



# THE SCHOOL OF PUBLIC POLICY

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## MASTER OF PUBLIC POLICY CAPSTONE PROJECT

### **The Impact of Tax Exemptions for First Nations Reserves**

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## Executive Summary

Debates over the adequacy of Aboriginal funding usually miss a key and neglected component: tax exemptions. Section 87 of the Indian Act dictates such exemptions. This section clearly states that no person living on reserve may be taxed for their work there, nor can any product or service delivered to or on reserve be taxed. This means multiple millions of dollars stay in the hands of First Nations people when they would otherwise go into provincial and federal coffers.

Prior to this capstone, no one has made as comprehensive an effort to calculate the aggregate value of all reserve tax exemptions. Thomas Courchene estimated in 1992 that if all Aboriginal reserves constituted a province, it would get \$103 million in provincial income taxes. In 2012, Gormanns and Waslander estimating that the tax exemption on B.C. reserves was worth \$20 million. Via information requests, the Canadian Taxpayers Federation (CTF) also revealed substantial tobacco tax exemptions of \$54 million for tobacco and \$14 million in fuel in Saskatchewan in 2008-09. Some advocacy and anti-smoking organizations have also drawn attention to the problem of illegal contraband cigarettes that originate from reserves.

Information requests for this capstone revealed figures for tobacco and fuel exemptions in all provinces except Nova Scotia. That province has great similarities with New Brunswick, not only with adjacent geography, but also with the percentages of population that is registered Indian and that lives on reserve. Therefore, this capstone assumes that First Nations tax exemptions occurred in similar proportions to tobacco and fuel taxes collected in Nova Scotia as they had in



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New Brunswick. Manitoba came through with an estimate on sales tax losses, and Ontario revealed exact figures for the past three years. Quebec estimates its income tax losses on reserves annually. Statistics Canada data can be used to estimate income tax data, and the Ontario stats allow us to conjecture broad estimates on sales taxes as well.

This capstone demonstrates that provincial governments lose \$258.6 million in tobacco taxes, and the federal government loses \$427.5 million. The provinces also forfeit \$65.4 million in fuel excise and carbon taxes while the federal government loses \$32.3 million in its excise taxes. Provincial sales tax losses amount to \$108.3 million, while the federal government foregoes \$128.7 million of its Goods and Services Tax. About \$139.7 million is lost in sales taxes to both governments. This means tax exemptions amount to \$1.16 billion. This amount is equal to 16.5 percent of the \$7.03 billion in programs from Indian and Northern Affairs.

Governments need to pay more attention to this issue. This means making data publicly available without information requests being necessary, especially regarding tobacco, fuel, and sales taxes. In some provinces, it means more restrictions or regulations preventing the abuse of tax exemptions for tobacco. The figures provide a starting point to discuss if such tax exemptions should reduce federal obligations to provide grants and services to First Nations reserves. It also informs the debate on how governments should address the competitive advantages and disadvantages such exemptions create.

## Introduction

Should Canada's federal government offer more funds to First Nations? Canada's last three prime ministers have offered different answers, in part due to their political stripe. Liberal Prime Minister Paul Martin's Kelowna Accord promised an extra \$5 billion over 10 years to Aboriginals.<sup>1</sup> Stephen Harper's Conservative government subsequently reversed this decision, leading the Assembly of First Nations to call loudly for more funding.<sup>2</sup> After the Liberals resumed power in 2015, Prime Minister Justin Trudeau responded with a promise to augment spending on First Nations by an additional \$8.4 billion over five years.<sup>3</sup>

Although political leaders and First Nations leaders may differ on the adequacy of governmental funding, it is certainly substantial and clearly delineated from a program perspective. In 2015, and prior to Trudeau's electoral victory, the Aboriginal and Northern Development Canada budget of \$7.03 billion had featured exact dollar amounts for grants and contributions in 14 different federal transfer categories.<sup>4</sup> The same holds for the \$1.03 billion spent by Health Canada for the Non-Insured Health Benefits Program for Aboriginals that covers medical

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<sup>1</sup> Jennifer Clibbon, "Paul Martin Says Ottawa Has 'No Understanding' of Native Issues - Canada - CBC News," *CBC.ca* (Canada: CBC News, January 17, 2013), <http://www.cbc.ca/news/canada/paul-martin-says-ottawa-has-no-understanding-of-native-issues-1.1405653>.

<sup>2</sup> Mark Milke, "Ever-Higher: Government Spending on Canada's Aboriginals since 1947" (Canada: Fraser Institute, 2013). As Milke noted, "In 2012, at the AFN's Special Chiefs Assembly, 22 out of 47 approved policy resolutions asserted inadequate funding, called for additional funding, and/or called for exemptions from payments and taxes normally due," (p. 4). Milke found the same assertions in 11 of 19 resolutions at the AFN's annual general assembly in 2013 (pp. 4-5).

<sup>3</sup> Kristy Kirkup, "Liberal Budget Includes Billions in New Spending for Aboriginal People," *CBC.ca* (The Canadian Press, March 22, 2016), <http://www.cbc.ca/news/aboriginal/liberal-budget-billions-new-spending-aboriginal-peoples-1.3502942>.

<sup>4</sup> Indigenous and Northern Affairs Canada, "Details of Transfer Payment Programs," January 7, 2015, <https://www.aadnc-aandc.gc.ca/eng/1420656321417/1420656712921>.

transportation, pharmacy, dental, mental health, vision care, and other expenditures.<sup>5</sup> The provinces also designate multiple millions in spending for Aboriginals. For example, the 2016-17 Saskatchewan budget allocates \$2.4 million for First Nations and Metis Relations, \$335,000 for Treaty Land Entitlement, \$200,000 for First Nations and Metis Consultation, \$3.2 million for the Metis Development Fund, and \$75.6 million under the First Nations Gaming Agreement.<sup>6</sup>

This financial disclosure stands in stark contrast with that of First Nations tax exemptions. With the exception of estimates on income taxes in Quebec, this information is not published anywhere. As this capstone will demonstrate, the aggregate value of such exemptions exceeds one billion dollars. An exemption of this amount represents a substantial form of indirect help for registered Indians and a noteworthy revenue loss for governments. It informs the ongoing debate regarding the tax exemptions themselves and the larger debate on the adequacy of Aboriginal funding in general.

Tax exemptions for economic activity taking place on First Nations Reserves and for individuals living on reserves have been the source of controversy. Advocacy groups for business owners and taxpayers have complained that such exemptions offer an unfair advantage to those who receive them.<sup>7</sup> Businesses operating on reserves pay no business tax on earnings, nor taxes on products or services delivered to or on reserve. Registered Indians pay no taxes on earnings from their labour on reserves<sup>8</sup> and can purchase tobacco or fuel on reserves tax-free.

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<sup>5</sup> Health Canada, “Non-Insured Health Benefits Program - First Nations and Inuit Health Branch: Annual Report 2014/2015,” accessed August 17, 2016, <http://healthycanadians.gc.ca/publications/health-system-systeme-sante/non-insured-health-benefits-annual-report-2014-2015-rapport-annuel-services-sante-non-assures/index-eng.php>.

<sup>6</sup> Government of Saskatchewan, “Estimates, 2016-17” (Regina, Canada: Government of Saskatchewan, 2016), 69.

<sup>7</sup> Evelyn Peters, “Urban Reserves” (Canada: National Centre for First Nations Governance, August 2007), 5.

<sup>8</sup> Tanis Fiss, “Apartheid: Canada’s Ugly Secret” (Calgary: Centre for Policy Change, Canadian Taxpayers Federation, 2004).

Despite the implications of such tax exemptions, few forays have been made by researchers to ascertain what their dollar value might be. This capstone attempts to remedy the dearth of information. First, it will review literature relevant to this issue. Next, it will outline the methodology to establish cash value of the tax exemptions. Provincial and federal responses to information requests follow, along with relevant observations and analysis. Later, I analyze tobacco, fuel, income, and sales taxes individually in a national context. The capstone concludes with policy implications and considerations for decision makers.

## Literature review

Scant literature exists regarding the dollar value of tax exemptions on reserves. As Gormanns and Waslander noted in 2012, “the body of literature assessing First Nation income and earnings is relatively ‘thin’.”<sup>9</sup> This is even more the case for the tax exemptions. This lack of attention might have been excused in past years because such exemptions were smaller. This is no longer the case because First Nations business development and earnings have improved significantly, as this capstone shall demonstrate shortly.

Section 87 of the *Indian Act* forms the basis for most tax exemptions for First Nations. It reads as follows:

87 (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the First Nations Fiscal Management Act, the following property is exempt from taxation:

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

Idem

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<sup>9</sup> Nina Gormanns and Bert Waslander, “Potential Revenues of First Nation Governments from Levies on Income of Residents of First Nation Communities” (Canada: Informetrica Limited, April 2012), 2.



(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (b) or is otherwise subject to taxation in respect of any such property.<sup>10</sup>

These exemptions are nearly universal in scope, but usually limited to a geographical area: Indian reserve lands. Tax exemptions apply to products delivered to a reserve for a First Nations individual or band, or income earned by a First Nations individual on First Nations land. Products sold at a convenience store on reserve, for example, would not have provincial or federal sales taxes applied to them either if the purchaser was a registered Indian. Fuel and tobacco bought there

	First Nations people		First Nations people with registered Indian status				First Nations people <i>without</i> registered Indian status	
	number	% distribution	number	% distribution	% living on reserve	% living off reserve	number	% distribution
Canada	851,560	100	637,660	100	49.3	50.7	213,900	100
NF	19,315	2.3	8,015	1.3	35.1	64.9	11,295	5.3
PEI	1,515	0.2	765	0.1	56.2	43.8	755	0.4
NS	21,895	2.6	12,910	2	68	32	8,985	4.2
NB	16,120	1.9	10,275	1.6	68.8	31.3	5,845	2.7
QC	82,425	9.7	52,645	8.3	72	28.1	29,775	13.9
ON	201,100	23.6	125,560	19.7	37	63	75,540	35.3
MB	114,225	13.4	105,815	16.6	57.9	42.1	8,410	3.9
SK	103,210	12.1	94,160	14.8	57.3	42.7	9,045	4.2
AB	116,670	13.7	96,730	15.2	47.3	52.7	19,945	9.3
BC	155,020	18.2	112,400	17.6	44.2	55.8	42,615	19.9
YK	6,585	0.8	5,715	0.9	n/a	n/a	875	0.4
NWT	13,350	1.6	12,575	2	2.1	97.9	775	0.4
Nunavut	125	0.01	90	0.01	n/a	n/a	40	0.02

*n/a = not applicable. Yukon and Nunavut have no Indian reserves or Indian settlements by census definitions.*

<sup>10</sup> *Indian Act, RSC 1985, c I-5* (Canada: CanLII, n.d.).

<sup>11</sup> Statistics Canada, “Distribution of First Nations People, First Nations People with and without Registered Indian Status, and First Nations People with Registered Indian Status Living on or off Reserve, Canada, Provinces and Territories, 2011.”

would not bear those taxes either. Limited partnerships between First Nation bands and business entities also allow for loopholes for paying tax on business income that would not be available to off-reserve entities.<sup>12</sup>

According to the most recent census data available (2011), Canada has 637,660 registered Indians, but less than half (49.3%) live on an Indian reserve or Indian settlement. Quebec (72%), New Brunswick (68.8%) and Nova Scotia (68.0%) have the highest population on reserves, while Ontario (35%) and Newfoundland and Labrador (35.1%) have the lowest.<sup>13</sup> Moreover, 22 percent of working-age Status Indians were unemployed and listed no employment income.<sup>14</sup> This leaves roughly 245,000 people employed, and unless they are working on reserve or off reserve but for a First Nations organization, their employment income is taxed.

First Nations peoples represent a demographic that is growing faster than the non-Aboriginal population. Between 2006 and 2011, First Nations populations grew by 22.9 percent,<sup>15</sup> whereas population growth was just 5.9 percent in Canada overall.<sup>16</sup>

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<sup>12</sup>A June 28, 2016 email from Andre LeDressay, head of Fiscal Realities, to the author states, “The corporate tax exemption is very tricky because corporations do not have status so technically corporations are not exempt. This is why many indigenous corporations are partnerships or other structures. You almost have to talk to an accountant specializing in this to get a good estimate. Years ago, KPMG used to publish a guide to help status businesses avoid taxes.”

<sup>13</sup> Statistics Canada, “Distribution of First Nations People, First Nations People with and without Registered Indian Status, and First Nations People with Registered Indian Status Living on or off Reserve, Canada, Provinces and Territories, 2011” (Minister of Industry, 2015), <https://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/2011001/tbl/tbl03-eng.cfm>.

