tractor. Emil and his wife had given the house and the lot to the band for that purpose. Driving past the compound and the garage, Emil thought about how the community had changed since he was young. There was no reserve school in those days. Emil and his brothers, like their parents before them, attended the Anglican residential school seventy miles away. Nobody stayed in school for long back then.

The community was different now. It pleased him more than he let on that he had been a key player in many of the important changes. There were about 700 people living on the reserve now, including 55 who weren't registered Indians. In the past twenty years, the band had built more than a hundred new houses. The housing backlog was more manageable now and almost under control. All the reserve houses were serviced with hydro and water and sewage. When Emil was growing up, those were unimagined luxuries on the reserve and for most of the people in the surrounding area. The band government operated a water treatment plant and a sewage treatment and disposal plant. It also provided fire prevention and protection services and operated a garbage dump for the community. Perhaps most importantly, Emil thought, the band government now provided social and health services to community members and offered the local kids a decent education from kindergarten through grade XII.

It was a little harder to make comparisons about employment. Emil remembered that when he was a youngster most of the men usually seemed to be busy cutting, hauling and stacking hay, sawing or splitting wood, trapping, fishing, tending gardens and doing other sorts of work. His mother and the other women were always very busy at the slow-paced drudgery of their housework. All the adults seemed to be active and working hard but nobody really had jobs like today. Now, about half the adult population was employed at regular jobs but the other half

was chronically unemployed. Those who relied on social assistance still lived a meager existence but those who worked generally were fairly prosperous, healthy and happy. Maybe prosperous wasn't the right word but, overall, the community was certainly living more comfortably by local standards than when he was a boy.

Each of Emil's three successive governments operated within budget and year-end audits had been clean and unqualified for the past seven years. About ninety percent of the band's program funding came from DIAND's transfer. Most of the remainder came from other federal departments including Health Canada, Industry Canada and Human Resources Development Canada. In recent years, the annual funding from all federal departments totaled about \$7,000,000. The provincial government paid tuition for four non-Indian kids who lived in the vicinity and attended the reserve school. The province also reimbursed the band for paying social assistance and providing counseling for two non-Indian families living on the reserve. Overall, however, it was fair to say that the provincial government didn't really provide the band government with any funding for programs and services for community members. The community raised about \$10,000 a year leasing reserve land to local farmers for grazing.

Perhaps the most significant potential source of own source revenue for the community, was the band-owned service station complex. During three and a half years of operation, however, all of the net income had been reinvested in the complex and none of it had been turned over to the band government. Emil remained hopeful, however, that there would be a regular flow of revenue from the complex to the band government at some point.

Nobody ever asked him but if anybody had inquired about which achievement during his terms in office gave him the most satisfaction, Emil would have answered without hesitation that it was the service station complex. The complex was situated at the south end of the reserve on the provincial road. The council began planning the service station more than five years ago. It took almost two years to line up the financing and complete the construction. After the first two years of operation, the service station site was expanded into a complex that included a small grocery store and restaurant.

Most of the grocery trade was with reserve residents. The restaurant and the gas station,

on the other hand, were doing a good business not only with reserve residents but also with other local people and travelers going by on the provincial road. The dinner trade at the restaurant was growing and it had recently applied for a liquor license. The complex competed directly with Sandy Arnason's and a half a dozen other establishments strung along thirty-six miles of road between provincial highways seven and nine. It was doing surprisingly well.

As he pulled into the parking lot, Emil saw Leonard Sinclair walking into the band office for the meeting. He made a mental note to ask Leonard for the latest stats for the service station complex. He pulled in beside Leonard's car, switched off the wipers and ignition and was closing the door of the truck as old Alfred Campbell, an elder who had also just arrived for the meeting, walked by. "Good morning Alfred" Emil said, adjusting his cap. "Hello Emil" returned Alfred. They tipped their heads away from the cold rain as they walked to the band office.

Like most governments, the Little Portage government always needed additional revenues. There were a dozen worthwhile community projects that couldn't be undertaken because of funding shortfalls. The reserve needed extensive road upgrading, more housing renovations and a community safe house. It also wanted a senior's home and community centre with a rink. The roads, housing renovations and senior's home were all included in the community's capital plan for the next five years, but the needs were already pressing.

The safe house and the community centre hadn't made it onto the capital plan. There were other program and service areas that were priorities for the community but which were unfunded at present. The community wanted more job and skills training for the unemployed adults, improved programming for seniors and more language and cultural programming for the kids in school. There was only so much flexibility to be wrung out of the federal funding. The inescapable bottom line was that the transfer funding available for the band government wasn't nearly enough to address all of the community's requirements.

