

2021

Kahnawà:ke

Business Information Guide



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Kahnawà:ke's Economic Development Commission

GENERAL BUSINESS INFORMATION

The following is a summary of general business information which will answer some of your questions regarding what is required when starting a new business or hiring new staff.

DISCLAIMER ♦

This information is not intended to replace actual government guidelines or their respective instruction brochures and should be used as a preliminary guide only. Wherever possible, we have included website addresses, emails and/or telephone numbers so that you can contact the various agencies yourself to obtain more detailed information. Kindly be aware that government office telephone numbers may change from time to time, and their offices are often moved to different locations, so we recommend you contact them by telephone or verify on-line before your visit to reconfirm their exact locations.

Also, please feel free to contact your Business Services Officer at Tewatohnhi'saktha, (450) 638-4280, who will be more than happy to answer any questions you may have regarding this information or anything else pertaining to your business. It will be our pleasure to serve you. Níá:wen.



Tsothorbkó:wa / January 2021

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WHAT IS A BUSINESS

A business is an activity that you intend to carry on for profit and there is evidence to support that intention. A business includes a profession, a calling, a trade, a manufacture, an undertaking of any kind, or an adventure or concern in the nature of trade. Business income includes income from any activity you do for profit. For example, income from a service business is business income. However, you do not include employment income as business income. You need to know if you are an employee or self-employed.

The date when the business can be said to have commenced must be known. Generally, it is considered that a business starts whenever you start some significant activity that is a regular part of the business or that is necessary to get the business going. For more extensive information, refer to www.canada.ca/en/services/business/start.html

Corporation, association, cooperative, organization or other entity refer to all legal persons and any group or persons pursuing a common goal, with or without the intent of earning a profit. A corporation business number begins with 11.

Sole proprietorship is a person operating a business of which he or she is the sole owner. This does not constitute a separate legal entity, as the business and its owner are one and the same. A sole proprietorship business number begins with 22.

A partnership refers to an entity in which two or more persons agree to carry on the operation of a business by pooling their property, knowledge or activities and to share any resulting profits. A partnership business number begins with 33.

HOW TO REGISTER YOUR COMPANY NAME

Registering your company name will guarantee that no one else will be able to open a business using the same name. Some banks or other financial lending institutions will require that you register your company name if the name of your business is different from your own name, for instance, Acme Plumbing as opposed to your own name followed by the word 'Plumbing', before they'll open a commercial account for your business.

There is an annual fee to renew your business name in the register.

Refer to *www.registreentreprises.gouv.qc.ca* for details on how to register your company name on-line,

or in person at:

2050, rue De Bleury, RC 10,
Station Place des Arts,
Montréal, Québec

by mail at:

Régistraire des entreprises,
Services Québec,
Immatriculation et modification au registre
C.P. 1364, succ. Terminus
Québec (Québec) G1K 9B3

by courier service at:

Régistraire des entreprises,
Services Québec,
2050, rue De Bleury,
Montréal (Québec), H3A 2J5

or by phone at: 1-800-644-0075

HOW TO REGISTER YOUR BUSINESS/ FEDERAL GOVERNMENT

The business number (BN) is a numbering system that simplifies and streamlines the way businesses deal with the federal government and is used to remit the source deductions of your employees, including federal income tax and EI contributions. It is based on the idea of one business, one number.

Each business requires one BN for its legal entity. A legal entity is defined as a sole proprietor, partnership, corporation, trust or other organization. The BN has a total account number of 15 characters, 9 to identify the business and two letters and four digits to identify each account a business may have. A corporation BN will begin with 11, a sole proprietorship BN will begin with 22, and a partnership BN will begin with 33. Refer to www.canada.ca/en/revenue-agency/services/tax/businessnumber (1-800-959-5525) for detailed information to register your business with the Canada Revenue Agency. Remittances are made on a monthly basis. Instructions to remit source deductions can also be found at this website.



CALCULATING EI RATES FOR EMPLOYEE SOURCE DEDUCTIONS

Revenue Canada's Employment Insurance (EI) rates* change on January 1st of each year. As the employer, you withhold a portion of your employee's monthly salary plus you contribute 1.4 times that amount and remit the total to Revenue Canada. Here is the formula for EI calculation: $EI = (\text{gross salary} \times \% = z) + (z \times 1.4)$ = total amount remitted to Revenue Canada. For EI premium rates, maximums and other details, refer to www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/ei/bstrc-eng.html

The EI rates for 2021 and calculating instructions are as follows: Revenue Canada's EI rate for 2021 is 1.18%. In Québec, the maximum annual insurable earnings are \$56,300; the maximum annual employee premium is \$664.34 and the maximum annual employer premium is \$930.08. We'll calculate the formula based on a gross salary amount of \$500 per week.

$$EI = (\$500 \times 1.18\% \text{ or } \$500 \times .0118 = \$5.90) + (\$5.90 \times 1.4 = \$8.26)$$
$$EI = \$5.90 + \$8.26 = \$14.16$$

\$5.90 is the employee's weekly EI contribution which you withhold from his gross salary. Therefore, his salary after you deduct his EI contribution would be \$494.10 per week.

\$8.26 is the employer's weekly contribution to Revenue Canada that the employer must contribute from their own pocket for the employee's EI benefit.