<sup>14</sup> Aleksandra Sagan, “First Nations Pay More Tax than You Think,” *CBC.ca* (CBC News, March 2, 2015), <http://www.cbc.ca/news/business/taxes/first-nations-pay-more-tax-than-you-think-1.2971040>.

<sup>15</sup> Employment and Social Development Canada, “Canadians in Context - Aboriginal Population - Indicators of Well-Being in Canada” (Government of Canada, February 1, 2016), <http://well-being.esdc.gc.ca/misme-iowb/.3ndic.lt.4r@-eng.jsp?iid=36>.

<sup>16</sup> Statistics Canada, “The Canadian Population in 2011: Population Counts and Growth” (Ottawa: Minister of Industry, December 21, 2015), <https://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-310-x/98-310-x2011001-eng.cfm>.

The growing presence of urban reserves, especially in Saskatchewan, mean more opportunities for First Nations who live off-reserve to enjoy tax exemptions because they work on, or make purchases on, an on-reserve business. This is especially so especially when those purchases are of tobacco or motor fuel, both of which are highly taxed. Estimates of the national averages made by the CTF in May 2016 placed the taxation cost at 37% of gasoline and 32% of diesel, amounting to 37 cents and 29 cents per litre, respectively.<sup>17</sup> At least three different taxes apply to tobacco everywhere it is sold in Canada (provincial excise tax, federal excise duty, and federal GST) and in some jurisdictions the provincial or harmonized sales tax applies as well. As of July 2016, a carton of \$200 will be taxed \$55.03 in Quebec up to \$95.53 in Manitoba.<sup>18</sup> In Quebec tax amounts to 62% for a carton that costs \$88.12 and in Manitoba tax counts for 71% of a carton that costs \$134.79.<sup>19</sup>

Few have attempted to capture or estimate a comprehensive picture of foregone revenues due to Aboriginal tax exemptions. A trailblazing effort was made by Thomas Courchene and Lisa M. Powell in their 1992 paper, “A First Nations Province.”<sup>20</sup> Using census data, he estimated that if all Indian reserves comprised a province, it would have raised \$102 million of income tax in 1991 (assuming prevailing provincial tax rates). This represents \$158 million in today’s dollars.<sup>21</sup> The figure in this hypothetical scenario excluded sales tax revenue due to inadequate data. Its focus

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<sup>17</sup> Jeff Bowes, “18th Annual Gas Tax Honesty Day” (Ottawa: Canadian Taxpayers Federation, May 2016), <http://www.taxpayer.com/media/2016-GTHD-EN.pdf>.

<sup>18</sup> Non-Smokers’ Rights Association, “Cigarette Prices in Canada,” accessed August 16, 2016, [http://www.nsr-adnf.ca/cms/file/files/160704\\_map\\_and\\_table.pdf](http://www.nsr-adnf.ca/cms/file/files/160704_map_and_table.pdf).

<sup>19</sup> Ibid.

<sup>20</sup> Thomas J. Courchene and Lisa M. Powell, “A First Nations Province” (Kingston, Ontario: Queen’s University, 1992).

<sup>21</sup> This was calculated using the Bank of Canada’s inflation calculator. “Inflation Calculator - Bank of Canada,” accessed August 16, 2016, <http://www.bankofcanada.ca/rates/related/inflation-calculator/>.

also excluded what the federal government would have received if First Nations functioned as a single province.

In 1991, the Department of Finance conducted tax potential studies of five communities whose names were withheld to protect data confidentiality. The average personal income tax exemption was \$700 per capita (\$1,087 in 2016 dollars). Sales taxes payable averaged \$120 per capita (\$186 in 2016 dollars).<sup>22</sup> Were the \$186 multiplied by the 337,000 registered Indians currently on reserve, the total sales taxes collected have been \$62.7 million in 2016 dollars.

The impacts and dollar values of tax exemptions gained some attention from advocacy groups and governments in the following years. Tanis Fiss, a Metis lawyer who once advocated on behalf of the CTF Fiss, penned a 30 page policy paper in 2004 entitled, “Apartheid: Canada’s Ugly Secret.” Fiss took her title from the comments of a Canadian judge in a 1995 decision highlighted in the *Globe and Mail*, as she explains:

No surprise Justice Muldoon of the Federal Court [in 1995] declared the Indian Act a “racist” document that favours aboriginal people over the rest of society. He went further and said, “It makes financial dependents of those who pay no taxes as an eternal charge on those who are taxed to meet the expense of such dependency.”<sup>23</sup> Along with treaties, he declared the Indian Act fosters the establishment of apartheid in Canada.<sup>24</sup>

Fiss’ polemic treatment of the exemptions does illustrate how sizeable a dollar amount they can reach on an individual level. By her comparison, a registered Indian on an Ontario reserve that made \$56,000 a year would take home \$55,228, losing only \$772 to Employment Insurance deductions. Others with the exact same pay in Ontario would pay \$11,990 in income tax, \$1,831

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<sup>22</sup> Fiscal Realities, “First Nation Taxation and New Fiscal Relationships” (Kamloops, BC: Department of Indian Affairs and Northern Development, 1997), 27.

<sup>23</sup> “Indian Act ‘racist,’ judge says,” *The Globe and Mail*, January 6, 1995, A3 as quoted by Tanis Fiss, “Apartheid: Canada’s Ugly Secret” (Calgary: Centre for Policy Change, Canadian Taxpayers Federation, 2004), 14.

<sup>24</sup> Fiss, “Apartheid: Canada’s Ugly Secret,” 13.

in Canada Pension Plan premiums, and \$772 in E.I. premiums, taking home just \$41,407. Fiss summarizes these differences, stating that “[t]he tax-free status of reserves and on reserve businesses distorts the economy by giving an advantage to individuals living on the reserve and reserve-based businesses.”<sup>25</sup> She further called for taxation “at all levels (municipal, provincial and federal) should be phased in for Indians over a period of ten years.”<sup>26</sup>

Fiss also pointed out that the tax exemptions also facilitated fraudulent activity. In 2001, fraud artists used registered Indians to buy vehicles since a particular Kelowna Toyota dealership would deliver the vehicles tax-free to an Indian Reserve. From there, the vehicles were re-sold to numbered companies and found their way to the United States. Governments forfeited 17 per cent of the normal vehicle cost because of unpaid taxes. This left the B.C. Finance Ministry slapping the dealership with an unpaid tax bill of \$564,000. In 2001, the Quebec government uncovered 70 cases that led to tax losses of \$25 million. The federal government suspected that similar frauds were happening nationwide.<sup>27</sup>

For First Nations people, Canada Pension Plan premiums, which may be interpreted as payroll taxes, are mandatory in some circumstances and optional in others.<sup>28</sup> If a person is employed off-reserve, income is taxable and CPP premiums are mandatory. A First Nations employer on-reserve can choose to pay into CPP and have his employees do the same, in which

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<sup>25</sup> Ibid, 14.

<sup>26</sup> Ibid.

<sup>27</sup> As quoted by *ibid*.

<sup>28</sup> Domenic Natale, “Canada Pension Plan: Retirement Pension Overview for First Nations People” (Canada: TD Wealth, June 22, 2015), [https://www.foa.ca/afoadocs/Home Page/Press Release/2015 Press Release/TD\\_AFOA\\_CPP Overview\\_FINAL.pdf](https://www.foa.ca/afoadocs/Home Page/Press Release/2015 Press Release/TD_AFOA_CPP Overview_FINAL.pdf).

case they are required to pay such premiums.<sup>29</sup> A self-employed registered Indian on-reserve can likewise choose for themselves whether or not to make such earnings pensionable.

In 2012, Gormanns and Waslander Informetrica offered a report to Aboriginal Affairs and Northern Development Canada estimating the value of the income taxes not applied to First Nations in B.C.<sup>30</sup> Their methodology was to align the census income as closely as possible with total income as defined by Canada Revenue Agency. From there, the authors applied average tax rates for B.C. taxpayers by ranges of total income, age and gender. Thirdly, the authors compensated to adjust for differences between First Nations and non-First Nations regarding the use of credits to spouses or dependants, and the education and tuition credits.<sup>31</sup>

Gormanns and Waslander used data from the 2006 Census Hierarchical Public Use Microdata File and T1 returns from Canada Revenue Agency as the basis for their research. The estimated personal income of \$140 million reported in the census by First Nations people in British Columbia differed from the \$120 million reported to Canada Revenue Agency as taxable income. Since other relevant factors had been accounted for, the authors assumed this \$20 million gap was caused by the tax exemption. An important reason for this low tax exemption was low income. In 2006, nearly 50 percent of First Nation people made too little money to be subject to tax, compared to 25 percent of the general population of B.C.<sup>32</sup> As the authors demonstrated, “This \$20 million would be paid almost entirely by only 8% of First Nation people who pay no income tax but have

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<sup>29</sup> Service Canada, “First Nations Workers and the Canada Pension Plan” (Canada: Her Majesty the Queen in the Right of Canada, 2010), 2.

<sup>30</sup> Gormanns and Waslander, “Potential Revenues of First Nation Governments from Levies on Income of Residents of First Nation Communities.”

<sup>31</sup> *Ibid.*, i-ii.

<sup>32</sup> *Ibid.*

income in the taxable range, and who would pay at least \$1,000 of tax in the absence of the tax exemption, as we calculated.”<sup>33</sup>

The TD Economics report showed that in the 10 years leading up to 2011, the Aboriginal market had grown by 7% annually whereas Canadian nominal GDP had grown 4%. The report anticipated this trend would continue through 2016.<sup>34</sup> This suggests that tax exemptions also, while once small, have also grown substantially and will continue to do so. The growth in dollar amounts for such exemptions comes at a bad time for governments expecting higher health care and pension costs as baby boomers age. This situation is further stressed by the drop in the number of workers per retiree from just under 5 today to only 2.7 by 2030.<sup>35</sup>

The new landscape means governments, researchers, and policy makers should give attention to two increasingly relevant questions: what is the impact of such exemptions on government budgets and taxpayers? And what, if anything, should be done about it? This capstone attempts to answer both questions.

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<sup>33</sup> Ibid., 3.

<sup>34</sup> Ibid, 5-6.

<sup>35</sup> Cindy Forbes, “Recession Challenge : Let’s Think about Economic Growth in an Aging Society, CMA Says” (Ottawa, Canada: Canadian Medical Association, September 1, 2015), <https://www.cma.ca/En/Lists/Medias/2015-09-01-press-release-gdp-aging-e.pdf>.

## Methodology

This capstone lays out the information on tax exemptions as exact figures wherever possible and with estimates when necessary. I made information requests to the federal and all provincial governments. The inquiry generally requested “the total amount of tax revenues refunded or never issued due to tax exemptions on reserves, with dollar figures for each tax for the most recent fiscal year, including sales taxes, business income taxes, personal income taxes, tobacco taxes and fuel taxes, and any other for which you may have records.”

Most provincial information authorities asked for clarification on my requests. These interactions allowed me to ask them whether information for previous years could reasonably be facilitated, and the answer was usually positive. These cases shed further insight on whether the dollar value of the tax exemptions is static, growing, or diminishing from year to year.

My information requests to the federal government were futile. The Department of Finance received my information request for records regarding “the total amount of tax revenues refunded or never issued due to tax exemptions on reserves” on March 16, 2016. The reply on April 18 read, “I must inform you that, after a thorough search, no records exist in the Department of Finance Canada concerning this request.”<sup>36</sup> A subsequent request was received by the Canada Revenue Agency June 14, 2016, and on July 13, 2016, the agency responded by saying a 60 day extension would be required “since meeting the original time limit would unreasonably interfere with the Canada Revenue Agency’s operations.”<sup>37</sup> Yet on July 8, the information contact in Ontario informed the author by email, “We reached out to the CRA and to Department of Finance Canada

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<sup>36</sup>Letter to the author from Denise Brennan in reply to Information Request A-2015-00596 / LA

<sup>37</sup> Emily Laforge, “Letter in Response to A-086368” (Gatineau, QC: Canada Revenue Agency, n.d.).



for consultation on the disclosure of one record,”<sup>38</sup> a record that was subsequently released on August 5.

Disclosure from the federal government would have been helpful regarding point-of-sale fuel tax or tobacco tax exemptions, but not all is lost. I estimated them based on provincial numbers. For British Columbia and Alberta, the exact number of litres of exempted fuel was disclosed, which allows for an easy calculation of the ten cents per litre excise tax. I derived estimates of sales taxes and federal excise taxes from the price of fuel for the year, building on the work of market estimates and calculations on gas prices and the GST per litre.