Emil knew that four First Nation governments in BC had begun to levy sales taxes on fuel, tobacco and alcohol products sold on reserve both to members and other persons living on or passing through the reserve. Section 87

of the *Indian Act* protected the property of Indians and bands on reserve from taxation by other governments but it was possible for a First Nation government to levy taxes despite section 87. He had heard that, for First Nations levying their own sales tax on reserve, the federal government would back out of the GST and let the First Nation sales tax apply on sales to non-Indians as well. He heard similar things about personal income taxes being collected by the self-governing Yukon First Nations. Some First Nations were starting to access new revenues by levying sales taxes and income taxes.

It sounded like an interesting and potentially positive arrangement, but it wasn't entirely without risk or cost. These tax arrangements required the First Nation governments to tax their own citizens. Those are the same people who had previously enjoyed the tax exemption under section 87 of the *Indian Act*. While section 87 continued to protect the property of registered Indians and bands from taxation by other governments, the First Nation government could pass a by-law imposing a direct tax on that property. The bottom line from the point of view of individual band members, however, likely would be that they're losing their tax exemption. The introduction of a tax in many Indian communities could be expected to have a very high political cost. Unless the community was solidly behind the idea, a First Nation tax could easily lead to a government turnover at the next election.

Section 83 of the *Indian Act* provides that First Nations can pass by-laws imposing property tax. Little Portage had been levying property taxes for years but those taxes were aimed primarily at non-Indians who used reserve land for grazing or other purposes. Emil found that kind of taxation to be somewhat discriminatory but, in any event, those taxes didn't generate more than a few thousand dollars a year. The First Nations in BC that had introduced sales taxes didn't apply their taxes to the full range of products and services that are taxable under the GST. Rather, those First Nations' sales taxes applied only to products like tobacco, alcohol and motive fuels. Other First Nations wanted to impose their sales taxes on the entire range of items that were subject to the GST, but Emil wasn't aware of any such taxes being in effect yet. These were surprising changes. The Indian tax exemption had been one of the few distinct benefits of being an Indian, Emil thought. But then again, he thought to himself, the exemption

doesn't seem to be working for anybody as it was intended to. Maybe it was time to think about levying a sales tax at Little Portage.

Emil took his place at the council table and, seeing that a quorum of the council was there, asked Alfred to say a prayer to open the meeting. The first item on the agenda was Arlene's report on a community policing study prepared by the tribal council. Judging from the amount of paper in front of her, he guessed she would be talking for some time. Emil introduced Arlene's item and when she was comfortably into her presentation, he sent a note down the table to Leonard. After reading the note, Leonard rummaged through his briefcase and passed a bunch of papers back up the table. Emil turned to councilor Frances Langlois beside him, and asked her to chair the meeting for the next while. Then he put on his reading glasses and thumbed through the papers, pulling out the year-end financial statements for the store, restaurant and gas station and six pages of Leonard's variously coloured scribbling that were current statements for the months of April through September.

Turning his agenda over he began copying figures from the financial statements and Leonard's scrawling to estimate roughly what a First Nation tax on fuel and tobacco products might mean for the Little Portage band. He knew that more detailed calculations would be required to distinguish business sales from sales to final consumers. Much of the sales tax paid by businesses on fuel purchases would be reclaimed through input tax credits and would not become part of the net tax revenue received by the band. Nevertheless, the results of his quick calculations were encouraging. It appeared that a sales tax on tobacco and fuels at Little Portage could generate about \$200,000 annually. These rough calculations only represented net tax revenue from sales of fuel and tobacco. How much more revenue might be generated if the First Nation sales tax was applied to alcohol sales at the new restaurant? Even better, what if the First Nation sales tax applied to all of the goods and services that are taxable under the GST?

His thoughts returned to the meeting when he heard Frances saying that a motion had been seconded and then calling for a vote on the motion. "Those in favour?" she asked. Emil looked down the table at old Alfred, who had been watching him and who nodded slightly. Emil put up his hand along with a majority of the other councilors and the motion, approving

Arlene's report and its recommendations, was carried. Frances introduced the next item on the agenda.

Emil's thoughts returned to tax and the numbers on his overturned agenda. He began contemplating the risks of introducing a tax. The band government would probably have to take some heat for levying a sales tax on any product. Would the benefits of being able to provide more and better services outweigh risks for the government? Talk about taxes was just the kind of thing that could get councils removed. He tried to imagine how he or anyone could go before a community of relatively poor people who aren't taxed and tell them that you want to be the chief and that you want to start taxing them. The idea seemed absurd. On the other hand, he was sure that the government could do important things for the community with the new tax revenue. Nobody anywhere liked the idea of being taxed but other governments had somehow introduced taxes. Certainly it seemed that, if Little Portage were to continue growing and developing, it would need more locally generated revenue. A sales tax on certain products could be part of the answer.