The total of the two above amounts, \$14.16, is what the employer submits to Revenue Canada each week so that your employee will be eligible to collect employment benefits if he is laid-off. If the month has four weeks, then $\$14.16 \times 4 = \56.64 is what you submit; if the month has five weeks, then $\$14.16 \times 5 = \70.80 is what you submit. Monthly payments of this Employee Source Deduction can be made directly with the teller at the Caisse Populaire.

T4 AND T4 SUMMARY TO REVENUE CANADA

In all instances, you have to file your T4 and T4 Summary (which is a report on the total amount of source deductions that you collected from your employees for the year plus the portion you paid), on or before the last day of February following the calendar year to which the information return applies. For details on completing the T4 slip(s) and T4 Summary, refer to *www.canada.ca/en/revenue-agency/services/tax/business/topics/payroll.html*. You must also give your employees their T4's before the end of February.

HOW TO REGISTER YOUR BUSINESS/ PROVINCIAL GOVERNMENT

To register your business for Québec programs and to remit the source deductions of your employees including provincial income tax, QPIP contributions, Quebec Pension Plan and Québec Commissions des normes du travail and the Québec Health Services Fund, apply to Revenu Québec at *www.revenuequebec.ca* or (514) 873-4692 for a Numéro d'Entreprise du Québec, or NEQ, which is a 10-digit number assigned to your company. You will also need an ID number (identification number) to remit source deductions in Quebec. Apply for both of these numbers at the same time. Remittances are made on a monthly basis. Instructions to remit can also be found at the Revenue Québec website.

Notes

QUEBEC ENTERPRISE REGISTER (REQ) NEW SERVICE FOR ENGLISH-SPEAKING ABORIGINALS

Is your business registered with the REQ? As of April, 2015 you may communicate directly with the REQ for support by email at registre@servicesquebec.gouv.qc.ca. Four agents are now specifically assigned to the English-speaking Aboriginal clientele to facilitate the business registration process. However, all inquiries must be transmitted by email because these resource persons don't have individual phone lines.

They will reply on the same day of your request, except if the email is received at the end of the day. In this case, they will respond the following morning. The following information should be provided in your email:

- The word “Aboriginals” is to be mentioned in the subject of the email;
- Name and phone number of the person to be contacted;
- Availability for the return call;
- The NEQ (if applicable);
- Reference number of the application (if applicable);
- The subjects(s) to be discussed.

In addition to providing the necessary information to the Aboriginal clientele, the designated resource persons will take note of the suggestions and comments of the English clientele as to the on-line services and the Enterprise Register's forms. Although it's not possible to have English forms because of Quebec's language policy, a follow-up to the comments collected by the Aboriginal English-speaking clientele will be made and modifications could be made to the translations in order to improve them if required.

CALCULATING QPIP RATES FOR EMPLOYEE SOURCE DEDUCTIONS

Revenu Québec's Parental Insurance Plan (QPIP) premium rates change on January 1st of each year. As the employer, you withhold a portion of your employee's salary plus you contribute a percentage of the employee's salary, add the two amounts together and remit it to Revenue Québec on a monthly basis. Here is the formula for QPIP calculations, with (a) being the employee's premium percentage rate and (b) being the employer's premium percentage rate: $\text{QPIP} = (\text{employee's gross salary} \times a) + (\text{employee's gross salary} \times b) = \text{total amount remitted to Revenu Québec}$. For QPIP premium rates, maximums and other details, refer to www.revenuquebec.ca/en/businesses/source-deductions-contributions

The QPIP rates for 2021 and calculating instructions are as follows: Revenu Québec QPIP employee premium rate for 2021 is 0.494%; employer premium rate is 0.692%. In Québec, the maximum annual insurable earnings are \$83,500; the maximum annual employee premium is \$412.49 and the maximum annual employer premium is \$577.82.

We'll calculate the formula based on a gross salary amount of \$500 per week.

$$\begin{aligned}\text{QPIP} = & (\$500 \times 0.494\% \text{ or } \$500 \times .00494 = \$2.47) \\ & + (\$500 \times .00692 = \$3.10)\end{aligned}$$

$$\text{QPIP} = \$2.47 + \$3.10 = \$5.57$$

\$2.47 is the employee's weekly QPIP contribution which you withhold from his gross salary. Therefore, his salary after you deduct his QPIP contribution would be $\$500 - \$2.47 = \$497.53$ per week.

\$3.10 is the employer's weekly contribution to Revenu Québec that the employer must contribute from their own pocket for the employee's QPIP benefit.

The total of the two amounts, \$5.57, is what the employer submits to Revenu Québec so that your employee will be eligible to collect benefits for maternity, paternity, parental and adoption. If the month has four weeks, then $\$5.57 \times 4 = \22.28 is what you submit; if the month has five weeks, then $\$5.57 \times 5 = \27.85 is what you submit. Monthly payments of this Remittance of Source Deductions and Employer Contributions can be made directly with the teller at the Caisse Populaire.