Income taxes losses are impossible to know with precision, but estimates are possible. Quebec was the only province to provide this author with an estimate, as it publishes these estimates each year in the *Dépenses Fiscales*. First Nations living on reserve do not disclose on-reserve income because it is not taxable, making T1 return data less useful to discover the value of tax exemptions. However, First Nations are more likely to report it on census data. This means that a comparison of registered Indians in various income brackets should be paying less tax than others in those respective brackets. A comparison of both 2006 and 2011 census shows this to be the case, save for one exception in each year. This capstone takes the effective tax rates of each income bracket for people who are not registered Indians and applies them to registered Indians of those same tax brackets. Taxes that should have been paid are calculated for each bracket. Taxes actually paid are then subtracted from each bracket. This renders the dollar value of exemptions at each tax level. I add these together to get the value of all income tax exemptions, a figure between \$250 million and \$300 million in each census year.

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<sup>38</sup> Alexandra Kozlov, email message to author, July 8, 2016.

Sales tax data was even harder to come by. With enough diligence and time, Canada Revenue Agency might be persuaded to share such information, but that has not happened. The Manitoba government estimated the value of sales tax exemptions and the Ontario government disclosed its portion of HST exemptions at the point of sale. Provincial sales taxes do not exist in Alberta—making the exemption value nil. Other estimates are approximations at best. British Columbia did publish its PST rebate amounts, but these only occurred when the PST had been paid when it should not have been. It did not reflect the actual total value of sales tax exemptions. Household consumption statistics also have limited value in making estimates because no one knows what percentage of First Nations spending is done on reserve. Surveys, even if attempted, would only be reliable to answer this question at a local level.

Are governments given these amounts adequate attention? Are they considering policy changes or other responses? To answer these questions, information requests were made of the federal government and a handful of provinces for all documentation regarding government consideration of the tax exemptions and efforts or options to mitigate the dollar amounts. I withdrew such requests later because the financial costs to search for and disclose such documents were prohibitive. Some governments, most notably Ontario, pointed the author towards publicly available reports. Provincial governments seemed most concerned with complying with the Indian Act and often did not view mitigating tax losses as an option.

Although this capstone is more comprehensive than past efforts, it also has blind spots. I do not include property taxes—a levy sometimes in provincial hands, but usually done by municipalities. In 1995, the Indian Taxation Advisory Board developed software so First Nations could estimate their property tax potential, an endeavour that usually took three hours of data entry

for each band.<sup>39</sup> The implication is that such estimates are possible, but not practical on a national scale. As well, Section 87 of the Indian Act precludes reserve lands being owned *fee simple*. The shortcomings of property rights on reserve make an estimate of the value of such lands difficult (since they cannot be bought or sold) and a dollar number impossible, since no standard mill rate would apply.

Corporate taxes are also hard to ascertain. A corporation does not have Indian status, *per se*. This has led to some First Nations to form partnerships or other business structures to avoid paying taxes.<sup>40</sup> A tax bulletin written by the Ministry of Finance in B.C. explains that, “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.”<sup>41</sup> Limited partnerships, like general partnerships, are eligible for exemptions if all involved are First Nations. Otherwise, it is much less straightforward, as the B.C. tax bulletin explains.

... 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...The law relating to partnerships is complicated.<sup>42</sup>

The lack of data on corporate taxation and the complexity of analysis required are beyond the resources or scope of our examination. Total exemption values for Canada Pension Plan

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<sup>39</sup> Fiscal Realities, “First Nation Taxation and New Fiscal Relationships,” 28.

<sup>40</sup> Andre LeDressay, Director of Fiscal Realities, email message to author, June 28, 2016.

<sup>41</sup> Ministry of Finance, “Sales to First Nations, and the Exempt Fuel Retailer Program” (Victoria: Government of British Columbia, 2014), 3.

<sup>42</sup> *Ibid*, 4.

premiums are another area beyond the scope for this capstone. (The comfort for governments is that future payouts of pension benefits will be reduced accordingly.) Despite these limitations, this capstone represents the most current and comprehensive effort available to estimate the total value of First Nations tax exemptions. Table 2 demonstrates what the author received in response to information requests.

<b>Table 2: Disclosures to Author by Province for First Nations Tax Exemption Amounts</b>				
Province	Tobacco	Fuel	Sales	Income
BC	Y	Y	N	N
AB	Y	Y	n/a	N
SK	Y	Y	N	N
MB	Y	Y	E	N
ON	Y	Y	Y	N
QC	Y	Y	N	E
NB	N	N	N	N
NS	Y	Y	N	N
PEI	Y	Y	N	N
NF	Y	Y	N	N
<i>Y = Yes to exact dollar amounts, N = No totals or estimates, E = Estimates given</i>				

## Provincial Findings

### British Columbia

Category	Amount
Foregone Motor Fuel Tax Act Revenues	3,549,986.94
Foregone Carbon Tax Act Revenues on Fuel	1,873,105.84
Motor fuel tax act refunds	1,014,025.83
Provincial sales tax act refunds	146,175.39
Carbon tax act refunds	606,429.71
Tobacco	42,824,629.45
<b>Total</b>	<b>50,014,353.16</b>

For a fee of roughly \$150, British Columbia produced exemption numbers on behalf of this author. By the time that the request was complied with, the “latest fiscal year” requested had become 2015-16. In Table 4 above, the rows with foregone revenues for tobacco and fuel are for sales right on reserves. The refunds apply in various circumstances, including when the fuel purchaser does not have the necessary documentation when they buy the fuel that is supposed to be tax-free. A tax bulletin from the Ministry of Finance in British Columbia explains,

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.<sup>43</sup>

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<sup>43</sup> Ibid.

Compared to the overall taxes collected, tax exemptions and rebates for First Nations represent a negligible percentage in all categories except one: tobacco. Here the \$42 million rebated to reserves represents more than 5 percent of the total tobacco tax revenues.

**Table 4: British Columbia Tax Revenues and First Nations Exemptions and Rebates, 2015-16**

<b>Tax Revenue Category</b>	<b>Taxes Collected</b>	<b>Taxes Exempted</b>	<b>Taxes Rebated</b>	<b>Total</b>	<b>Total as % of Revenues</b>
Provincial sales	5,956,000,000	not available	146,175.39	146,175.39	0.002%
Fuel	941,000,000	6,437,118.61	1,014,025.83	7,451,144.44	0.792%
Carbon	1,216,000,000	1,873,105.84	606,429.71	2,479,535.55	0.204%
Tobacco	755,000,000	42,824,629.45		42,824,629.45	5.672%

*Note: Taxes collected based on projections in 2016 Budget and Fiscal Plan*

### Alberta

As taxes increase, so do the value of tax exemptions. The Alberta government increased gas and diesel taxes from 9 cents per litre to 13 as of April 1, 2015, the start of the fiscal year.<sup>44</sup> Tobacco taxes increased on October 28, 2015. This meant that tax on a carton of cigarettes rose from \$45 up to \$50 and that the tax on loose tobacco rose from 33.75 cents to 37.5 cents per gram.<sup>45</sup> Compared to British Columbia, fuel tax refunds to Alberta First Nations represent a slightly higher percentage, and a slightly lower percentage for tobacco.

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<sup>44</sup> Government of Alberta, “Alberta Fuel Tax Act - Special Notice Vol. 1 No. 36 - Fuel Tax Increase” (Edmonton, Alberta: Ministry of Finance, March 27, 2015), [http://www.finance.alberta.ca/publications/tax\\_rebates/fuel/fuel36.html](http://www.finance.alberta.ca/publications/tax_rebates/fuel/fuel36.html).

<sup>45</sup> Government of Alberta, “Fiscal Plan 2015-18 - Tax Plan” (Edmonton: Ministry of Finance, October 27, 2015), 84.

Fiscal Year	Tobacco Tax Revenues	Tobacco Tax Refunds	Refunds as % of Total	Fuel Tax Revenue	Fuel Tax Refunds	Refunds as % of Total
2014/15	896,000,000	40,706,205	4.54%	944,000,000	6,831,510	0.72%
2015/16	980,000,000	47,851,354	4.88%	1,370,000,000	10,415,132	0.76%

### Saskatchewan

Disclosure from Saskatchewan offered amounts for tobacco and fuel tax exemptions back to fiscal 2000-01. Fuel and tobacco tax exemptions were under \$4 million each in 2000-01 but quickly mushroomed to \$8.7 million and \$25.2 million respectively just two years later. They rose steadily until 2009-10.

Fiscal Year	Tobacco Tax Revenues	Tobacco Tax Exemptions	Exemptions as % of Revenues	Fuel Tax Revenues	Fuel Tax Exemptions	Exemptions as % of Revenues
2000-01	122,000,000	3,099,000	2.5%	345,136,000	3,617,000	1.0%
2001-02	120,000,000	7,150,000	6.0%	353,765,000	7,605,000	2.1%
2002-03	158,500,000	25,154,000	15.9%	331,512,000	8,713,000	2.6%
2003-04	176,700,000	30,951,000	17.5%	356,773,000	10,483,000	2.9%
2004-05	187,000,000	37,600,000	20.1%	361,039,000	11,001,000	3.0%
2005-06	171,100,000	44,514,000	26.0%	376,426,000	12,631,000	3.4%
2006-07	190,300,000	46,154,000	24.3%	383,576,000	13,269,000	3.5%
2007-08	190,400,000	52,301,000	27.5%	406,434,000	14,770,000	3.6%
2008-09	199,100,000	54,025,000	27.1%	429,162,000	15,138,000	3.5%
2009-10	196,868,000	57,743,468	29.3%	441,533,000	15,477,496	3.5%
2010-11	237,507,000	55,209,808	23.2%	463,147,000	14,906,233	3.2%
2011-12	242,853,000	47,573,482	19.6%	475,452,000	14,341,295	3.0%
2012-13	253,353,000	46,964,625	18.5%	495,955,000	14,619,789	2.9%
2013-14	276,234,000	55,587,381	20.1%	509,814,000	14,978,202	2.9%
2014-15	260,696,000	55,962,349	21.5%	515,400,000	14,812,112	2.9%
2015-16	263,686,000	59,959,613	22.7%	479,259,000	15,884,760	3.3%

<sup>46</sup> Tax revenue amounts taken from Saskatchewan public accounts.

In Saskatchewan, tobacco tax rebates on reserve businesses are substantial in comparison to the overall tax figures, though the same is not the case for fuel. Exemptions equalled 29.3 percent of tobacco revenues in 2009-10 and 22.9% in 2015-16. For fuel however, the figures are much more modest. They peaked at 3.6% of revenues in 2007-08 and were 3.3% of revenues in 2015-16. However, record dollar totals were set in 2015-16 for both tobacco and fuel exemptions.

Dollar values for tobacco tax exemptions dropped in 2010-11 even though cigarette taxes went up by 68 cents to \$5.25 per pack. This was because the former three-carton limit per First Nation member per week was limited to one. Whereas a band member could get 24 packs with 600 cigarettes in all each week, thereafter they could only get 8 packs with 200 cigarettes.<sup>47</sup>

On March 24, 2010, CBC News reported,

The provincial government said the change would help First Nations people cut back. Reserves have relatively high rates of smoking, the province said.

Health promotion groups applauded the change. Many of the serious health conditions that are chronic among First Nations people — such as heart disease, strokes and cancer — are directly linked to smoking, said Rhae Ann Bromley, spokesperson for the Heart and Stroke Foundation.

The government said it also wants to stop tax-free tobacco from getting into the hands of non-First Nations people.<sup>48</sup>

More on-reserve stores have sprung up in recent years. In 2008-09, there were 47 privately-owned retailers and 57 band-owned retailers.<sup>49</sup> By 2015-16, there were 50 privately owned stores and 61 band-owned stores. Dollar amounts divided by ownership are shown below.