On some reserves, there was almost a religious fervor to the idea that being Indian means not having to pay tax. Some advocates claimed they had a treaty right or an Aboriginal right to be exempt or even immune from all forms of tax. Fundamentally, those ideas didn't seem quite right to Emil. The more he thought about tax, the more he realized how complicated the issues were. Indians shouldn't have to pay tax to other governments on the property they hold on reserves. That was the basic idea behind the section 87 exemption and that much for sure seemed right and reasonable. But surely, Emil thought, if an Indian government wanted to tax its citizens for the betterment of the community, it should be able to. That also seemed reasonable to him, but he knew that it wouldn't be an easy thing to accomplish. In a way, he was relieved that he wouldn't have to be the one to take this idea to the people. That challenge would be left to the person who would succeed him as chief, possibly Leonard Sinclair.

If the idea of a First Nation tax was acceptable to the community, then it looked like a very sensible thing to do. It would be a much-needed source of funding for the First Nation and would allow the community to address more of its priorities. Emil also thought that community

members would become more interested in government expenditures, knowing that it was local tax revenue being spent, not just transfer funding from another government. He saw great potential for community pride in using locally generated revenue for addressing community priorities.

He knew that by introducing a First Nation tax there could be a heavy political price to pay. Perhaps it would be easiest to introduce the taxes slowly over time. Perhaps it would be best to introduce a First Nation sales tax on just fuel, tobacco or alcohol products. If it worked well, they might contemplate other taxes. If it didn't work, they could cancel the whole arrangement.

Emil also knew that he wouldn't be the chief or even on the council that would have to pay the political price for introducing the tax. He decided that he'd better get the right people involved in discussing the idea of a possible tax. Frances was bringing the discussion of the second item to an end. She looked at him. Emil said, "I have another item that I'd like to put on our agenda today. I'd like to talk about introducing a First Nation sales tax here at Little Portage."

### For Discussion

- Do you think that taxation has a place in the operation of modern First Nation governments?
- Do you think the electorate's accountability expectations of a First Nation government would change if the government was spending locally generated tax revenue in addition to transferred program funding?
- What are some of the benefits and some of the costs of introducing taxes in reserve communities? On balance, do the benefits outweigh the costs?

#### ANNEX 1

##### DIAND Program Funding for Little Portage

Registration and Membership	\$ 12,873
Elementary and Secondary Education	1,447,083
Post Secondary Education	529,301
Social Services	1,044,944
Operations and Maintenance	484,621
Economic Development	124,093
Band Management and Support	776,820
Housing and Minor Capital	812,426
<b>TOTAL</b>	<b>\$6,483,597</b>

## ANNEX 2

Section 87 of the *Indian Act*

87.(1) Notwithstanding any other Act of the Parliament of Canada or any act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely:

- (a) the interest of an Indian or a band in reserve or surrendered lands; and
- (b) the personal property of an Indian or band situated on a reserve.

(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property.

(3) No succession duty, inheritance tax or estate tax is payable on the death of any Indian in respect of any such property mentioned in paragraphs (1)(a) or (b) or the succession thereto if the property passes to an Indian, not shall any such property be taken into account in determining the duty payable under the *Dominion Succession Duty Act*, chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.

## ANNEX 3

## Elements of the Federal Approach to First Nation Taxation

- The Department of Finance is willing to put into effect direct taxation arrangements with First Nations that indicate an interest in exercising taxation powers within their lands.
- A First Nation tax would apply to members. The federal government is also willing to negotiate the application of the First Nation tax to non-members.
- First Nation taxation powers would not limit the powers of the federal or provincial governments to impose taxes.
- These First Nation tax powers would go beyond the property tax power contained in section 83 of the *Indian Act*.
- When the federal legislation is in place, a First Nation government would be able to pass tax by-laws imposing direct taxes on band members on reserve, even though they would otherwise enjoy the section 87 tax exemption.
- The decision to exercise or not exercise these tax powers is left entirely in the First Nation's hands.
- The section 87 exemption continues to protect against taxation by other governments.
- The tax revenues are First Nation revenues rather than "Indian moneys" that the Minister of Indian Affairs and Northern Development would hold in trust.
- The Canada Customs and Revenue Agency (CCRA) would act as an agent of the First Nation government and collect the tax for the First Nations government.
- Through the tax collection and sharing agreements between Canada and the First Nation, Canada would be responsible for dealing with non-compliance with the First Nation's tax by-law.
- Canada and the First Nation would agree on an estimate of the annual amount of tax revenue expected from the new tax. The CCRA would collect the tax revenue. It would then be remitted to the First Nation government on a monthly basis, based on the joint estimates.
- The First Nation can use the tax revenue as it sees fit. Unlike federal transfers for agreed programs, there are no strings attached to how the First Nation can use the revenue. The tax revenue belongs to the First Nation, not Canada.

The First Nation government, of course, continues to be fully accountable for its decisions about the use of the tax revenue. Normally, expenditures of tax revenue would be authorized by a by-law passed by a majority of the councilors at a duly convened meeting.