RELEVÉ 1'S AND RL-1 SOMMAIRE TO REVENU QUÉBEC

In all instances, you have to file your Relevé-1's and RL-1 Sommaire (which is a report on the total amount of source deductions that you collected from your employees for the year plus the portion you contributed), before the last day of February following the calendar year to which the information return applies. For details on completing these forms, refer to www.revenuquebec.ca/en/businesses/rl-slips-sommes. You must also give your employee their RL1's before the end of February.

LABOR STANDARDS IN QUÉBEC

The Commission des normes du travail du Québec informs the Québec population on matters dealing with labor standards, supervises the application of labor standards, receives complaints from employees, transmits recommendations to the Minister of Labor and endeavors to bring about agreements between employers and employees. They also issue a publication detailing the minimum conditions of employment for all Québec employees. For more details and information, refer to www.cnt.gouv.qc.ca (514-873-7061). Their office is located at the Regional Offices of the Commission des normes du travail, 26th Floor, 500 Rene-Levesque Blvd. West, Montreal, Qc, H2Z 2A5.

MINIMUM WAGE

Effective May 1, 2021 the general rate of minimum wage is \$13.50 per hour. This rate changes every year. Contact the Commission des normes du travail du Québec at 514-873-7061 or visit their website www.cnt.gouv.qc.ca for wage rates applicable to tip-earning employees and individuals working in the garment or domestic industries, whose rates differ from the general rate.

ROE (RECORD OF EMPLOYMENT)

When an employee has quit, was laid-off or their employment was terminated, or may have seven consecutive calendar days without both work and insurable earnings from the employer, then by law, an ROE must be completed and given to the employee. The employee requires this report in order to apply for employment insurance benefits. You must contact Service Canada at 1-800-367-5693 to order these reports which takes about 10 working days to receive by mail. The report has 3 copies, one for your employee, one the employer keeps for the file and one is mailed to Revenue Canada's Bathurst, New Brunswick office. All instructions on completing the report and the mailing address are contained in the report. A penalty may apply to employers who fail to issue an ROE to their employees.

EI (EMPLOYMENT INSURANCE) BENEFITS

A first-time claimant must work a minimum of 910 hours to be eligible to receive employment benefits. For a second application claim, 695 hours are needed, which is about 19 weeks at 35 hours per week. Applications for EI benefits could either be completed on-line at www.servicecanada.gc.ca or made in person. The address of the office in Chateauguy is: Chateauguy Service Canada Centre, 245 St. Jean Baptiste Blvd, Room 101, Chateauguy, Quebec, J6K 3C3, and their fax number is 450-691-4247. The applicant should apply for benefits no later than 4 weeks from the last day worked, otherwise they will experience delays in the processing of their claim and receiving their benefits. Service Canada's Employment Insurance telephone information service number is 1-800-206-7218. To apply for EI benefits, the applicant will need their ROE, their Social Insurance Number, picture proof of their identity, the address of their bank and a void cheque sample for automatic deposit.

QPIP (QUEBEC PARENTAL INSURANCE PROGRAM) BENEFITS

QPIP provides employees with benefits for maternity, paternity, parental and adoption. To apply for benefits, the employee should call 1-888-610-7727 or www.rqap.gouv.qc.ca to apply on-line.

MSI (MOHAWK SELF-INSURANCE)

MSI is workplace insurance for your employees which covers on-reserve, on-the-job bodily injury only. The employer pays the monthly MSI premium. Non-Native employees are eligible for this insurance if they work on the Territory of Kahnawake. Contact the Mohawk Council of Kahnawake at 450-632-9595 to register your employees or for more information.

ANSWERS TO FREQUENTLY ASKED QUESTIONS

Note:

This document is not intended as specific legal advice and should not be construed as such. Each situation differs according to its own particular circumstances, and you should always consult a lawyer for advice as to how the law applies to a given set of facts.

Source: Legal Council of the Mohawk Council of Kahnawake

1. Can an individual/private business garnish wages if a contract has been signed with the client agreeing to it?

There are several scenarios that must be examined in order to properly address this question, as each bears its own legal regime. However, in most situations, wages will not be susceptible of garnishment, as it is tantamount to a seizure of property.

———— Situation #1 ————

According to s. 89 (Indian Act), the seizure of property on reserve is not possible by a “person” other than an “Indian” or a “band”. This is a right that cannot be contracted away since it is probably a matter of “public order” (see: *Mitchell v. Sandy Bay Indian Band*, [1990] S.C.R. 85). Therefore, in order for garnishment to succeed on a reserve, the garnishee must be either a non-“Indian” or not a “band”, otherwise they are protected by s. 89. Despite an entire “Indian” ownership, both corporations, and partnerships cannot by definition be considered “Indians”, and nor can they be “bands”, and are therefore beyond the protection of s. 89. A sole proprietorship owned by an Indian, on the other hand, is considered an Indian.

———— Situation #2 ————

Assuming the garnishee and garnishor are both either an Indian or a band, (and are thus exempt from restrictions on garnishment/seizure), or in the alternative, that s. 89 does not apply, (in which

case garnishment/seizure is according to applicable law) is the procedure for seizure by garnishment is governed by the Code of Civil Procedure, s. 625-650. A contractual agreement by a client permitting garnishment does not eliminate the required process of obtaining a judgment, which is the focus of this procedure; however, it will facilitate the burden of proof in that procedure.