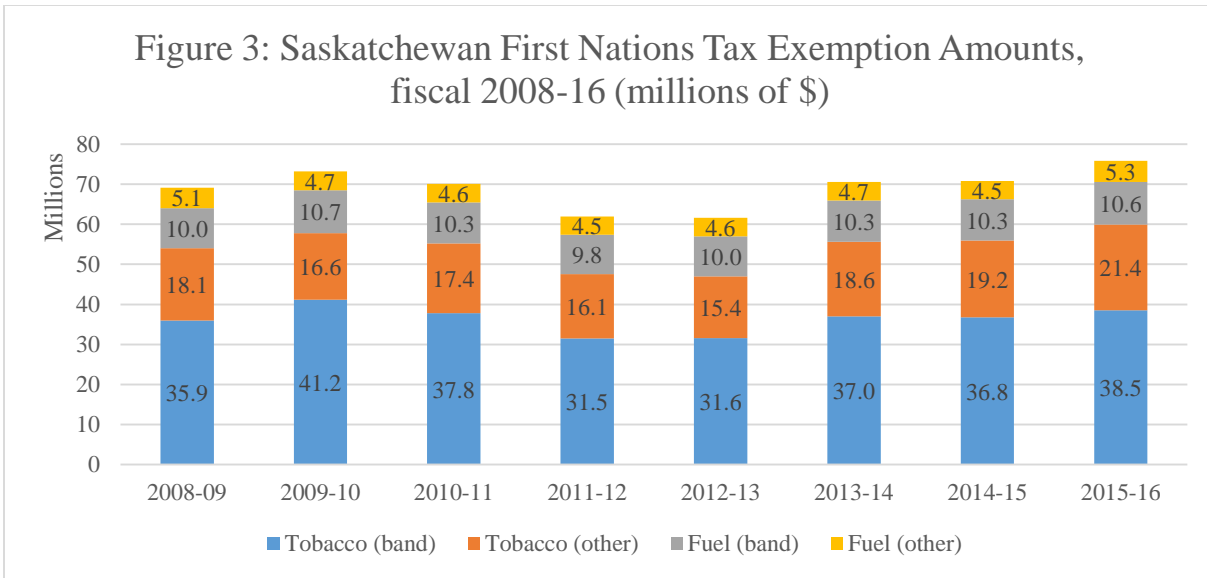
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<sup>47</sup> “Fewer Tax-Free Cigarettes for First Nations - Saskatchewan - CBC News,” *CBC.ca* (Canada: CBC News, March 24, 2010), <http://www.cbc.ca/news/canada/saskatchewan/fewer-tax-free-cigarettes-for-first-nations-1.944664>.

<sup>48</sup> *Ibid.*

<sup>49</sup> Lee Harding, “Native Tax Exemptions Hurting Small Business” (Canada: Canadian Taxpayers Federation, November 12, 2009), <http://www.taxpayer.com/news-releases/native-tax-exemptions-hurting-small-business>.





### Manitoba

In 2014-15, the value of First Nations tax exemptions in Manitoba was \$34.0 million for tobacco and \$10.2 million for fuel. The Department of Finance estimated their retail sales tax exemption to be 70.0 million. These totals represent a 3 percent loss for the province for fuel and sales tax revenues, but nearly 12 percent for tobacco.

Tax	Revenue	Exemptions	Rebates as % of Total
Fuel	334,500,000	10,200,000	3.0%
Tobacco	256,000,000	34,000,000	13.3%
Sales	2,204,600,000	70,000,000	3.2%
Total	2,795,100,000	114,200,000	4.1%

*Sources: Information request, 2014-15 Public Accounts Vol. 3*

<sup>50</sup> Government of Manitoba, "Public Accounts 2014 /15," vol. 3 (Winnipeg, Manitoba, 2015), 8.

Comments from Manitoba finance in the response to the information request illustrate how unclear the figures for sales taxes are, even for governments: “It should be noted that the retail sales tax figure provided is a rough working estimate based on economic purchase data of taxable goods purchased in, or shipped directly to, a reserve. The department does not have records as to the actual value of the exemptions for this tax since it is point-of-sale – related (not pre-collected as fuel and tobacco taxes are). Manitoba Finance also lacks records for foregone tax revenue on personal income tax and corporate income tax.”<sup>51</sup>

### Ontario

Each year the Government of Ontario publishes estimates of foregone tax revenue. However, the “Income of Status Indians and Indian Bands on Reserve” is one of 11 non-taxable income “Items for Which an Estimate is Not Available.”<sup>52</sup> Status Indians also pay no sales tax, fuel tax, or tobacco tax for on-reserve purchases. Status Indians employed on a reserve do not pay the Employer Health Tax, while those living on a reserve are exempt from the Debt Retirement Charge on electricity.<sup>53</sup>

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<sup>51</sup> Christina Moody, letter to author in response to 15-16FIN and 16-16FIN, April 20, 2016.

<sup>52</sup> Government of Ontario, “Transparency in Taxation, 2015,” accessed August 18, 2016, <http://www.fin.gov.on.ca/en/budget/fallstatement/2015/transparency.html>.

<sup>53</sup> Ontario Ministry of Finance, “Status Indians, Indian Bands and Band Councils” (Government of Ontario, Ministry of Finance), accessed June 28, 2016, <http://www.fin.gov.on.ca/en/guides/drc/108.html>.

First Nations in Ontario are eligible for tax-free coloured fuel.<sup>54</sup> The total dollar amount of foregone revenue for such fuel was \$215 million in 2015,<sup>55</sup> but not all of this can be attributed to First Nations, since there are seven other types of users for such fuel.<sup>56</sup>

Allocation Year	Tobacco Taxes Collected	Tax Value of Tobacco Allocation Sold	Exemption as % of Revenues	Gas Tax Collected	Amount Approved for Gas Tax Exemption	Exemption as % of Revenues
2012-13	\$1,142,000,000	\$41,146,692	3.60%	\$2,390,000,000	n/a	n/a
2013-14	\$1,110,166,339	\$42,920,350	3.87%	\$2,363,021,552	\$20,479,789	0.87%
2014-15	\$1,162,503,240	\$48,551,470	4.18%	\$2,446,753,297	\$16,332,890	0.67%
2015-16	\$1,163,000,000	n/a	n/a	\$2,383,000,000	\$18,743,680	0.79%

Ontario Finance disclosed point-of-sale exemptions for each month during 2013, 2014, and 2015. This facilitated totals for two fiscal years. The Ontario government reported online in 2010 that “The Ministry of Finance is experiencing an increase in the number and size of refund applications related to the Ontario HST Refund for First Nations.”<sup>57</sup> This trend seems to have continued as rebates totalled \$846,720.81 in 2013, \$86,388.68 in 2014, and \$987,929.59 in 2015. For our purposes, these calendar year totals into fiscal year totals, estimated as three-quarters of the amount of the initial calendar year, and one-quarter of the amount of the calendar year

<sup>54</sup> Ontario Ministry of Finance, “Coloured Fuel” (Minister of Finance, September 2009), [http://www.fin.gov.on.ca/en/bulletins/ft/1\\_2001.html](http://www.fin.gov.on.ca/en/bulletins/ft/1_2001.html).

<sup>55</sup> Charles Sousa, “2015 Ontario Economic Outlook and Fiscal Review” (Toronto: Ministry of Finance, Government of Ontario, 2015).

<sup>56</sup> Ontario Ministry of Finance, “Coloured Fuel.”

<sup>57</sup> Ontario Ministry of Finance, “Ontario First Nations Point-of-Sale Exemptions,” October 2010, <http://www.fin.gov.on.ca/en/guides/hst/80.html>.

following. Sales tax exemptions far outweigh the refunds, suggesting that similar refunds in British Columbia represent a similarly small fraction of sales taxes there.

<b>Table 9: Ontario HST revenues and First Nations Rebates and Exemptions, Fiscal 2013-2015</b>					
Year	Revenues	Exemptions	Rebates	Total	Total as % of Revenues
2013-14	\$718,000,000	\$29,392,256	\$856,638	\$30,248,894	4.2%
2014-15	\$738,000,000	\$29,520,058	\$911,774	\$30,431,832	4.1%
<i>Note: Estimates in italics. Rebates for fiscal years estimated by 9/12 of initial year and 3/12 of year following.</i>					

As a percentage of total revenues, tobacco exemptions represent four percent of revenues and fuel and sales less than one. However, tax exemptions are only a tiny fraction of the revenue losses to government compared to contraband cigarette sales. Rob Cunningham, a senior policy analyst for the Canadian Cancer Society said in 2009, "We know that perhaps 95 percent of the contraband in Canada originates in illegal operations located on four First Nations reserves, the most important of which by far is the U.S. side of Akwesasne near Cornwall, Ont. There is also Kahnawake near Montreal, Tyendinaga near Belleville, and Six Nations near Brantford."<sup>58</sup>

In 2009, the Canadian Tobacco Manufacturers' Council reported that 48.6 percent of cigarettes bought in Ontario were illegal, followed by Quebec at 40.1 percent. Nationally the figure is estimated at roughly 33 percent, costing governments \$2.4 billion in taxes each year.<sup>59</sup> In 2009, the National Coalition Against Contraband Tobacco collected 19,770 cigarette butts at 110 Ontario high schools and found 30 percent were illegal due to their markings. The coalition was launched by the Canadian Convenience Stores Association, whose members on average lose \$115,000 in

<sup>58</sup> Robert Benzie and Richard J. Brennan, "\$2 Billion in Tax Revenue up in Smoke," *Toronto Star*, November 15, 2009, [https://www.thestar.com/news/investigations/2009/11/15/2\\_billion\\_in\\_tax\\_revenue\\_up\\_in\\_smoke.html](https://www.thestar.com/news/investigations/2009/11/15/2_billion_in_tax_revenue_up_in_smoke.html).

<sup>59</sup> *Ibid.*

sales annually due to illegal cigarettes.<sup>60</sup> The financial loss for governments is staggering. A 2012 report by the CTF estimated that federal and provincial governments were losing between \$742 and \$1.2 billion annually in tobacco taxes on sales in Ontario alone.<sup>61</sup>

### Quebec

Quebec is the only province that publishes estimates on the dollar amounts of First Nations tax exemptions on income. In the 2015 edition of the *Dépenses Fiscales*, Quebec listed the “Non-imposition du revenu des Indiens situés dans une réserve.”<sup>62</sup> The years 2010-2013 were estimated, and 2014 and 2015 were projected as shown in the chart. The Quebec government also released information on the number of registered Indians on reserve in the province. From this, we know that the \$62 million exemption in 2015 represented just 0.23 percent of all the \$27.547 billion in provincial income taxes collected in Quebec. It would also mean the average First Nations Quebecois would have paid \$2,989 in income tax, somewhat below the roughly \$3,300 paid per capita by others in the province. The province did not disclose the methodology for their estimates. However, they seem inordinately higher than results produced via other methods, as will be demonstrated later.

Tax losses due to exemptions to First Nations represent only one percent of the \$1.1 billion collected in tobacco taxes each year. However, this is not the whole story. The Quebec government

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<sup>60</sup> Ibid.

<sup>61</sup> Gregory Thomas, “Ontario Losing Millions in Tobacco Tax Each Year to Contraband on Reserves” (Ottawa, Canada: Canadian Taxpayers Federation, December 19, 2012), <http://www.taxpayer.com/news-releases/ontario-losing-millions-in-tobacco-tax-each-year-to-contraband-on-reserves>.

<sup>62</sup> Government of Quebec, “Dépenses Fiscales 2015” (Quebec: Government of Quebec, 2016), 38.

estimates that tobacco tax evasion costs the province \$125 million annually.<sup>63</sup> As mentioned in the Ontario section of this capstone, much of it has to do with contraband tobacco from reserves. In 2009, the Canadian Tobacco Manufacturers' Council reported that 40.1 percent of cigarettes bought in Quebec were illegal.<sup>64</sup> That same year the National Coalition Against Contraband Tobacco looked at 14,064 butts from 75 Quebec high schools and found 45 percent were contraband.

**Table 10: Quebec Tobacco Tax Revenues and Reserve Exemptions, Fiscal 2011-2015, \$**

Fiscal Year	Tax Revenues	Reserve Exemptions	Exemptions as % of Revenues
2011-12	913,000,000	9,820,574	1.08%
2012-13	907,000,000	9,093,526	1.00%
2013-14	1,010,000,000	11,559,965	1.14%
2014-15	1,069,000,000	13,304,110	1.24%

**Table 11: Quebec First Nations Population and Income and Fuel Tax Exemptions and Income and Fuel Tax Revenues, 2010-2015**

Year	Registered First Nations Reserve Residents	Income Tax Revenues for fiscal year ending that calendar year (millions of \$)	Estimated Income Tax Exemptions (millions of \$)	Exemptions as % of Revenues	Fuel Tax Revenues for fiscal year ending that calendar year (millions of \$)	Fuel Tax Exemptions (\$)	Exemptions as % of Revenues
2010	22,374	17,352	52	0.30%	1,698	2,343,467	0.14%
2011	22,927	18,835	56	0.30%	1,910	3,944,738	0.21%
2012	23,013	24,498	57	0.23%	2,064	2,576,536	0.12%
2013	21,665	25,070	57	0.23%	2,150	2,514,154	0.12%
2014	20,740	26,203	59	0.23%	2,310	1,905,074	0.08%
2015	n/a	27,547	62	0.23%	2,215	2,077,313	0.09%

<sup>63</sup> Revenu Quebec, "Tax Evasion in the Tobacco Industry," accessed July 30, 2016, [http://www.revenuquebec.ca/en/a-propos/evasion\\_fiscale/tabac/default.aspx](http://www.revenuquebec.ca/en/a-propos/evasion_fiscale/tabac/default.aspx).

<sup>64</sup> Benzie and Brennan, "\$2 Billion in Tax Revenue up in Smoke."

