

Do First Nations owe the government?

Last month, Richard Truscott, Saskatchewan director of the Canadian Taxpayers Federation, handed a ticking time bomb to Premier Roy Romanow's government — a petition with 29,000 signatures calling on Saskatchewan to start collecting provincial sales tax from status Indians making off-reserve purchases. Is this a portent of white backlash against aggressive aboriginal demands for self-government, land-claims settlements, financial compensation, and preferential programs? It's the first time I can remember that a major organization has launched a campaign to roll back a long-entrenched privilege enjoyed by First Nations: other such campaigns have been spontaneous reactions to newly acquired privileges.

Maybe the government would have preceded anyway to extend the PST. Maybe the taxpayers' petition suggested that it would be a popular move. In any case, two weeks later, Finance Minister Eric Cline announced in his budget speech that the province would start to collect PST on sales to off-reserve Indians, thus bringing its practice into conformity with

Indian Act, but it is certainly gone for good in light of the government's move to collect PST off reserve.

One looming possibility is that Saskatchewan First Nations will now try to use their numerous urban reserves as tax havens to attract retail business away from local merchants. If that happens, there is bound to be much litigation as well as widespread political unrest.

Dealing with the issue at a more basic level, the Federation of Saskatchewan Indian Nations has lodged a statement of claim in the Saskatchewan Court of Queen's Bench, arguing that status Indians are exempt from all forms of taxation, both on and off reserve. But its first argument, that exemption from taxation is a treaty right, will have to clear several legal hurdles. No treaty explicitly mentions taxation, although, in 1899, the commissioners for Treaty 8, which covers the northwest corner of Saskatchewan, stated that the treaty "did not open the way to the imposition of any tax." What those words mean is the subject of a case now before the Federal Court of Canada sitting in Edmonton (Gordon Benoit and his family, Treaty 8 Indians who live off re-

serve, are suing the federal government, claiming that they should not pay income taxes).

But the FSIN's position goes far beyond treaty rights. It holds that immunity from taxation forms part of the historical relation of Indians with the Crown; that it is an inherent aspect of aboriginal self-government; and that First Nations have pre-paid, indeed overpaid, their taxes for all time by surrendering their lands and resources.

Thus, the FSIN claims immunity from taxation for all Saskatchewan Indians, not just those covered by Treaty 8. This would include signatories to Treaties 4, 5, 6 and 10, as well as refugees from the United States (the Dakota and Lakota) given reserves by the Crown without adhering to a Canadian treaty. Such an expansive view, while accepted today by many native people, is bound to be unpopular with Canadian taxpayers and voters.

Exemption of on-reserve Indians from taxation first appeared in legislation in 1850 and has been carried forward in successive versions of the Indian Act. Historical evidence suggests its original purpose was to protect reserve lands from taxation

by municipalities — and seizure by those municipalities if such taxes were not paid.

When the exemption was first created, income and sales taxes did not exist. The federal government monopolized customs and excise duties and heavily subsidized the provinces by transfers from these sources, while local governments depended on property taxes. Since that time, the revenue situation of all Canadian governments has changed profoundly due to the rise of modern forms of taxation. But we still struggle along with the archaic provisions of the Indian Act. The government has tried to modernize matters in contemporary treaties, such as the Yukon and Nisga'a agreements; but such piecemeal adjustments applying to particular First Nations are not enough. Aboriginal self-government will never be efficient and accountable unless aboriginal people have to support it with their own taxes.

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Tom Flanagan is professor of political science at the University of Calgary. His latest book is First Nations? Second Thoughts (McGill-Queen's University Press).



TOM FLANAGAN

the other provinces (except Alberta, which has no sales tax).

The facts on the ground are complicated — because, for decades, Saskatchewan, while not collecting PST off reserve, has collected gasoline and excise taxes from Indians making purchases on reserve. It had no legal right to gather these latter taxes because Section 87 of the Indian Act confers on Indians a general immunity from taxation on their reserves.

Nonetheless, there was a long-standing unwritten agreement between the province and First Nations to maintain this extra-legal equilibrium. The balance might have been overturned by bands suing to vindicate their rights under the

Tom
April 17, 2000