Situation #3

In a third situation, let us assume [1] that the “client” is himself or herself an employee, and not a third party who entered into the contract, or did not enter into a contract with another other than his/her employee, and [2] that this contract does not violate rules of contract formation, or that consent was not vitiated, or that some other exception can be found to render the contract either void or invalid. In this scenario, the CCQ enables the contractual retention of monies. Retention, here, is different than garnishment, since no seizure is necessary. The employer is the one with whom the employee/client entered into a relationship, and the monies therefore need not be “seized” as they already are in the employer’s possession. However, a right of retention can only be contractually granted if it is not waiving a public order right. Since in an employment contract, one’s right to one’s wages is a matter of public order, the monies being retained must be something other than employment wages, however unlikely that may be. In this case, the following CCQ provisions on retention would apply.

Art. 1592

A party who, with the consent of the other party, has detention of property belonging to the latter has a right to retain it pending full-payment of his claim against him, if the claim is exigible and is directly related to the property of which he has detention.

Art. 1593(1)

The right of retention may be set up against anyone.

The following are exempt from seizure:

(7) Benefits payable under a supplemental pension plan to which an employer contributes on behalf of his employees, other amounts declared unseizable by an Act governing such plans and contributions paid or to be paid into such plans.

Furthermore, under laws pertaining to bankruptcy in Quebec, a certain portion of salaries and wages based on the number of dependants are exempt from seizure as well. Therefore, the amount must be taken into consideration in each given situation.

2. When a business owner files their personal income tax, do they have to attach their business income tax to it?

If the business is a corporation, it is considered a separate legal entity, and is therefore not related to a person's personal income. If an owner becomes an "employee" or a "contractee" of the corporation, then the money earned is declared in one's personal income tax. Similarly, if any dividends, bonuses or stock options are issued to an "owner" from "their" corporation (shareholders are considered to be equity owners in the corporate context), then it considered part of one's taxable personal income.

If the business is not a corporation, then the business income becomes the personal income of the owner, subject to one's share of the ownership of the business, in the case of a partnership, or in its entirety, in the case of a sole proprietorship. There is a line/section on the personal income tax form designated for business income or independent contract income.

3. What are the implications of incorporating federally and provincially?

Incorporation in General

A corporation is constituted under a statute (see: Canada Business Corporations Act, R.S., 1985, c. C-44, and the Companies Act R.S.Q. C-38) and exists as a **distinct legal entity** from its shareholder or shareholders. Because it is a distinct legal entity, and is not susceptible of being an “Indian” according to the Indian Act, certain benefits may actually be lost through incorporation.

The goal of a corporation is to operate a business for profit and to distribute the profits among the shareholders.

The following are some of the characteristics of a corporation:

- ◆ A corporation exists on an ongoing basis, until such time as it is wound up.
- ◆ A corporation can be set up under the authority of either a federal or a provincial statute. If you intend to operate your business solely in Québec, it might be advisable to incorporate under a provincial statute. However, the corporate name of a federally incorporated entity is protected throughout Canada.
- ◆ A corporation has exclusive ownership of all property (whether money or personal property) transferred to it by its shareholders in exchange for shares of the corporation.
- ◆ A shareholder’s liability for the corporation’s debts is limited to his or her investment, unless the shareholder provided personal guarantees for a loan to be invested in the corporation’s business.

LIABILITY OF DIRECTORS

If the corporation fails to remit an amount payable to the Ministère, the corporation and the directors serving at the time of the omission are jointly liable for the amount in question, as well as any penalties and interest. However, directors are not liable if they acted with reasonable care, dispatch and skill under the circumstances, or if it was impossible for them to be aware of the omission.

Source: <http://www.revenu.gouv.qc.ca/eng/entreprise/demarrage/types/societe.asp>

ADVANTAGES AND DISADVANTAGES OF FEDERAL AND PROVINCIAL INCORPORATION

The next decision is whether to incorporate your company federally or provincially. If you incorporate federally (a “Corporation”), your business will be empowered to conduct business throughout Canada. Although your “corporation” will still be subject to provincial regulations, and will have to pay a license or registration fee in some provinces, no province will be able to prevent your company from conducting business under its corporate name. A provincially incorporated company, (a “Company”) on the other hand, may not be able to operate under the same name in another province, if another corporation with a similar name already exists in that province.

One disadvantage of federally incorporating your company is the required disclosure of financial records. A private corporation’s financial statements must be made public if a federal corporation has gross revenues for a fiscal period in excess of \$10 million, or has total assets in excess of \$5 million as of the last day of any fiscal period. These gross revenues and total asset figures include those of affiliated companies and the parent company (Canadian Business Guide).

Also, to federally incorporate, the composition of your company’s board of directors must meet the requirements of the Canada Business Corporation Act. Under this Act, a majority of the directors

of a federally incorporated company must be resident Canadians, unless “a holding corporation earns in Canada directly or through its subsidiaries less than five per cent of the gross revenues of the holding corporation and all of its subsidiary bodies corporate together, then not more than one-third of the directors of the holding corporation need be resident Canadians” (“...Incorporation Kit, Industry Canada).

Finally, corporations provide more security for minority shareholders than do companies. So when a client is in a minority shareholding position, we suggest incorporating at the federal level.