## New Brunswick

New Brunswick entered into First Nations Revenue Sharing Agreements in the early 1990s. As this capstone explains shortly, advocacy groups and off-reserve businesses complained that the way that rebates function in the province creates an unfair advantage for the on-reserve businesses. The government recently decided to revise the revenue sharing agreements. This represents one example of government rethinking the issue of how it deals with First Nations taxation.

In a news release dated February 20, 2014, CTF Atlantic Director Kevin Lacey brought to light agreements made between the province and each of 13 First Nations between 1994 and 2008. Under such agreements, aboriginal retail businesses only had to remit 5 percent of the provincial taxes collected on gas and tobacco on reserve, keeping the other 95 percent. Lacey stated that gas taxes should be redirected to roads, not into the pockets of First Nations. He further asserted that, “These agreements place non-aboriginal competitors at a significant disadvantage to neighbouring band retailers.”<sup>65</sup>

In a later commentary Lacey further explained,

While the tax deals with aboriginal bands specifically state they cannot use their special tax status to undercut prices on gas and tobacco, groups that follow prices, like the Atlantic Convenience Stores Association say that’s exactly what is happening. The deals are unfair to competing businesses off-reserve. Every business should have the same opportunity, and compete on a level playing field.<sup>66</sup>

At first, the province indicated it would not rescind the agreements. However, by August 21, 2014, it announced it would do just that. The government gave the First Nations 90 days’ notice

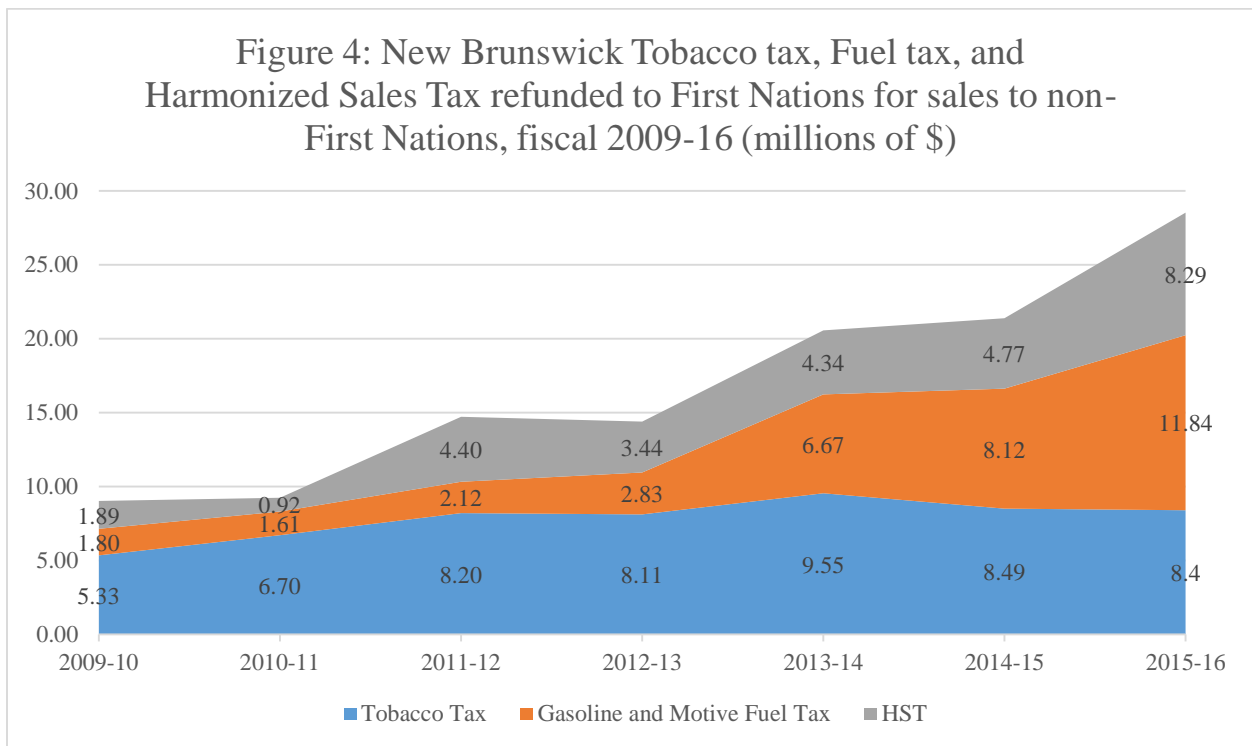
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<sup>65</sup> Kevin Lacey, “Aboriginal Bands Get Special Tax Deal from NB Government” (Halifax, NS, Canada: Canadian Taxpayers Federation, February 20, 2014), <http://www.taxpayer.com/news-releases/aboriginal-bands-get-special-tax-deal-from-nb-government,-rti>.

<sup>66</sup> Kevin Lacey, “Special Tax Deals for Aboriginal Bands Cost Double What They Did Four Years Ago” (Halifax, NS: Canadian Taxpayers Federation, July 23, 2014), <http://www.taxpayer.com/commentaries/special-tax-deals-for-aboriginal-bands-cost-double-what-they-did-four-years-ago-19466>.

that the agreements were ending, being phased out over five years. Finance Minister Blaine Higgs commented, “The issue is looking at fairness in terms of others businesses that are either associated with or in the proximity of First Nations communities and saying they pay tax and the other business that’s on the First Nation community gets it refunded.”<sup>67</sup>

Information requests by CTF revealed the revenue forfeited by the province under such agreements from 2009 to 2014,<sup>68</sup> while information requests by this author revealed the later figures. The first chart below shows the amounts for the 95 percent refund of taxes for sales to *non-Aboriginals* by such on-reserve businesses.



First Nations tax exemptions for on-reserve sales to Status Indians are much less for fuel but much more for tobacco, as shown in Table 12.

<sup>67</sup> CBC News, “Government Cancels First Nation Tax and Gaming Deals,” *CBC.ca* (Fredericton, NB, Canada: CBC News, August 21, 2014), <http://www.cbc.ca/news/canada/new-brunswick/government-cancels-first-nation-tax-and-gaming-deals-1.2742587>.

<sup>68</sup> Lacey, “Special Tax Deals for Aboriginal Bands Cost Double What They Did Four Years Ago.”



<b>Table 12: Sales, Fuel, and Tobacco Tax rebates to New Brunswick First Nations, 2014-15 (millions of \$)</b>							
<b>Tax</b>	<b>Revenues</b>	<b>Exemptions for sales to First Nations</b>	<b>%</b>	<b>Exemptions for sales to non-First Nations</b>	<b>%</b>	<b>Total Exemptions</b>	<b>Total %</b>
Sales	1,239.8	Not available	n/a	4.77	0.4%	4.77	0.4%
Fuel	240.0	2.54	1.1%	8.12	3.4%	10.66	4.4%
Tobacco	140.0	12.07	8.6%	8.49	6.1%	20.56	14.7%
<b>Total</b>	<b>1,619.8</b>	<b>14.61</b>	<b>0.9%</b>	<b>21.38</b>	<b>1.3%</b>	<b>35.99</b>	<b>2.2%</b>

Tax exemptions for sales of tobacco and fuel to First Nations were even higher in 2015-16 at \$12.28 million for tobacco and \$2.99 million for fuel.

#### Nova Scotia

In an April 27, 2016 reply to this author, Nova Scotia Finance and Treasury Board indicated it had no records regarding dollar amounts for First Nations tax exemptions and no other department or agency had such records either.

Nova Scotia's neighbouring province New Brunswick is useful as a reference point to provide estimates. The percentage of the population that is registered Indian is nearly identical—0.00137 for Nova Scotia and 0.00136 for New Brunswick,<sup>69</sup> and the percentage of those who live on reserve is also very similar (68.8% and 68.0%) respectively. Nova Scotia collected \$206.3 million in tobacco taxes in 2014-15. If Nova Scotia had a similar percentage of tobacco tax revenues exempted as New Brunswick did (5.7% of revenues), then the value of the tobacco tax exemptions would be \$11.8 million.

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<sup>69</sup> Statistics Canada, "Population by Year, by Province and Territory (Number)," 2015, <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm>.

### Prince Edward Island

Tobacco and fuel tax rebates have been static for First Nations in Prince Edward Island. Abegweit and Lennox Island are the only two First Nations there. Fuel tax exemptions nearly doubled in 2012-13 when the Abegweit band first opened its gas station, and have plateaued since. Tobacco and fuel tax rates dropped April 1, 2013, but tobacco taxes rose again in 2015, with commensurate impacts on tobacco and fuel tax exemptions on reserve.

Tobacco taxes on reserves would represent 3 percent of the provincial total if they were applied. For fuel taxes, the figure is half a percentage point.

Fiscal Year	Tobacco Revenues	Tobacco Rebates	Tobacco Rebates as % of Revenues	Gasoline Tax Revenues	Gasoline Tax Rebates	Rebates as % of Revenues
2011-12	37,040,000	1,272,972.76	3.4%	41,787,000	94,497.07	0.2%
2012-13	36,354,000	1,272,972.76	3.5%	41,122,000	182,409.04	0.4%
2013-14	31,255,000	1,130,941.52	3.6%	35,108,000	167,623.75	0.5%
2014-15	30,259,000	1,130,941.52	3.7%	35,398,000	175,689.70	0.5%
2015-16	32,000,000	1,239,393.28	3.9%	36,500,000	195,315.03	0.5%

### Newfoundland and Labrador

In response to the author's information request, the Government of Newfoundland and Labrador granted tobacco and fuel tax rebate amounts from 2010-2015. Their note on the initial fiscal year is interesting, given that the tobacco rebates exceeded one million dollars in just six weeks. "Note: Fiscal 2011 includes only Feb 16 -Mar 31, 2011 as gasoline exemption did not commence until Feb 16, 2011." Gasoline rebates barely register in Newfoundland's finances and if tobacco rebates only represent one percent of revenues.

**Table 14: Newfoundland and Labrador Tobacco and Fuel Tax Revenues and First Nations Rebates, fiscal 2011-16 (millions of \$)**

Year	Tobacco Revenues	Tobacco Rebates	Tobacco Tax Rebates as % of Revenues	Gasoline Tax Revenues	Gasoline Tax Rebates	Gasoline Tax Rebates as % of Revenues
2010-11	135,000,000	1,491,440.70	1.10%	168,902,000	77,476.91	0.05%
2011-12	137,821,000	1,665,101.70	1.21%	168,566,000	351,188.30	0.21%
2012-13	146,000,000	1,592,494.50	1.09%	170,684,000	363,939.64	0.21%
2013-14	148,017,000	1,643,879.72	1.11%	185,666,000	332,972.84	0.18%
2014-15	157,078,000	1,833,278.83	1.17%	185,858,000	366,532.37	0.20%

## Provincial and National Comparisons by Tax

### Tobacco

Government	Population (Millions)	Registered Indians	Registered Indians living on reserve <sup>70</sup>	Tobacco Tax Exemptions by government (\$ millions)	Tobacco Tax Rebates as % of Revenues	Tobacco tax exempted per overall population	Tobacco tax exempted per registered Indian	Tobacco Tax Exempted per registered Indian on reserve
BC	4.50	112,400	49,681	42.8	5.7%	\$9.52	\$381.00	\$862.00
AB	3.79	96,730	45,753	40.7	4.5%	\$10.74	\$420.82	\$889.69
SK	1.07	94,160	53,954	56.0	21.5%	\$52.52	\$594.73	\$1,037.93
MB	1.23	105,815	61,267	34.0	13.3%	\$27.56	\$321.32	\$554.95
ON	13.26	125,560	46,457	48.6	4.2%	\$3.66	\$387.07	\$1,046.12
QC	8.01	52,645	37,904	13.3	1.2%	\$1.66	\$252.71	\$350.99
NB	0.76	10,275	7,069	12.1	8.1%	\$15.98	\$1,174.70	\$1,707.41
NS	0.94	12,910	8,779	16.8	8.1%	\$17.75	\$1,298.64	\$1,909.76
PEI	0.14	765	430	1.1	5.7%	\$7.85	\$1,478.35	\$2,630.52
NF	0.53	8,015	2,813	1.8	1.2%	\$3.49	\$228.32	\$650.49
<b>Prov's</b>	<b>34.23</b>	<b>619,275</b>	<b>314,107</b>	<b>258.6</b>	<b>5.2%</b>	<b>\$7.56</b>	<b>\$417.65</b>	<b>\$823.42</b>
Federal	35.54	637,660	314,366	427.5	5.2%	\$12.03	\$670.42	\$1,359.88
<b>Total</b>	<b>35.54</b>	<b>637,660</b>	<b>314,366</b>	<b>686.2</b>	<b>5.2%</b>	<b>\$19.31</b>	<b>\$1,076.04</b>	<b>\$2,182.64</b>

*Note: Nova Scotia numbers are estimated based on New Brunswick totals. Yellow highlights are for the highest province in each category, while green highlights are for the lowest.*

The table above shows how substantial tobacco tax exemptions are for registered Indians.

