

***Indian Act* Exemption for Employment Income Guidelines**

In these 1994 guidelines, the references to "Revenue Canada" and the "Department" can be read as meaning the Canada Revenue Agency.

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Introduction

Section 87 of the *Indian Act* exempts from taxation the personal property of an Indian situated on a reserve. The courts have determined that, for the purposes of section 87 of the *Indian Act*, employment income is personal property. In the case of employment income earned by an Indian, therefore, what must be determined is whether the employment income is situated on a reserve. The courts have directed that connecting factors must be considered when making this determination. Revenue Canada, after receiving representations from interested Indian groups and individuals, has identified a number of connecting factors that can be used to determine whether employment income is situated on a reserve.

The location of the employment duties is a major connecting factor. However, the Department also recognizes that employees of bands, tribal councils, or organizations that operate on behalf of bands or tribal councils may perform most of their activities off reserve. For the employees, the connection to a reserve is that the employer is resident on a reserve and the Indian is employed in a non-commercial activity for the social, cultural, educational, or economic development of Indians who for the most part live on reserves.

With a view to assisting the Indian community, the Department has developed the following guidelines, incorporating the various relevant connecting factors, that describe the employment situations covered by section 87 of the *Indian Act*. The treatment of other income related to employment is also discussed.

THESE GUIDELINES ARE AN ADMINISTRATIVE TOOL TO ASSIST INDIANS IN DETERMINING WHETHER THEIR EMPLOYMENT INCOME IS EXEMPT OR NOT.

Most employment situations that are subject to the exemption from taxation are covered in this brochure. However, it should be noted that, when applying all the connecting factors, there may be unusual or exceptional circumstances where:

(i) the income may not be taxable even though it does not fall within one of the guidelines; or

(ii) the income may be taxable even though it appears to fall within one of these guidelines.

If you have any questions about a particular situation, please contact your district taxation office. There is a list of offices at the back of this brochure.

Guideline 1

WHEN AT LEAST 90% OF THE DUTIES OF AN EMPLOYMENT ARE PERFORMED ON A RESERVE, ALL OF THE INCOME OF AN INDIAN FROM THAT EMPLOYMENT WILL USUALLY BE EXEMPT FROM INCOME TAX.

Examples

Examples where exempt

Mr. A works as a mechanic for an automobile repair shop, performing his duties in a garage located on a reserve. The wages he receives are exempt because the duties are performed on a reserve.

Mr. B lives off reserve and works as a driver for a heating-oil supplier, performing almost all of his duties making deliveries to houses on a reserve. The wages he receives are exempt because more than 90% of the duties are performed on a reserve.

Ms. C works in an office on a reserve. Her duties include a daily drive into a nearby town where she does the banking for the business and picks up the mail and supplies for the business. The wages she receives are exempt, although she incidentally leaves the reserve in the course of carrying out her duties.

Example where NOT exempt

Mr. D works for a logging company that is not resident on a reserve, cutting trees under license on provincial Crown land. The wages he receives are taxable because the land does not form part of a reserve. (Note: Mr. D lives on a reserve, but this factor alone is not sufficient to connect the income to a location on a reserve.)

Proration Rule

WHEN LESS THAN 90% OF THE DUTIES OF AN EMPLOYMENT ARE PERFORMED ON A RESERVE AND THE EMPLOYMENT INCOME IS NOT EXEMPTED BY ANOTHER GUIDELINE, THE EXEMPTION IS TO BE PRORATED. THE EXEMPTION WILL APPLY TO THE PORTION OF THE INCOME RELATED TO THE DUTIES PERFORMED ON THE RESERVE.

Examples

Examples where exempt

Mr. E lives off reserve and works for a government department, mostly at a location off reserve. He spends one-half day per week on a regular basis working in a clinic on a reserve. Since one-tenth of Mr. E's work is performed on a reserve, 10% of Mr. E's income from this employment is exempt.

Ms. F lives off reserve and works for a boys and girls club at a location off reserve. Each summer, Ms. F works for the club at a one-month camp operated on a reserve. The income Ms. F earns at the summer camp is exempt.

Example where NOT exempt

Mrs. G lives off reserve and works for a stationery store located off reserve. On rare occasions, Mrs. G delivers some of the store's goods to customers on reserve. None of her income is exempt. The trips to the reserve are merely occasional and are not a meaningful connecting factor.

Guideline 2

WHEN:

- THE EMPLOYER IS RESIDENT ON A RESERVE; AND
- THE INDIAN LIVES ON A RESERVE;

ALL OF THE INCOME OF AN INDIAN FROM AN EMPLOYMENT WILL USUALLY BE EXEMPT FROM INCOME TAX.