Industry Canada’s Small Business Guide to Federal Incorporation provides detailed information on how to federally incorporate your company. Federal incorporation costs \$500.

If you incorporate your company provincially, you’ll have to register and license your company through the appropriate provincial Registrar in each province and territory you wish to do business in, outside of the original incorporation jurisdiction. So if you incorporate your business in Ontario, and then want to operate in New Brunswick as well, you’ll have to register your business with the New Brunswick Registrar as well, and pay the appropriate additional fees. Incorporation fees vary from province to province, but generally, provincial incorporation costs about half as much as federal incorporation.

4. What are the pros and cons of registering for a business number?

Registering for a number will facilitate trade with suppliers who, for tax reasons, require that they provide a business number of their clients. Also, having a number will permit one to gain tax credits for off-reserve business, where tax credits would otherwise be lost. But these are only general advantages.

Since there are only a few scenarios in which one has a choice whether to register or not, this becomes a question of which form of business

organization one wishes to pursue. Please refer to the answer to question 5.

5. Who should register for a business number and what are the implications?

Whether you are required to register your business depends on its legal structure. A registered business is automatically included in the business register maintained by the Inspector General of Financial Institutions (IGFI) making its existence a matter of public record.

To register your business, complete the declaration of registration corresponding to its legal structure.

SOLE PROPRIETORSHIPS AND PARTNERSHIPS

If you are starting a sole proprietorship under your own first name and last name, you are not required to register (although you may do so if you wish). For example, the Henry Jenkins Travel Agency would not be required to register; however, a business called Laura's Pet Care would be required to register, since its name does not include the owner's last name. If you are starting a joint venture, you are not required to register (although you may do so if you wish).

In most other cases, you must register your business. To do so, file the declaration of registration, along with the applicable fee, at an office of the IGFI in Montréal or Québec City, within 60 days following the date on which you begin your business activities. You may also file your declaration with the Ministère du Revenu or the Clerk of the Superior Court.

CORPORATIONS

If you plan to incorporate your business under the Companies Act (in Québec), you may apply to the IGFI (but not to the Ministère du Revenu) to have your corporate name reserved for you for a period of 90 days. You must then complete the required forms and file them along with your articles of incorporation.

If your business is incorporated under the Canada Business Corporations Act, or if it is a foreign company that operates in Québec or has its head office there, you must complete a declaration of registration and file it with the IGFI within 60 days following the date on which your business begins operating in Québec.

Source: <http://www.revenu.gouv.qc.ca/eng/entreprise/demarrage/demarches/immatricul.asp>

6. What type of legal action can a Kahnawà:ke business take in regards to collecting outstanding accounts from Kahnawà:ke clients and non-registered businesses?

In order to fully answer this question we must distinguish between the right to take legal action and the right to execute on a judgement resulting from the said legal action. Whether the creditor is a corporation/company, a partnership or a sole proprietorship, it has a right to sue a debtor who is in default of fulfilling its obligations under contract, regardless of whether the debtor is native or non-native. The difficulty comes in executing a judgement when the creditor is a non-native, such as a corporation/company or a partnership, and the debtor is a native.

Section 89 of the Indian Act protects natives from any type of seizure of their property situated on reserve at the instance of a non-native creditor. As such, even if a non-native can sue a native for breach of contract, they cannot execute the judgement if the only property owned by the native is situated on reserve.

With this distinction in mind, a corporation/company, or partnership which during a twelve month period immediately before the taking of an action had no more than five employees may sue its debtor in small claims court if the value of the action is no more than \$7,000.00. If the value of the action is between \$7,000.00 and \$70,000.00 the creditor, regardless of its status, can sue in the Court of Quebec. If the value of the action exceeds \$70,000.00 then in all cases the action is taken before the Superior Court of Quebec.

Kahnawake is situated in the judicial district of Longueuil, generally if the contract is signed in Kahnawake the action resulting from breach of contract should be taken in that district.

7. What tax exemptions in the goods and services markets, outside of the normal “native status” exemptions, are applicable to me as a sole proprietor?

According to Technical Information Bulletin (August 2006) B-039R3: Businesses owned by Indians, Indian bands or band-empowered entities whose annual taxable sales of property and services are more than \$30,000 are required to register for the GST/HST. Like other businesses, once registered, they must collect and remit the tax on their sales of property and services (unless the sales are made to Indians, Indian bands or band-empowered entities under conditions where the GST/HST is not payable). They may also claim input tax credits for the GST/HST paid on purchases made in the course of their commercial activities.

Businesses, whether owned by Indians or non-Indians, selling property or services to Indians must include their taxable sales to Indians, even if no GST/HST was charged, in their calculation of annual revenue to determine if they must register for the GST/HST. Sales of taxable property and services that are relieved from tax when supplied to Indians, Indian bands or band-empowered entities under the circumstances described in this bulletin are still considered to be taxable sales for determining registration requirements.

Sole proprietorships and partnerships owned by individual Indians receive the same treatment on purchases as individual Indians. If they are registered for the GST/HST, they, like all other businesses, must collect the GST/HST on their sales of taxable property and services (unless they are made to Indians, Indian bands or band-empowered entities under the conditions in which the GST/HST is not payable) and they can recover any GST/HST paid on their eligible off-reserve business purchases by claiming input tax credits. So apart from “native status” exemptions a “native” business will be

treated like any other business for the purpose of goods and services taxes.