To produce the chart, I compared the population from July 1, 2011 with the registered Indian

<sup>70</sup> Statistics Canada, "2006 Census: A Decade of Comparable Data on Aboriginal Peoples," October 14, 2008, <http://www12.statcan.gc.ca/census-recensement/2006/ref/info/aboriginal-autochtones-eng.cfm>.

population as declared based on the 2011 Census. I estimated the numbers living on reserve based on the percentages of registered Indians who did so by province (previously shown in Table 1). I extrapolated the federal tobacco tax exemptions based on the percentage of excise taxes exempted at the provincial level. The slight variation between the federal and provincial population totals has to do with the inclusion of the territories in the Canadian amounts.

Although Ontario has the highest population of people and of registered Indians, more live on reserves in Manitoba than anywhere else. Even so, Saskatchewan ends up having the highest tobacco tax exemptions (\$56 million), the highest percentage of exemptions vs. revenues (21.5%), and the highest amount of tax exemption per member of the general population (\$52.52). This can be explained in part by the prevalence of urban reserves in that province. Currently Saskatchewan has 51.<sup>71</sup> Such innovations allow those living off-reserve to more easily access a convenience store or gas station where cigarettes may be bought.

On the low end, Quebec ties Newfoundland for the lowest percentage of revenues rebated to registered Indians. Exemptions in *la belle province* also produce the lowest dollar figures per Quebecker (\$1.66), registered Indian, (\$252.71), and registered Indian on reserve (\$350.99).

Prince Edward Island presents a surprising mix of highs and lows on our chart. Only 0.5 percent of the population is a registered Indian, and just 0.3 percent live on reserve. However, at 72 percent, PEI has the highest percentage of its registered Indians living on reserve. The tiny size of the island means that the possibility to buy tax-free tobacco is easy for registered Indians and presumably for any smoker who knows one willing to buy on his or her behalf. The tobacco dollars exempted per Islander is an unspectacular \$7.85 (even less than the national average of \$12.03 in

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<sup>71</sup> Thomas Flanagan and Lee Harding, "Treaty Land Entitlement and Urban Reserves in Saskatchewan: A Statistical Evaluation" (Canada: Frontier Centre for Public Policy, 2016), 8.

provincial excise taxes), the \$1.12 million in exemptions means an astonishing \$1,478.35 per registered Indian and \$2,630.52 per registered Indian on reserve. And this is before the federal tax are applied.

### Fuel Taxes

Fuel tax exemptions are known exactly for nine of ten provinces, and provincial sales taxes on fuel can be calculated with great accuracy. The exception is Nova Scotia where, as with tobacco exemptions, fuel exemptions are calculated based on percentages borrowed from neighbouring New Brunswick. Rebates based on sales tax on fuel were not included. In its 2014 annual Gas Tax Honesty Day background, <sup>72</sup> the CTF estimated the provincial sales tax that would be collected on fuel based on budget projections, while market surveys provide average prices in each province. <sup>73</sup> This capstone imports statistics from both the CTF calculations and the market surveys. The exemption percentage multiplied by the sales tax fuel revenues renders the exemption for provincial sales tax on fuel.

The federal government places an excise tax of 10 cents per litre on gasoline and 4 cents on fuel, plus the GST on the price of gasoline and all other taxes. Statistics Canada records the amounts of gasoline and diesel sold in each province annually, with 2014 numbers being the latest available. <sup>74</sup> I applied the ratio of exemptions to revenues for fuel taxes in each jurisdiction to estimate the number of litres sold and the tax amounts that therefore applied. Even better, Alberta and British Columbia explicitly disclosed the litres exempted by information request.

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<sup>72</sup> Jeff Bowes, “16th Annual Gas Tax Honesty Day” (Canada: Canadian Taxpayers Federation, May 2014), 7.

<sup>73</sup> Natural Resources Canada, “Fuel Focus, 2014 Annual Review” (Minister of Natural Resources, January 23, 2015).

<sup>74</sup> Statistics Canada, “Sales of Fuel Used for Road Motor Vehicles, by Province and Territory,” accessed August 5, 2015, <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/trade37a-eng.htm>.

**Table 16: Provincial Motive Fuel Tax Revenues and First Nations Exemptions, 2014-15**

	Provincial Per Litre and Carbon Taxes	First Nations Fuel & Carbon Tax Exemptions & Rebates	%	Provincial Sales Tax on Fuel	Estimated Value of Exemptions of Sales Tax on Fuel	Total Provincial Tax Revenues From Fuel, Including Carbon Taxes	Total Provincial Value of Tax Exemptions
BC*	2,167,000,000	9,457,155	0.4%	0	0	941,000,000	9,457,155
AB	944,000,000	6,831,510	0.7%	0	0	944,000,000	6,831,510
SK	490,041,611	14,812,112	3.0%	0	0	490,041,611	14,812,112
MB	345,164,827	10,200,000	3.0%	0	0	345,164,827	10,200,000
ON	3,500,698,194	16,332,890	0.5%	1,988,279,801	9,276,537	5,488,977,995	25,609,427
QC	2,310,275,568	2,077,313	0.1%	1,406,708,022	1,264,859	3,716,983,590	3,342,172
NB	240,000,000	2,540,000	1.1%	137,779,765	1,458,169	377,779,765	3,998,169
NS**	248,274,000	2,627,567	1.1%	171,908,058	1,819,360	420,182,058	4,446,927
PEI	35,398,000	175,690	0.5%	25,275,461	125,449	60,673,461	301,139
NF	185,858,000	366,532	0.2%	99,503,664	196,232	285,361,664	562,765
Total	10,466,710,200	65,420,769	0.6%	3,829,454,771	23,935,494	13,070,164,971	89,356,263

\*BC estimates based on 2015-16 percentages. Since 2014-15 revenues were 95.2% as high as in 2015-16, exemptions were adjusted down accordingly.

\*\*Nova Scotia estimates based on New Brunswick percentages.

Yellow highlights = highest in column. Green highlights = lowest. Estimates in italics.

**Table 17: Federal Motive Fuel Tax Revenues and First Nations Exemptions by province, 2014-15 (\$ and litres in millions)**

Prov	Gas sold	Litres of Diesel Sold	Fed. Excise Taxes	Exempt \$ of Federal Excise Tax	Cents / L of Gas or Diesel	GST Rev's	Estimated GST Tax Exempt	Total Federal Taxes	Total Federal Exempt	Total Prov. & Federal Exempt	Total Exempt as a % of Total Revenue
BC*	4,422	1,923	519	2.27	6.6	419	1.83	938	4.09	13.55	0.44%
AB	6,401	4,461	819	5.92	5.9	641	4.64	1,459	10.56	17.39	0.72%
SK	1,534	1,472	212	6.42	6.1	183	5.54	396	11.96	26.77	3.02%
MB	1,551	815	188	5.55	6.0	142	4.19	330	9.74	19.94	2.96%
ON	15,991	4,943	1,797	8.38	6.0	1,256	5.86	3,053	14.24	39.85	0.47%
QC	7,706	2,744	880	0.79	5.9	617	0.55	1,497	1.35	4.69	0.09%
NB	1,055	381	121	1.28	5.9	85	0.90	205	2.17	6.17	1.06%
NS**	1,138	402	130	1.37	6.1	94	0.99	224	2.37	6.82	1.06%
PEI	200	40	22	0.11	6.1	15	0.07	36	0.18	0.48	0.50%
NL	742	317	87	0.17	6.1	65	0.13	151	0.30	0.86	0.20%
Total	40,739	17,496	4,774	32.26		3,515	24.71	8,289	56.96	146.32	0.63%

Ontario ranks highest in most categories, and P.E.I. the lowest, due to their population. Because the GST also applies to the provincial taxes themselves, B.C.'s fuel tax and carbon tax combine with the pump price for the highest GST per litre at 6.6 cents. Of course, fuel tax exemption rates remain the same as in our previous chart.

Although Ontario had the highest amounts for fuel tax exemptions, it was Saskatchewan taxpayers who bore the heaviest burden and Prince Edward Island registered Indians who derived the greatest benefit. The lowest cost to individual taxpayers and the least benefit to individual registered Indians was found in Quebec. It cost taxpayers there only 59 cents per capita for exemptions to First Nations, while registered Indians benefitted \$89.05 each. For those who lived on Quebec reserves, the benefit was \$123.68—barely one-tenth the \$1,117.64 enjoyed by Prince Edward Island's reserve Indians.

	Prov fuel tax*** exempt (millions \$)	Prov Fuel Taxes Exempted Per Resident	Prov Fuel Tax Exempted Per Registered Indian	Prov Fuel Tax Exempted Per Reserve Indian	Total Prov. & Federal Exempt (millions of \$)	Total Fuel Taxes Exempt Per Canadian	Total Fuel Tax Exempt Per Registered Indian	Total Fuel Tax Exempt Per Reserve Indian
BC	*9.5	\$2.10	\$84.14	\$190.36	13.6	\$3.01	\$120.55	\$272.75
AB	6.8	\$1.80	\$70.62	\$149.31	17.4	\$4.59	\$179.81	\$380.15
SK	14.8	\$13.89	\$157.31	\$274.53	26.8	\$25.10	\$284.29	\$496.15
MB	10.2	\$8.27	\$96.39	\$166.48	19.9	\$16.16	\$188.43	\$325.45
ON	25.6	\$1.93	\$203.96	\$551.25	39.9	\$3.00	\$317.40	\$857.84
QC	3.3	\$0.42	\$63.49	\$88.17	4.7	\$0.59	\$89.05	\$123.68
NB	4.0	\$5.29	\$389.12	\$565.58	6.2	\$8.17	\$600.76	\$873.20
NS	**4.4	\$4.71	\$344.46	\$506.55	6.8	\$7.22	\$527.96	\$776.41
PEI	0.3	\$2.09	\$393.65	\$700.44	0.5	\$3.34	\$628.11	\$1,117.64
NL	0.6	\$1.07	\$70.21	\$200.04	0.9	\$1.64	\$107.46	\$306.14
<b>All</b>	<b>89.4</b>	<b>\$2.61</b>	<b>\$144.29</b>	<b>\$284.48</b>	<b>146.3</b>	<b>\$4.27</b>	<b>\$236.27</b>	<b>\$465.82</b>



## Income Taxes

For reasons described earlier in the capstone, income tax exemptions can only be estimated. The methodology used as an estimate in the attempt by Informetrica had 18 steps that had to be applied to each of the reserve census subdivisions. Those subdivisions number more than 1000, meaning that replicating the methodology used there was not feasible without an extraordinary amount of work.

The only government estimation of income tax from our requests for information came from Quebec. The province estimated that income taxes not applied to its 20,700 on reserve resulted in \$62 million of tax losses. If we multiply the \$2,989.39 per Indian by Canada's 314,366 registered Indians on reserve, we get a total of \$939.8 million of income tax losses for Canada. Considering Informetrica estimated B.C.'s income tax losses to be \$20 million despite having 40,000 Indians on reserve, the Quebec estimate seems high.

Peter Peller, librarian and head of numerical and spatial data services at the University of Calgary, offered invaluable assistance in estimating these income tax losses. Peller used the 2006 Hierarchical Census Data to calculate the effective tax rate for two groups of people—registered Indians and all others. He calculated the total amount of tax collected for each category in each of the income levels listed above. From there he calculated the effective average tax rate.

