



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

Darren Patrick

# The Indian Act

## Section 87 of the Indian Act

### Taxation

#### **Marginal note: Property exempt from taxation**

**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.
- (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.
- (3)** No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1)(a) or (b) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the *Dominion Succession Duty Act*, chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.

**Source:** <https://laws-lois.justice.gc.ca/eng/acts/i-5/page-13.html#h-332811>

# What is Income?

## **What is Considered Income (Sources of Income)**

Section 87 of the *Indian Act* exempts from taxation the personal property of an Indian situated on a reserve.

The courts have determined that, for the purposes of section 87 of the *Indian Act*, employment income earned by an Indian is personal property.

# What is Income?

The question: Is the employment income situated on a reserve?

The courts have directed that *connecting factors* must be considered when making this determination. Revenue Canada, after receiving representations from interested Indian groups and individuals, has identified a number of connecting factors that can be used to determine whether employment income is situated on a reserve.

# **Location** of employment duties is a major connecting factor

However, employees of bands, tribal councils, or organizations that operate on their behalf may perform most of their activities off reserve.

For the employees, the connection to a reserve is that the employer is resident on a reserve and the Indian is employed in a non-commercial activity for the social, cultural, educational, or economic development of Indians who for the most part live on reserves.

# Guidelines

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

EI Benefits, Retiring Allowances, CPP Payments, Registered Pension Plan Benefits, or Wage Loss will usually be exempt when received as a result of income that was exempt. Proration also applies.

# Guideline 1

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

*Nowegijick v the Queen (1983) SCC*

# Guideline 1: Examples

## Exemption applies:

- Employee works in and performs all duties in place of employment which is located on reserve. Exemption applies because of situs of work and workplace.
- Employee lives off reserve and delivers orders to houses on-reserve, a majority of the work he performs. Because the majority of the work is done on reserve (more than 90%) exemption applies.
- Employee is a band office staff member on reserve. Duties include daily driving into town making deposits, retrieving mail and office supplies for the band office. While she leaves for work it is done for the employer located on reserve so the exemption applies.



# Guideline 1: Examples cont.

## Exemption does not apply:

- While the employee resides on reserve, his employer is not on reserve and the work he performs is conducted off-reserve. His income is NOT exempt.

# Proration Rule

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

THE EXEMPTION WILL APPLY TO THE PORTION OF THE INCOME RELATED TO THE DUTIES PERFORMED ON THE RESERVE.

# Proration Rule: Examples

- Employee does not live on reserve. Most of the work is performed off-reserve for a company located off-reserve. But 10% of work is performed on-reserve. Proration applies: 10% of employee's income is exempt.
- Employee lives off-reserve and works for an auditor. Each fiscal year she works in the band office conducting an audit for 1 calendar month. Proration: income from one month is exempt.
- Employee works for pizza restaurant off-reserve. Deliveries made to residents on-reserve. No exemption applies as there are insufficient 'connecting factors'.

## **Guideline 2**

THE EMPLOYER IS RESIDENT ON A RESERVE  
AND THE INDIAN LIVES ON A RESERVE.

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

# Guideline 2: Examples

## Exemption applies:

- Employee lives on reserve. Employer is on reserve. Employee works in mining camps off-reserve.
- Both employee and employer have a primary residence on reserve. Work is conducted off-reserve. At times the employee resides near the employment sites off-reserve.

# Guideline 2: Examples

## No exemption:

- Employee lives on reserve and works for a for-hire company located on reserve. Work sites are located off-reserve. Very few of the business activities other than some administrative duties of his employer are conducted on reserve. Because of the relatively weak connecting factors, his income is not exempt.

## **Guideline 3**

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

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

# Guideline 3: Examples

## **Exemption applies:**

- Employee lives on reserve and is employed as an RCMP officer. Her detachment is off-reserve, but as a liaison more than half of her employment is performed on reserve.

## **No exemption:**

- Employee lives off-reserve. She is employed by a corporation located on reserve. Her work is performed off-reserve although she goes to the reserve weekly for supplies.



# Guideline 4

THE EMPLOYER IS RESIDENT ON A RESERVE AND THE EMPLOYER IS:

- AN INDIAN BAND WHICH HAS A RESERVE, OR A TRIBAL COUNCIL REPRESENTING ONE OR MORE INDIAN BANDS WHICH HAVE RESERVES, OR
- AN INDIAN ORGANIZATION CONTROLLED BY ONE OR MORE SUCH BANDS OR TRIBAL COUNCILS, IF THE ORGANIZATION IS DEDICATED EXCLUSIVELY TO THE SOCIAL, CULTURAL, EDUCATIONAL, OR ECONOMIC DEVELOPMENT OF INDIANS WHO FOR THE MOST PART LIVE ON RESERVES;

AND

THE EMPLOYMENT DUTIES ARE CONNECTED WITH THE EMPLOYER'S NON-COMMERCIAL ACTIVITIES CARRIED ON EXCLUSIVELY FOR THE BENEFIT OF INDIANS WHO FOR THE MOST PART LIVE ON RESERVE.