8. As a sole proprietor, is it possible to form a partnership with a non-native corporation? If yes, how does this affect my tax responsibilities for a contract to be fulfilled within the territory or outside the territory?

Yes, it is possible for a sole proprietor to form a partnership (for the purpose of this answer we assume it will be a general partnership as opposed to a limited partnership) with a corporation (a corporation is neither native nor non-native).

If you are a member of a partnership, your partnership income will be taxed in the same way as any other business income. For the purposes of section 87 of the Indian Act (this is the general tax exemption for status Indians), the key factor will be the location of the partnership's income-earning activities. Under the Income Tax Act, partnership income is first calculated as if the partnership were a separate person. Your share of the partnership income from each source will be allocated to you, and will retain its characteristics as to source and nature. If all the partnership's income-earning activities are carried out on a reserve, all your income from the partnership will be exempt from tax. If one-half of the partnership's income-earning activities are carried out on a reserve, one-half of your share of the partnership income will be exempt.

9. Is it mandatory to register with the CNESST for businesses who expand goods and services sales off reserve?

According to the CNESST, this form of insurance is mandatory for all employers. All businesses having an establishment in Quebec and who employ at least one worker, whether full-time or part-time, are required to register with the CNESST as an employer.

10. What are the personal income tax implications of doing business off reserve if I am a status Indian living on reserve and my registered company (with a Quebec enterprise number and business number) is located on reserve?

Section 87 of the Indian Act does not apply to corporations or companies, even if they are owned or controlled by a status Indian. A corporation or company is treated as a separate taxpayer. As such, neither a corporation or company would be considered an “Indian” for purposes of the exemption. Therefore, any business income earned by the company, whether on or off reserve, will be taxable at the company’s corporate tax-rate.

11. What are the tax implications of registering (with a Quebec enterprise number and business number) my sole proprietorship?

If you register your sole proprietorship with Quebec, Quebec may not know that the business is being operated by a status Indian and consequently that the business may be entitled to certain tax exemptions. As such, Quebec will treat the sole proprietorship as any other business in Quebec and may assess the business for certain taxes, fees, contributions and levies for which the sole proprietorship may be exempt. In this case it will be up to the sole proprietorship to prove it is entitled to the particular exemption claimed.

12. As a contractor in the construction industry, what are the tax implications of becoming registered with the Régie du Bâtiment du Québec (RBQ). Do I have to grant RBQ access to my bank statements?

The tax implications of a contractor in the construction industry does not depend on whether or not he is registered with the RBQ, but rather depends on the type of business organization he operates, where he operates, and where his clients are located and how all these factors are related to the reserve. If you are, however, registered with the RBQ, the Board may in the exercise of their powers of supervision examine

and make copies of a contractor's books, ledgers and files the whole in accordance with article 112(2) of the Building Act R.S.Q. c., B-1.1.

13. As an employer and regardless of where my contracts are performed, am I liable for contributions to the Commission des normes de travail (CNT), Health Services Fund (FSS). and Training Program (FDRCMO)?

This question cannot be fully answered in this format. For each "levy" we must first determine if the amount claimed by the Government is a "tax." If the "levy" were in fact a tax then we would have to determine if the employer could claim an exemption under the Indian Act. This would depend on the business structure used to carry on the business activity. Thereafter we would in some cases have to consider whether the business activity is sufficiently connected to the reserve in order to benefit from an exemption. Therefore the question is too broad in scope to properly answer in this format.

14. If I fail to pay any assessment made against my sole proprietor company, am I personally liable for payment?

If so, can my bank accounts be seized or frozen?

What else can they do to collect?

If you are operating a sole proprietorship business you will be personally liable for all debts of the business. If you are a status Indian section 89 of the Indian Act will protect your property situated on reserve from seizure. However, any property that you own situated off-reserve is subject to seizure for the debts of your business. What is generally done in the case of a tax liability is that Quebec or Canada will withhold tax credits or government payments that you may be entitled to in compensation of your tax liability.

15. What is the theoretical jurisdiction for labor on a Reserve?

In general terms, provincial labour and employment law (such as the Québec Labour Standards Act) will apply to Indians on a reserve.

————— *Section 88 of the Indian Act states:* —————

“General provincial laws applicable to Indians – Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the First Nations Fiscal and Statistical Management Act, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts.”

In the case of *Four B. Manufacturing Limited vs. United Garment Workers of America* (1980), R.C.S. 1031 the Supreme Court of Canada established the following rules: “With respect to labour relations, exclusive provincial legislative competence is the rule, exclusive federal competence is the exception. The exception comprises, in the main, labour relations in undertakings, services and businesses which can be characterized as federal....Neither the ownership of the business by Indian shareholders, nor the employment of a majority of Indian employees, nor the carrying on of that business on the (Indian reserve, nor the federal loan and subsidies, taken separately or together, can have any effect on the operational nature of that business.

However, in most respects the Band Council is considered to be subject to federal law and its employees will therefore be governed by the Canada Labour Code and other applicable federal legislation. If there is no applicable federal legislation then Band Council employees may, in certain circumstances, be governed by provincial law.