**Table 19: Estimates of Total Income, Income Taxes Paid, Total Income, and First Nations Exemptions, 2006**

	Not a Registered Indian			Registered Indian					
Income	Average total income per person	Avg income tax paid (\$)	Effective income tax rate	Average total income of individual	Average income tax paid (\$)	Effective income tax rate per reg. Indian	Total income tax paid	% Lower Income Tax Rate	% of taxes Exempt due to Indian Act
Loss and nil	-428	23	-	-272	0	0.00	0	0.00	0.0%
1-10000	5,074	62	1.23	4,387	10	0.23	1,502,610	1.00	81.4%
10,001-20,000	15,370	456	2.96	15,006	206	1.37	19,111,839	1.59	53.8%
20,001-30,000	25,401	2,230	8.78	25,095	1,140	4.54	61,114,997	4.24	48.3%
30,001-40,000	35,310	4,456	12.62	35,436	2,490	7.03	87,419,119	5.59	44.3%
40,001-50,000	45,284	7,207	15.91	45,109	4,787	10.61	87,618,260	5.30	33.3%
50,001-60,000	55,323	10,209	18.45	54,900	7,092	12.92	85,117,544	5.54	30.0%
60,001-70,000	65,204	13,046	20.01	64,889	10,444	16.10	84,617,441	3.91	19.5%
70,001-80,000	75,306	16,049	21.31	74,848	14,349	19.17	66,019,308	2.14	10.0%
80,001-90,000	85,161	19,703	23.14	84,417	22,203	26.30	53,297,486	-3.16	-13.7%
90,001-100,000	96,448	23,922	24.80	96,222	23,778	24.71	21,404,412	0.09	0.4%
100001-150000	124,330	35,205	28.32	121,821	35,593	29.22	78,319,643	-0.90	-3.2%
150001-250000	191,194	64,910	33.95	175,133	49,116	28.05	34,388,488	5.90	17.4%
250,001 and over	498,324	193,071	38.74	387,996	59,500	15.34	11,902,453	23.41	60.4%
<b>Total</b>	<b>33,842</b>	<b>6,155</b>	<b>18.19</b>	<b>18,621</b>	<b>1,664</b>	<b>8.93</b>	<b>691,833,599</b>	<b>9.25</b>	<b>51%</b>
N				25,113,676			415,886		

Whereas a status Indian had an average effective tax rate of 8.93, it was 18.19 for everyone else—a savings of just over half. By this estimation, registered Indians would have paid an extra \$281 million in income taxes were it not for the tax exemptions on reserve some of them received. However, when Peller tried his simplified method on registered Indians in British Columbia, he produced a figure of \$36 million. The \$20 million estimate made by the Informetrica study was only 56 percent as much. Given Informetrica’s rigorous methodology, it may suggest that we should multiply the national estimate by 56 percent. If we do so, the result is \$155.7 million. On the other hand, Courchene’s 1991 estimate of the provincial portion of income taxes alone amounts to \$158 million in today’s dollars, suggesting that Peller’s \$280.2 million estimate for combined provincial and federal income taxes is not unreasonable.

**Table 20: First Nations effective income taxes and exemptions by income bracket, 2006**

Income	People	Mean income	Average Total Income of Individual	Effective Income Tax Rate	Total Income Tax Paid	Hypothetical Total Income (using non-registered tax rate)	Exemptions
Loss and nil	34,907	-272	0	0.00%	0	0	0
1-10,000	149,931	4,387	10	0.23%	1,502,610	8,095,784	6,593,174
10,001-20,000	92,919	15,006	206	1.37%	19,111,839	41,340,610	22,228,770
20,001-30,000	53,611	25,095	1,140	4.54%	61,114,997	118,124,970	57,009,973
30,001-40,000	35,107	35,436	2,490	7.03%	87,419,119	156,977,729	69,558,610
40,001-50,000	18,304	45,109	4,787	10.61%	87,618,260	131,400,094	43,781,834
50,001-60,000	12,002	54,900	7,092	12.92%	85,117,544	121,600,388	36,482,844
60,001-70,000	8,102	64,889	10,444	16.10%	84,617,441	105,179,344	20,561,903
70,001-80,000	4,601	74,848	14,349	19.17%	66,019,308	73,391,386	7,372,078
80,001-90,000	2,400	84,417	22,203	26.30%	53,297,486	46,884,656	-6,412,830
90,000-100,000	900	96,222	23,778	24.71%	21,404,412	21,484,015	79,603
100,000-150,000	2,200	121,821	35,593	29.22%	78,319,643	75,902,344	-2,417,299
150,000-250,000	700	175,133	49,116	28.05%	34,388,488	41,629,081	7,240,593
250,001+	200	387,996	59,500	15.34%	11,902,453	30,071,251	18,168,798
<b>Total</b>	<b>415,886</b>	<b>18,621</b>	<b>1,664</b>	<b>8.93%</b>	<b>691,833,599</b>	<b>972,081,651</b>	<b>280,248,052</b>

Peller also calculated similar estimates based on the 2011 National Household Survey hierarchical data. At 366,459 the sample had fewer registered Indians with taxable income than the one in 2006 which had 415,286. The 2006 census counted 623,780 registered Indians<sup>75</sup> while the 2011 census counted 637,660. This said, such numbers always fall short of those of the official registry at Indigenous and Northern Affairs Canada because not all reserves are adequately enumerated.<sup>76</sup>

<b>Income Bracket</b>	<b>People</b>	<b>Average total income</b>	<b>Income Tax Paid</b>	<b>Effective Income Tax Rate</b>	<b>Total Income Tax Paid</b>	<b>Hypothetical Total Income (using non-registered tax rate)</b>	<b>Exemption</b>
Loss and nil	33,345	-8	0	0.0%	-	-	-
1-10,000	99,823	3,982	21	0.5%	2,111,954	8,175,993	6,064,039
10,001-20,000	83,991	15,243	136	0.9%	11,439,825	27,825,384	16,385,559
20,001-30,000	45,491	24,974	1,003	4.0%	45,625,144	70,868,161	25,243,016
30,001-40,000	35,763	35,313	2,341	6.6%	83,712,011	123,999,886	40,287,875
40,001-50,000	22,109	45,041	3,909	8.7%	86,412,414	126,735,490	40,323,076
50,001-60,000	15,753	55,732	6,564	11.8%	103,397,021	133,959,108	30,562,088
60,001-70,000	9,923	65,667	8,051	12.3%	79,888,542	111,445,616	31,557,074
70,001-80,000	7,037	75,322	11,172	14.8%	78,619,907	99,010,075	20,390,169
80,001-90,000	4,097	85,460	15,055	17.6%	61,675,477	68,747,388	7,071,911
90,001-100,000	3,931	96,795	17,027	17.6%	66,936,840	80,507,580	13,570,740
100,001-150,000	3,432	126,839	27,934	22.0%	95,878,777	104,152,802	8,274,024
150,001-250,000	1,584	179,448	42,538	23.7%	67,375,726	81,039,196	13,663,470
250,001 and over	180	370,259	137,147	37.0%	24,743,343	22,787,905	- 1,955,439
<b>Total</b>	<b>366,459</b>	<b>23,601</b>	<b>2,204</b>	<b>9.3%</b>	<b>807,817,072</b>	<b>1,059,254,584</b>	<b>251,437,511</b>

<sup>75</sup> Statistics Canada, "Table 3 Status Indian Population, by Area of Residence, Canada, 1981, 1991, 1996, 2001 and 2006," November 30, 2015, <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442/tbl/tbl003-eng.htm>.

<sup>76</sup> Statistics Canada, "2006 Census: A Decade of Comparable Data on Aboriginal Peoples."

For the sake of comparison, Peller made separate calculations based on employment income, market income, and total income. The results are presented in Table 22.

<b>Table 22: Estimated Tax Exemptions Comparing Effective Tax Rates of Registered Indians to All Others, 2011</b>					
Category	Effective total income tax rate	Total Income Tax Paid	Hypothetical total income tax on total income (using non-registered income tax rate)	Hypothetical total Income tax on employment income (using non-registered income tax rate)	Hypothetical total Income tax on market income (using non-registered income tax rate)
Not a Registered Indian	16.49	169,714,674,957	n/a	769,450,108,395	902,645,772,105
Registered Indian	9.34	807,817,072	1,059,254,584	882,337,341	946,753,651
Estimated income taxes exempted			251,437,511	74,520,269	138,936,578

Why would the value of the tax exemption drop from \$280 million 2006 to \$251 million in 2011? For one, the percentage of registered Indians reporting taxable income was 66.6 percent in 2006 (415,286/623,780), but was 57.5 percent in 2011 (366,459/637,660). More importantly, Saskatchewan raised its basic personal exemption (BPE) by \$4,000 in 2008, taking 80,000 people off the tax rolls and saving everyone who made \$12,495 or more \$440 more than the year before.<sup>77</sup> If 50,000 of Saskatchewan's 54,000 registered Indians on reserve earned the basic personal exemption, the BPE tax cut would cut \$22 million out of the value of exemptions on reserve. Although those living on reserve would have received such tax breaks anyway, they would no longer be because of the Indian Act tax exemptions. The drop in exemption estimates may also be

<sup>77</sup> Saskatchewan Finance, "Tax Relief," accessed August 5, 2016, <http://finance.gov.sk.ca/Default.aspx?DN=73513bc4-93e7-474d-ae45-9eb347edb03c>.

an artifact of our loose calculations, since tax exemptions seemed to vanish for the highest income bracket, nullifying the \$18.2 million exemption found in 2016.

Table 23 shows that the effective income tax rate in 2011 actually went up for registered Indians compared to previous years. This may be a reflection of the long trend of migration off the reserve. By total income, the effective tax rate for registered Indians rose by 0.41 percent even while it dropped by 1.5 percentage points for others. This meant the percentage of income taxes exempted for registered Indians dropped to 43.35, down from 50.51 in 2006. Both percentages are loosely what we should have anticipated. They are close to the same percentages of registered

Bracket	2006				2011			
	Other	Registered Indian			Other	Registered Indian		
	Effective income tax rate	Effective income tax rate	% Lower Income Tax Rate	% of taxes exempted due to Indian Act	Effective income tax rate	Effective income tax rate	% Lower Income Tax Rate	% of taxes exempted due to Indian Act
Loss and nil	-	0	0	0.00	0.00	0.00	0.00	0.00
1-10000	1.23	0.23	1	81.40	2.06	0.53	1.53	74.17
10001-20000	2.96	1.37	1.59	53.80	2.17	0.89	1.28	58.89
20001-30000	8.78	4.54	4.24	48.30	6.24	4.02	2.22	35.62
30001-40000	12.62	7.03	5.59	44.30	9.82	6.63	3.19	32.49
40001-50000	15.91	10.61	5.3	33.30	12.73	8.68	4.05	31.82
50001-60000	18.45	12.92	5.54	30.00	15.26	11.78	3.48	22.81
60001-70000	20.01	16.1	3.91	19.50	17.10	12.26	4.84	28.32
70001-80000	21.31	19.17	2.14	10.00	18.68	14.83	3.85	20.59
80001-90000	23.14	26.3	-3.16	-13.70	19.64	17.62	2.02	10.29
90001-100000	24.8	24.71	0.09	0.40	21.16	17.59	3.57	16.86
100001-150000	28.32	29.22	-0.9	-3.20	23.92	22.02	1.90	7.94
150001-250000	33.95	28.05	5.9	17.40	28.51	23.71	4.81	16.86
250001 & over	38.74	15.34	23.41	60.40	34.11	37.04	-2.93	-8.58
<b>Total</b>	<b>18.19</b>	<b>8.93</b>	<b>9.25</b>	<b>50.51</b>	<b>16.49</b>	<b>9.34</b>	<b>7.15</b>	<b>43.35</b>

Indians that live on reserve, a trend that has been dropping for decades. As registered Indians leave the reserve for a different life and opportunities, they usually forfeit the chance to make tax-free income.

### Sales Taxes

<b>Table 24: Sales Tax Exemptions in Manitoba and Ontario, 2014-15</b>										
	Pop. in millions	Registered Indians	Reg. Indians on Reserve	% on reserve	Sales Tax Revenue (millions \$)	Prov. Exempt	% of Total Exempt	Exempt Per Capita In Prov.	Exempt Per Reg. Indian	Exempt Per Reserve Indian
MB	1.23	105,815	61,267	5.0%	2.20	70.0	0.887%	15.84	184.70	319.01
ON	13.26	125,560	46,457	0.4%	21.69	30.4	0.140%	2.29	242.37	655.05

Only two provinces offered sales tax numbers via information request and they are shown in the chart above. Because Ontario's sales tax is harmonized with the federal government, dividing the provincial portion of the HST by the 8 percent Ontario portion, multiplied by the 5 percent federal portion gives us the amount of GST exempted. Add the two totals, and the total sales tax exemptions are known. In all, the average registered Indian on an Ontario reserve saves \$1064.46 in sales taxes each year.

<b>Table 25: Federal and Total On-Reserve Exemptions for Sales Tax in Ontario, 2014/15</b>							
Federal portion of HST Exempt (millions)	Federal portion of HST Exempted Per Capita	Federal portion of HST Exempt Per Registered Indian	Federal portion of HST Exempt Per Reserve Indian	Total HST Exempt (millions \$)	Total HST Exempt Per Canadian	Total HST Exempt Per Registered Indian	Total HST Exempt Per Reserve Indian
19.02	1.43	151.48	409.41	49.45	3.73	393.85	1064.46

Venturing a guess on sales taxes based on these data points would be a ballpark figure at best. However, it is important to do so, given this capstone’s goal of estimating the total value of tax exemptions and of comparing it to federal transfers. Having a figure of zero for sales taxes would be more misleading than a loose estimate. With that in mind, an estimate is worth consideration.