Examples

Examples where exempt

Mrs. H works for a logging company that is resident on a reserve. Mrs. H lives on a reserve, but performs her duties at lumber camps located off the reserve. Her employment income is exempt from income tax because the place where she lives and the residence of her employer are factors connecting her income to a reserve.

Mr. I is a construction worker employed by a construction company that is resident on a reserve, to work on building sites that are not located on a reserve. Mr. I lives on a reserve, except for short periods each year when he lives near the construction sites. When away from the reserve, he retains his residence on the reserve where his family lives. Mr. I is exempt from income tax on his employment income because the place where he lives and the residence of his employer are factors connecting his employment income to a reserve.

Examples where NOT exempt

Ms. J lives on a reserve and works as an accountant at the head office of a bank located off reserve in a nearby city. The bank maintains a branch on Ms. J's reserve and arranges for her to be paid at that branch. Ms. J's employment income is taxable because the only substantive factor linking her employment income to a reserve is her residence which, without other substantial connecting factors, does not result in exemption. Payment on the reserve is viewed as a connecting factor of relatively little weight.

Examples where NOT exempt (continued)

Mr. K is a construction worker employed by a corporation situated on a reserve. The corporation is an employment agency that makes employees available to work for clients that are not situated on a reserve, on building sites not located on a reserve. Mr. K lives on a reserve. The employment agency had an office on the reserve, but carried out very few of its business activities on the reserve. The guidelines would not apply in this case, and one must therefore do an analysis of the connecting factors. Mr. K's employment income is taxable because the residence of the employer in this case has little weight as a connecting factor. The only other substantive factor connecting Mr. K's employment income to a reserve is his residence, which is not sufficient to bring the employment income within the exemption.

Guideline 3

WHEN:

- MORE THAN 50% OF THE DUTIES OF AN EMPLOYMENT ARE PERFORMED ON A RESERVE; AND
- THE EMPLOYER IS RESIDENT ON A RESERVE, OR THE INDIAN LIVES ON A RESERVE;

ALL OF THE INCOME OF AN INDIAN FROM AN EMPLOYMENT WILL USUALLY BE EXEMPT FROM INCOME TAX.

Examples

Examples where exempt

Ms. L lives on a reserve and works as a policewoman for an off-reserve employer. She performs more than one-half of her duties on reserve, and she has an additional connecting factor in that she lives on the reserve. Therefore, she is exempt on the whole of the employment income.

Examples where NOT exempt

Ms. M lives off reserve in a town where she works in a restaurant owned by a corporation resident on a reserve. Once a week, she drives to the reserve to pick up the pay cheques for the restaurant staff. She is taxable on the whole of her employment income because

the only factor connecting the income to a reserve is the residence of the employer and, without other connecting factors, this is not sufficient to confer the exemption.

Guideline 4

WHEN:

- THE EMPLOYER IS RESIDENT ON A RESERVE; AND
- THE EMPLOYER IS:
 - AN INDIAN BAND WHICH HAS A RESERVE, OR A TRIBAL COUNCIL REPRESENTING ONE OR MORE INDIAN BANDS WHICH HAVE RESERVES, OR
 - AN INDIAN ORGANIZATION CONTROLLED BY ONE OR MORE SUCH BANDS OR TRIBAL COUNCILS, IF THE ORGANIZATION IS DEDICATED EXCLUSIVELY TO THE SOCIAL, CULTURAL, EDUCATIONAL, OR ECONOMIC DEVELOPMENT OF INDIANS WHO FOR THE MOST PART LIVE ON RESERVES; AND
- THE DUTIES OF THE EMPLOYMENT ARE IN CONNECTION WITH THE EMPLOYER'S NON-COMMERCIAL ACTIVITIES CARRIED ON EXCLUSIVELY FOR THE BENEFIT OF INDIANS WHO FOR THE MOST PART LIVE ON RESERVES;

ALL OF THE INCOME OF AN INDIAN FROM AN EMPLOYMENT WILL USUALLY BE EXEMPT FROM INCOME TAX.

Examples

Examples where exempt

Mr. N works for the education department of a tribal council at an off-reserve location central to several reserves. Mr. N lives off reserve and the tribal council is resident on one of the reserves. Mr. N is exempt from income tax on his employment income because the duties he performs for the tribal council are connected to the reserves served by the council, and the employer is resident on a reserve.