Therefore, in most cases, the operation of a business on a reserve is subject to the labour/employment law of the province of Quebec. Any private business starting up in Kahnawà:ke will, in most cases, have to comply with provincial labour law.

Source: MNP SENCRL srl/LLP

16. What are the implications in Kahnawà:ke of being a registered employer with registered employees?

A registered employer operating in Kahnawà:ke must deduct at source for all non native employees for Federal and Quebec income taxes as well as wage levies, ie QPP, QPIP and EI.

For native employees, the registered employer must deduct at source for the employee share of wage levies, where applicable.

The employer portion of the wage levies is noted in the table below. In addition to the wage levies, the employer is also subject to other payroll based charges as follows:

- 1. Quebec Health Plan**
- 2. Commission des Normes de Travail (CNT)**
- 3. 1% Training tax**

———— The criteria and rates are noted in the table below ————

QUEBEC PENSION PLAN (QPP)

The salary of a status Indian is not subject to QPP contributions if:

- ◆ The income gives entitlement to the deduction for employment income situated on a reserve; and
- ◆ The employer did not make the irrevocable election to have the Act respecting the Québec Pension Plan apply to this employment.

Employer Payroll Summary Information 2021 Year

PAYROLL LEVIES	% OF SALARY	NOTES
Quebec Training tax (WSDRF)	1%	When employer salaries exceed \$2 million
Employment insurance (EI)	1.18%	<p>Maximum annual insurable salary \$56,300 for each employee</p> <p>Maximum annual employer contribution \$930.08 for each employee</p>
Quebec Pension Plan (QPP)	5.90%	<p>Maximum annual salary \$61,600 and annual basic exemption \$3,500 for each employee</p> <p>Maximum annual employer contribution \$3,427.90 for each employee (see comments above re eligibility)</p>

Employer Payroll Summary Information 2021 Year

PAYROLL LEVIES	% OF SALARY	NOTES
Quebec Parental Insurance Plan (QPIP)	0.692%	Maximum annual salary \$83,500 for each employee Maximum annual employer contribution \$577.82 for each employee
Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)	0.07%	Maximum annual salary \$83,500 for each employee Maximum annual employer contribution \$58.95 for each employee
Health Services Fund (HSF)	1.65%	of total wages up to \$1 Million
CSST	varying rates	Per government annual assessment (if applicable)

TEWATOHNHI'SAKTHA'S PROGRAMS AND SERVICES / BUSINESS SERVICES

Mandate ♦ To support economic development and self-sufficiency of Kahnawà:kehró:non by improving business development services and programs, entrepreneurship and access to financing. It accomplishes this through the following programs and services:

Business Consulting ♦ Business consultation services are provided to clients using in-house expertise or specialized volunteer business consultants from the Canadian Executive Services Organization (CESO).

Bookkeeping Aftercare ♦ Training, mentoring and coaching are available in manual and computerized account/bookkeeping systems. Business financial statement preparation is also available.

Entrepreneurship Training ♦ A 10-week course explores entrepreneurship in Kahnawà:ke. The introduction course is designed to help you research your opportunities and discover if you are entrepreneur-oriented. Training course topics begin with the exploration of business ideas and your potential as an entrepreneur. This is followed by strategy development and business plan preparation. This training is mandatory to access our Business Assistance Fund (BAF) and all other business loans.

Business Plan Preparation ♦ Clients who have successfully completed the 10-week Entrepreneurship Training course can obtain assistance from a business services officer (BSO) to prepare their business plan. A business plan is a requirement to accessing capital from the Business Assistance Fund, Tewatohnhi'saktha Business Loan Fund, Kahnawà:ke Youth Business Fund, and financial institutions or through federal or provincial business funding programs.

Heads-Up Summer Program ♦ This program is geared specifically to our community youth, ages 12 to 17 years old. Two

3-week sessions are held from June until August with the goal of teaching participants the value of entrepreneurship and stimulating their awareness of career possibilities and employment opportunities through classroom lessons and by researching a business idea and its' viability. Once a business is chosen, all the students are required to participate. They gain valuable business experience and their hard work generates revenue which they get to share. In addition to working the business, students also participate in an employee-for-a-day program and are able to make site visits with potential community employers such as the Kahnawà:ke Peacekeepers, Kateri Memorial Hospital Center and The Eastern Door, to name a few. They also enjoy two fun trips per session, to the movies and La Ronde, to remind them that life is not all work and no play. The program is very successful and every summer we look forward to meeting and working with our community youth.

Business Assistance Fund (BAF) ♦ Clients who have successfully completed the 10-week Entrepreneurship Training Course and who have a viable business plan are eligible to apply for this fund. The Business Assistance Fund (BAF) provides a grant contribution up to \$25,000. The amount of the BAF contribution will be determined based on the total eligible project costs. For project costs exceeding \$10,000, the grant must be paired with a direct loan from the Tewa'tohnhi'saktha Business Loan Fund (TBLF) or the Kahnawà:ke Youth Business Fund (KYBF). A standard loan application form must also be completed. The fund is available for either business start-ups or expansions.