In addition to the Ontario exemption totals, we also know from a compilation of provincial public accounts that provincial sales taxes in 2014-15 were \$1,376 per capita. In Ontario, however, it was \$1,636. This means the average Canadian province collected 84.13% as much tax as Ontario. If we multiply the Ontario sales tax exemption per registered Indian on reserve (\$404.41) by 84.13%, we could guess \$344.43 as a supposed national average of provincial taxes exempted per registered Indian on reserve. Multiply that by the number of reserve Indians and we get \$108,276,680 for provincial sales tax exemptions. This is certainly a conservative estimate, given that \$30 million from Ontario and \$70 million from Manitoba get us to \$100 million right away. That said, we do not know Manitoba’s method for estimation or how reliable it is.

**Table 26: Provincial Sales Taxes in Canada, 2014-15**

	Sales Tax Revenues	Population	Per capita sales tax	Exemption per on-reserve Indian
All provinces & territories	48,904,969,731	35,540,000	\$1,376.05	*344.43
Ontario	21,688,764,731	13,260,000	\$1,635.65	409.41
*Estimated based on the 84.13% ratio of Canada’s per capita sales tax to Ontario’s times Ontario’s exemption per on-reserve Indian.				

From here one may also surmise exemption totals for the GST. The GST per reserve Indian in Ontario was \$409.41. Let’s assume for a moment that this holds true for all of Canada. Multiply that \$409.41 by the 314,366 registered Indians on reserves in Canada and we arrive at an estimate



for total GST exemptions: \$128 million. Added to the provincial totals, the grand total for sales tax exemptions in Canada would be \$237 million.

Number of reserve Indians	314,366
<b>Estimated provincial sales tax exemptions</b>	<b>\$108,276,680</b>
GST exempted per reserve Indian	\$409.41
<b>Estimated GST exemptions</b>	<b>\$128,703,587</b>
<b>Total Sales Tax Exemptions</b>	<b>\$236,980,267</b>

### Grand Totals

Having made broad estimates on income and sales taxes, we come to a grand total of \$1,272,200,000 in tax exemptions due to the Indian Act. This represents less than \$35.80 per Canadian, but is a helpful \$1,995.17 per registered Indian and a hefty \$4,046.99 per registered Indian on reserve. Income taxes only account for 12 percent of the exemptions by our estimation.

<b>Tax Exemption</b>	<b>Millions of Dollars Exempted</b>	<b>Exempt per Canadian</b>	<b>Exempt per Registered Indian</b>	<b>Exempt per Registered Indian on Reserve</b>
Tobacco, provincial	258.6	\$7.28	\$405.55	\$822.61
Tobacco, federal	427.5	\$12.03	\$670.42	\$1,359.88
<b>Tobacco Total</b>	<b>686.1</b>	<b>\$19.31</b>	<b>\$1,075.97</b>	<b>\$2,182.49</b>
Provincial or Harmonized Sales	108.3	\$3.05	\$169.84	\$344.50
General Sales Tax	128.7	\$3.62	\$201.83	\$409.40
<b>Sales Total</b>	<b>237.0</b>	<b>\$6.67</b>	<b>\$371.67</b>	<b>\$753.90</b>
<b>Income, provincial &amp; federal</b>	<b>251.4</b>	<b>\$7.07</b>	<b>\$394.31</b>	<b>\$799.82</b>
Fuel and Carbon Tax, provincial	65.4	\$1.84	\$102.56	\$208.04
Fuel Excise Tax, federal	32.3	\$0.91	\$50.65	\$102.75
<b>Fuel Total</b>	<b>97.7</b>	<b>\$2.75</b>	<b>\$153.22</b>	<b>\$310.78</b>
<b>Grand Total</b>	<b>1,272.2</b>	<b>\$35.80</b>	<b>\$1,995.17</b>	<b>\$4,046.99</b>

It is worth noting that more than half of the exemptions are from tobacco alone. These smokers can indulge their habit relatively cheaply and taxpayers will cover many of the medical expenses from the risks involved. It is difficult to argue that this is fair or thoughtful policy.

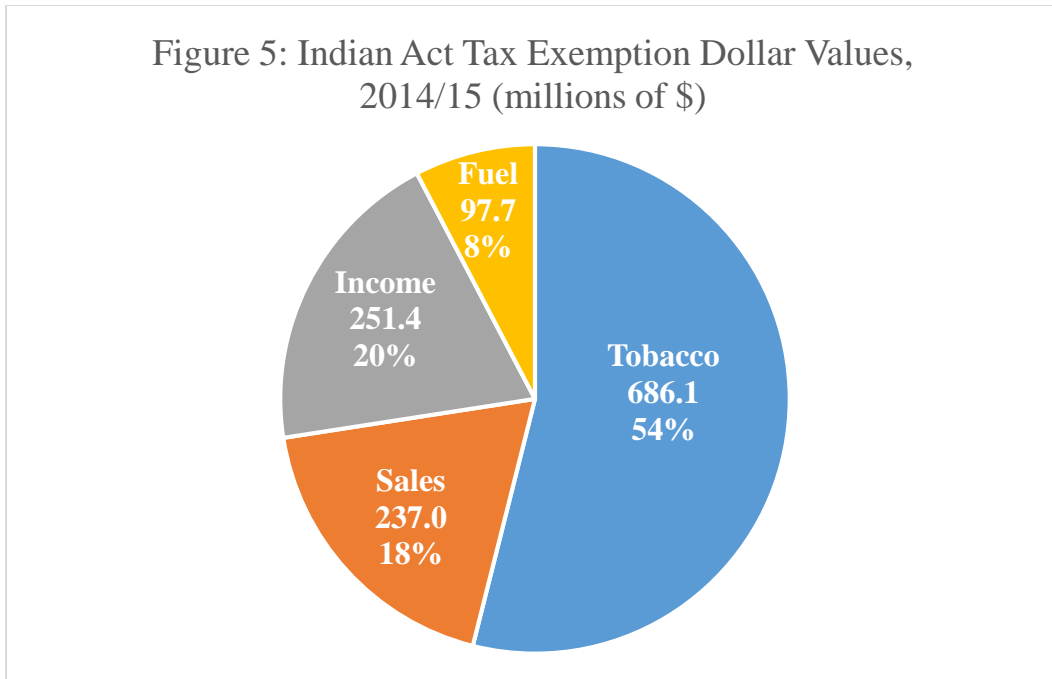
If one thinks that the increasing numbers of Aboriginals living off-reserve will relieve the amount of tax exemptions, they are only partly right. By the estimates in this capstone, income taxes only cover 12 percent of the total. Even if the proper estimate were twice as the \$139.7 million listed here, it would still be less than one quarter of the total. Tobacco consumption tends to be higher at younger ages, which is exactly what the Aboriginal population has. The 2011 census showed that children 14 and under made up 28 percent of the Aboriginal population, but just 16.5 percent of the non-Aboriginal population.<sup>78</sup> Many in this age bracket have since become smokers, meaning the tobacco exemption values will continue to increase unless changes are made.

Governments could curtail these losses by limiting purchases to one carton per week per registered Indian. Saskatchewan made this move in 2010, which helped contribute to decreased losses from tax exemptions of \$1.3 million between 2009/10 and 2011/2012 in Saskatchewan even amidst tobacco tax increases.

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<sup>78</sup> CTVNews.ca Staff, "Aboriginal Population Soaring, Getting Younger," May 8, 2013, <http://www.ctvnews.ca/canada/aboriginal-population-soaring-getting-younger-survey-1.1272166>.

Figure 5: Indian Act Tax Exemption Dollar Values, 2014/15 (millions of \$)



How then do the tax exemptions compare to the federal transfers? Such tax exemptions would be equal to 15.8% of the combined \$8.06 billion spent by AANCD and the NIHB, tax exemptions would be amount to 15.8% of the total. This is a substantial amount. Business and municipal tax exemptions would certainly increase this percentage, were they known.

### Policy Implications

The multiple millions of dollars forfeited by the different orders of government on First Nations tax exemptions, and the lack of reliable figures for much of the data, give rise to important policy implications.

First, we need to end the dearth of data on tax exemptions afforded to First Nations living in reserves. More data needs to be available and made public without the kinds of efforts expended by this author. Provinces and the federal government do not publish the values for any kind of on-reserve tax exemptions, save the Quebec government with its estimates of income tax exemptions.

Advocacy groups seem to be the only ones trying to discover and disclose such numbers and this should not be the case.

The government agencies that can fill this void are Statistics Canada and the finance departments of the provinces, territories, and Ottawa. Government budgets and public accounts could publish point-of-sale exemptions on tobacco and fuel. The Saskatchewan government, for example, posted the dollar amounts for 15 sales tax exemptions, the low-income tax credit, 3 fuel tax exemptions, 8 deductions from income taxes, 16 non-refundable tax credits, 4 corporate income tax credits, and 5 others besides, one of which was the Mineral Exploration Tax Credit that was only worth \$500,000.<sup>79</sup> Yet, the province did not publish the growing millions of dollars in First Nations tax exemptions. This oversight cannot be justified, even granting the possibility this omission is politically motivated to avoid controversy.

Statistics Canada can pick up where the governments leave off. It could publish and compile such information from the provinces. It could also ask a specific question regarding how much tax-free money was earned on reserve as part of its census or its aboriginal survey. It could also ask what percentage of household purchases were made on reserve. This information should be of interest to those promoting Aboriginal business development as well as policy wonks, researchers and governments.

TD Economics made similar recommendations in 2011.

We continue to call for improved data collection methods, better survey participation rates among communities, and less fragmented results across agencies and departments...Furthermore the collection and availability of high quality data would certainly help policymakers and other stakeholders better understand and analyze the complex issues at hand.<sup>80</sup>

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<sup>79</sup> Kevin Doherty, “Saskatchewan Provincial Budget, 2016-17” (Regina: Ministry of Finance, 2016), 56.

<sup>80</sup> TD Economics, “Estimating the Size of the Aboriginal Market in Canada.”

It is encouraging to see the growth of Aboriginal industry, commerce, education, and employment. These are all key elements to restoring peoples who have been marginalized and impoverished for decades. It is an unfortunate irony that as employment and development on reserve grow to the benefit of the people living there, and it comes at a cost to those off-reserve who do not have the opportunities to benefit from such tax loopholes.

Given that neither the federal government is not bound by any treaty to grant such tax exemptions, it may consider phasing them out or at least phasing out federal transfers to bands as they become more economically self-sufficient (a self-sufficiency certainly aided by the tax exemptions). Another option would be to have all such taxes applied consistently with those off-reserve, but to transfer the revenues to the bands where the taxes were applied. This would require changes to the Indian Act and substantial consultation and negotiation.

No one should expect such changes to be easy. Change is difficult at the best of times, and even more so when one party must exchange handouts for entrepreneurship. Even so, there are plenty of reasons to consider such change. Government by the people should always be supported by revenues from the people—not from some other people.

In the meantime, provincial and federal governments may want to re-examine tobacco tax exemptions. One option is to do what Saskatchewan did and include stricter limits on tobacco sales and enforcement of such sales in the interests of both protecting public health and preventing lost revenue. The New Brunswick government had very high tobacco exemptions per registered Indian on reserve at \$1,707. It wisely decided to rescind the PST deals that allowed First Nations there to pocket additional tax rebates for sales to non-First Nations people, an arrangement that fostered grievances and forfeited revenue. One may wonder how the \$2,630 of provincial tobacco tax exemptions per registered Indian on PEI reserves has not caught the attention of the provincial

government there. It would seem it is time to give the exemption there more scrutiny in how it is applied if not greater restrictions.

Businesses off-reserve have a legitimate complaint that tax exemptions on reserve present competitive advantages. A First Nations band could create a business with government help care of programs sponsored by the federal or provincial government, all with tax dollars they did not pay. The band can then create a business with an ownership structure of a limited partnership and avoid business taxes, retain labour while paying them less since their income is not taxed away, sell tax-free cigarettes and gasoline to registered Indians (including their own), and enjoy cheap construction and expansion costs since every product or service delivered to reserve is tax-free. Meanwhile, the band will continue to enjoy innumerable other helps from Indian and Northern Affairs Canada. It is not hard to see how legitimate complaints about this state of affairs could foster resentments towards Aboriginals, something they have already suffered enough.

On-reserve tax exemptions present an interesting irony—to the extent that First Nations people remain poor or away from the reserve, such exemptions have no impact. However, as bands and reserves leverage their tax-free advantages into commercial enterprises, the exemptions mean that taxpayers off-reserve feel a heavier burden. As pension and health care costs threaten to grow, and governments struggle to balance the budget (or fail to do so), a growing gap between potential and realized revenues should move these same governments to pay the issue of tax exemptions more attention. Now that such exemptions have an annual worth well past one billion dollars, it is in the public interest to have more examination and disclosure regarding them. The examination here is only a starting point that begs for further research, more data, and most likely changes to perspective, if not policy.

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