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

# Guideline 4: Examples

For further examples see:

- <https://www.canada.ca/en/revenue-agency/services/aboriginal-peoples/indian-act-exemption-employment-income-guidelines.html>

# Guideline 4: Examples

## **Exemption applies:**

- Employer: education department of a tribal council located on reserve. Location of employment: off-reserve but central to several reserves. Employee's location: lives off-reserve. Exemption applies because the duties performed for the tribal council are connected to the reserves served by the council, and the employer is resident on a reserve.
- Employer: a technical training institute operated by five Indian bands for Indians who live on reserve. The administrative office of the institute is on a reserve. Employee's location: lives off reserve. Location of employment: work done off-reserve at a location central to several reserves. Exemption applies because the duties she performs for the Indian organization that employs her are connected to the reserves served by the Indian organization, and the employer is resident on a reserve.

# Guideline 4: Examples

- Mr. P works for an Indian organization providing child and family related services to members of a large number of bands with reserves scattered over a large area within a province. Some of these services are provided in the provincial capital, where Mr. P works, and the organization's administrative office is at an off-reserve location central to the bands served. However, the organization's directors, consisting of the band chiefs, meet at each reserve in rotation. Mr. P is exempt from income tax on his employment income because the duties he performs for the Indian organization that employs him are connected to the reserves served by the Indian organization, and the employer is resident on a reserve.
- Ms. Q works for a company that is resident on a reserve and owned by a tribal council. The company exists to provide adequate low-cost housing on reserves and the company's property is for the most part on reserves. Ms. Q performs her duties at an off-reserve location central to several reserves. Ms. Q is exempt from income tax on her employment income because the duties she performs for the Indian organization that employs her are connected to the reserves served by the Indian organization, and the employer is resident on a reserve.

# Guideline 4: Examples

## No Exemption:

- Employer: a commercial building supplies company that is owned by a tribal council and is resident on a reserve. Employee: performs employment duties off-reserve and lives off-reserve. Employment income is taxable. The residence of the employer on reserve is insufficient on its own when both the employer and the employee are active in the commercial mainstream of society.
- Employer: Indian organization dedicated to organizing social programs for off-reserve Indians. The organization is located off-reserve. Employee's income is taxable because there are no factors connecting her income to a location on a reserve.

# Employment Related Income

UNEMPLOYMENT INSURANCE BENEFITS, RETIRING ALLOWANCES, CPP PAYMENTS, QUEBEC PENSION PLAN PAYMENTS, REGISTERED PENSION PLAN BENEFITS OR WAGE LOSS REPLACEMENT PLAN BENEFITS WILL USUALLY BE EXEMPT FROM INCOME TAX WHEN RECEIVED AS A RESULT OF EMPLOYMENT INCOME THAT WAS EXEMPT FROM TAX.

IF A PORTION OF THE EMPLOYMENT INCOME WAS EXEMPT, THEN A SIMILAR PORTION OF THESE AMOUNTS WILL BE EXEMPT.

# Employment Related Income: Examples

- Employee lives on reserve and was employed with an employer located on reserve. Employee loses their employment. Unemployment Insurance Benefits they receive will not be subject to taxation.
- Employee works for a Health Authority located off-reserve. One-fifth of her annual income was deemed exempt because of work performed at a clinic on reserve. As a result, one-fifth of her CPP payments is also exempt along with any additional income (in some cases a retiring bonus).

# CANADA EMERGENCY RESPONSE BENEFIT IN RESPONSE TO COVID-19

- Following the initial announcement of CERB, the government expanded the benefit in response to the need for continued support during this pandemic.
- On April 15, 2020, eligibility rules were extended to include part-time and seasonal workers.
- On June 16, 2020, the government announced that it is extending the maximum eligibility period for the CERB by an additional eight weeks.
- The CERB will provide a taxable benefit of \$500 per week, for a period of up to 24 weeks (16 weeks prior to the extension), to those who have stopped working for reasons related to COVID-19. See the [CRA's website](#) for more detail.
- CERB must be reported as income on the recipient's income tax return for the 2020 tax year. Each payment of the CERB covers a four-week period from March 15, 2020 to October 3, 2020.



# CERB, cont.

- CERB gives financial support to employed and self-employed Canadians who are directly affected by COVID-19.
- Who have stopped working because of reasons related to COVID-19 **or** are eligible for Employment Insurance regular or sickness benefits **or** have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between December 29, 2019 and October 3, 2020;
- Who had employment and/or self-employment income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and,
- Who have not quit their job voluntarily.
- <https://www.canada.ca/en/services/benefits/ei/cerb-application.html>

# ***Williams v Canada (1992) SCC***

- I make note of the *Williams* case as the CERB is primarily used as a supplementary form of Unemployment Insurance and any other form of income as previously discussed. The connecting factors will apply to any CERB received. For example, if an individual was receiving EI Benefits with tax exemption at the onset of the COVID outbreak the continued benefits would be tax exempt.
- If the individual was working off-reserve and was not tax exempt but is now isolated on their reserve due to the outbreak, they would not be tax exempt if their previous income was not tax exempt.

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  - Questions?