Marketing Program Fund (MPF) ♦ This fund provides new and existing businesses with financial assistance to implement a marketing strategy. The MPF is a cost-sharing agreement between Business Services and the client, wherein upon approval, covers 75% of marketing costs, up to a maximum of \$1,000 and the client's contribution is 25%. Funding for this program is limited to one financial contribution per client per Business Services fiscal year. Eligible costs include advertising, signage, promotional giveaways, web server and domain name registration.

Professional Services Fund (PSF) ♦ This fund provides new and existing businesses with financial assistance to access professional services. The PSF is a cost-sharing agreement between Business Services and the client, wherein upon approval, Business Services covers 75% of professional costs, up to a maximum of \$1,000 and the client's contribution is 25%. Funding for this program is limited to one financial contribution per client per Business Services fiscal year. The preparation/writing of the business plan is considered an ineligible cost. Examples of eligible professional services are financial statement preparation, taxation, incorporation, intellectual property issues, lawyers, consultants, technical specialists, graphic artists and website developers.

Tewatohnhi'saktha Business Loan Fund Ltd. (TBLF) ♦ This fund provides, upon approval, loans and/or loan guarantees. The loan program offers Kahnawà:ke Aboriginal businesses, that successfully complete the 10-week Entrepreneurship Training Course, access to direct loan financing to a maximum of \$100,000 to establish a viable business, create employment opportunities and facilitate greater economic well-being for the participants and the community. Loan guarantees assist businesses in obtaining commercial loans in the form of collateral of 40% of the loan up to a maximum of \$110,000. Depending on your needs, one or more of the following will be required: business plan, historical financials, completed TBLF loan application form and Executive Summary.

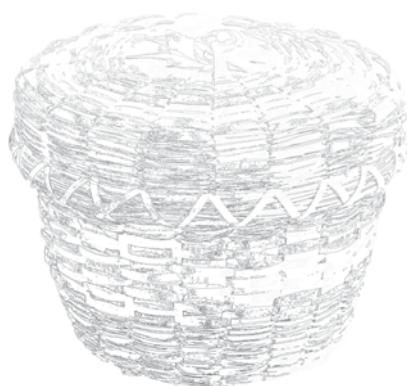
Kahnawà:ke Youth Business Fund (KYBF) ♦ This fund is available to those who have successfully completed the 10-week Entrepreneurship Training Course, a viable business plan and a completed loan application. The fund supports the creating or expansion of viable Kahnawà:ke Aboriginal businesses and offers direct loans at a maximum of \$15,000 for youth, ages 15 to 35. Interesting features of this fund are an interest rate of prime + 4% (not to exceed 8.5%), low fee-only payment option for the first

year, and a 75/25% forgiveness benefit whereby 25% of the loan is forgiven once 75% is repaid in a timely manner. Cash equity is not required to access this fund.

Shop Kahnawà:ke First ♦ The Shop Kahnawà:ke First promotional campaign has been developed by Business Services (BS) in an effort to encourage the purchase of local products and services. In support of Kahnawà:ke businesses and our local economy, we encourage Kahnawà:ke entrepreneurs to get involved in this campaign by contacting a Tewatohnhi'saktha BSO. Participating entrepreneurs will be promoted throughout the year. Each participant will receive a vinyl sticker, a poster and information on how to redeem Shop Kahnawà:ke certificates. Various denominations of Shop Kahnawake certificates are available at Tewatohnhi'saktha.

Tewatohnhi'saktha Business Contribution Fund (TBCF)

♦ The TBCF provides non-repayable contributions to eligible Aboriginal clients and organizations interested in starting or expanding a business. Eligibility is based on the business model of each proposal, the applicant's ability to provide cash equity and the ability to obtain additional financing for project implementation. Project promoters may apply for financial contributions to assist with business planning, business support, business start-up and acquisitions, business expansion and marketing.



OTHER RESOURCES

Aboriginal Women's Business Entrepreneurship Network (AWBEN)

<https://www.nwac.ca/home/policy-areas/business-employment-social-development/awben/>

Business Development Bank of Canada

<https://www.bdc.ca/en/pages/home.aspx>

Canada Business Network

<https://canadabusiness.ca/programs/aboriginal-business-and-entrepreneurship-development-1/>

Canadian council for Aboriginal Business

<https://www.ccab.com/>

First Nations of Quebec and Labrador Economic Developement Commission

<https://www.cdepnql.org/>

Futurpreneur Canada

<https://futurpreneur.ca/en/get-started/>

Innovation Canada

<https://www.ic.gc.ca/app/scr/innovation?lang=eng>

Mompreneur

<http://themompreneur.com/>

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Vision

Our vision is a self-sufficient community that fosters quality of life for Kanien'kehá:ka ne Kahnawa'kehró:non and creates collective prosperity for future generations consistent with our cultural values.

Í:non ia'teikwakà:nere ne tsi tewanákere taiakwatateniahesénhake. Né:'e aon-tatiatén:rohwe ne tsi niiokwarihò:ten ne onkwehonwehnéha. Tánon'tho néntewe ne sónha aionkwaianerahstenníhake tsi tionhnhe ne akwé:kon Kanien'kehá:ka Kahnawa'kehró:non, tánon'ne tahotikonhsotátie.



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