Ms. O is a librarian working for a technical training institute operated by five Indian bands for Indians who live on reserve. The administrative office of the institute is on a reserve. Ms. O lives off reserve and works at an off-reserve location central to several reserves. Ms. O is exempt from income tax on her employment income because the duties she performs for the Indian organization that employs her are connected to the reserves served by the Indian organization, and the employer is resident on a reserve.

Mr. P works for an Indian organization providing child and family related services to members of a large number of bands with reserves scattered over a large area within a province. Some of these services are provided in the provincial capital, where Mr. P works, and the organization's administrative office is at an off-reserve location central to the bands served. However, the organization's directors, consisting of the band chiefs, meet at each reserve in rotation. Mr. P is exempt from income tax on his employment income because the duties he performs for the Indian organization that employs him are

connected to the reserves served by the Indian organization, and the employer is resident on a reserve.

Ms. Q works for a company that is resident on a reserve and owned by a tribal council. The company exists to provide adequate low-cost housing on reserves and the company's property is for the most part on reserves. Ms. Q performs her duties at an off-reserve location central to several reserves. Ms. Q is exempt from income tax on her employment income because the duties she performs for the Indian organization that employs her are connected to the reserves served by the Indian organization, and the employer is resident on a reserve.

Mr. R works for an Indian organization that manages funds provided by the government to assist in planning for future education needs on reserves. His employer is resident on a reserve, but he works at a location off reserve. Mr. R is exempt from income tax on his employment income because the duties he performs for the Indian organization that employs him are connected to the reserves served by the Indian organization, and the employer is resident on a reserve.

Examples where NOT exempt

Mr. S works for a commercial building supplies company that is owned by a tribal council and is resident on a reserve. He performs his duties off reserve and lives off reserve. Mr. S is taxable on his employment income because, although there is one factor, the residence of the employer, connecting the income to a reserve, this factor by itself is not sufficient to confer the exemption when the employer and the employee are active in the commercial mainstream of society.

Ms. T works for an Indian organization dedicated to organizing social programs for off-reserve Indians. The organization is located off reserve. Ms. T is taxable on her employment income because there are no factors connecting that income to a location on a reserve.

Employment-Related Income

THE RECEIPT OF UNEMPLOYMENT INSURANCE BENEFITS, RETIRING ALLOWANCES, CANADA PENSION PLAN PAYMENTS, QUEBEC PENSION PLAN PAYMENTS, REGISTERED PENSION PLAN BENEFITS OR WAGE LOSS REPLACEMENT PLAN BENEFITS WILL USUALLY BE EXEMPT FROM INCOME TAX WHEN RECEIVED AS A RESULT OF EMPLOYMENT INCOME THAT WAS EXEMPT FROM TAX. IF A PORTION OF THE EMPLOYMENT INCOME WAS EXEMPT, THEN A SIMILAR PORTION OF THESE AMOUNTS WILL BE EXEMPT.

Examples

Mr. U has always lived on a reserve and, until recently, he worked as a labourer for an employer located on the reserve. Mr. U is currently unemployed and receives Unemployment Insurance benefits. Since the income from employment that entitled him to these benefits was not subject to income tax, the Unemployment Insurance benefits will not be subject to income tax.

Mrs. V worked for a public health office located in a city off reserve. Throughout her career, one-fifth of her annual employment income was exempt from income tax because

she spent one day a week performing her duties at a clinic on a nearby reserve. Upon retiring, Mrs. V received a retiring allowance from her employer and started receiving Canada Pension Plan payments. One-fifth of her retiring allowance and one-fifth of her Canada Pension Plan payments will not be subject to income tax.

Meaning of Terms Used

"Employer is resident on a reserve" means that the reserve is the place where the central management and control over the employer organization is actually located.

Note

The central management and control of an organization is usually considered to be exercised by the group that performs the function of a board of directors of the organization. However, it may be that the real management and control of an organization is exercised by some other person or group. Generally, management and control is exercised at the principal place of business but it is recognized that this function may be legitimately exercised in a place other than the principal administrative office of the organization. It is a question of fact where the central management and control is exercised.

"Indian" means an Indian as defined for the purposes of the *Indian Act*.

"Indian lives on the reserve" means the Indian lives on the reserve in a domestic establishment that is his or her principal place of residence and that is the centre of his or her daily routine.

"On a reserve" means on a reserve as defined for purposes of the *Indian Act*, including any settlements deemed to be reserves for purposes of the *Indian Settlements Remission Order*, and any other areas given similar treatment under federal legislation (for example, Category I-A lands under the *Cree-Naskapi* (of Quèbec) Act).

"Social, cultural, educational or economic development" includes the provision of social services such as health care or counselling.

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