

# SETTLEMENT OF THE CLASS ACTION REGARDING FUEL TAX PAID BY INDIANS ON RESERVE IN QUEBEC

## ***PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS***

The Plaintiff, Ghislain Picard, and the Agence du Revenu du Québec have negotiated an agreement to settle this class action. The agreement will be submitted to the Court for approval on November 29, 2011. Those affected by the class action have the right to participate in this hearing and they have the right to make representations concerning the agreement. This notice summarizes the important points in the agreement negotiated by the parties.

### **THE DISPUTE**

#### **The tax**

When purchasing gasoline or diesel in Quebec, a consumer pays three taxes: the federal goods and services tax (GST), the Quebec sales tax (QST) and the fuel tax imposed by the Province. Unlike the GST and the QST, the fuel tax is not indicated separately on the bill but is simply included in the price that is paid at the pump.

#### **The exemption and the refund mechanism**

Since the *Fuel Tax Act* came into force on July 1, 1973, retailers situated on reserve have had to collect the fuel tax from all customers who buy fuel.

Since 1987, registered (“status”) Indians could obtain a refund if they applied using the form and within the time-period required by Quebec.

### **THE ACTION**

#### **The procedure for a class action**

A class action is a legal proceeding in which a person is authorized to represent a wider group of people facing the same problem. The action applies to a “class” of people and is not limited to one plaintiff alone.

Since the plaintiff can argue and negotiate on behalf of other people who have not individually mandated the plaintiff to do so, s/he must obtain the approval of the court before instituting the action. For the same reasons, once the action has been authorized, a notice to group members must be published. Lastly, if an agreement is reached, the court must approve it during a public hearing, after notice has been provided to group members.

## **The class action authorized in *Picard v. Attorney General of Quebec and Agence du Revenu du Québec***

On May 7, 2007, the Superior Court of Quebec authorized Mr. Ghislain Picard to institute a class action on behalf of all registered Indians (except for the Cree) who, since July 1, 1973, had paid fuel tax on a reserve situated in Quebec or on Cree or Naskapi Category IA or IA-N land.

The group is made up of:

- all Indians within the meaning of the *Indian Act* who are registered in the Indian Register, except for Cree beneficiaries of the James Bay and Northern Quebec Agreement;
- who have paid the tax collected pursuant to the *Fuel Tax Act* since it came into force on July 1, 1973;
- for a purchase of gasoline or diesel on an Indian reserve, within the meaning of the *Indian Act*, located in Quebec, or on Cree or Naskapi Category IA or IA-N land within the meaning of the *Cree-Naskapi (of Quebec) Act*.

All affected Indians became group members automatically if they did not ask to be excluded in 2007.

Ghislain Picard is acting in his own name and as a Court-appointed representative of all group members. He is also Chief of the Assembly of First Nations of Quebec and Labrador (AFNQL). The chiefs of the First Nations of Quebec decided by resolution to support the class action.

A lawsuit was filed in the district of Quebec City on behalf of the group under file no. 200-06-000088-073. In this proceeding, Ghislain Picard seeks:

- a declaration that the *Fuel Tax Act* violates the tax exemption provided for in the *Indian Act* and the *Cree-Naskapi (of Quebec) Act* and which takes precedence over all provincial legislation;
- restitution of the tax to registered Indians who have paid it since 1973 without applying for a refund;
- damages for trouble and inconvenience suffered by those who obtained a refund, on the grounds that the system they had to comply with was illegal.

## **THE SETTLEMENT AGREEMENT**

### **The negotiations**

In 2008, the parties agreed to suspend the litigation and initiate settlement negotiations. On June 30, 2011, they signed a settlement agreement.

The provincial government decided to implement a new mechanism for collecting fuel tax on reserve as of July 1, 2011. Beforehand, representatives of the AFNQL had provided the

government with the First Nations' views on the best way to respect the tax exemption to which registered Indians are entitled.

Since July 1, 2011, registered Indians who have a registration card ("*attestation d'inscription*") issued by the Agence du Revenu du Québec may buy fuel on reserve without paying the tax if they buy it from a retailer participating in the new mechanism.

### **The amounts provided by the settlement agreement**

The settlement agreement provides for the creation of two funds:

- \$24.3 million to be distributed on an individual basis;
- \$2.7 million to be provided to the Assembly of First Nations of Quebec and Labrador (AFNQL) for the benefit of its members as a whole.

This payment constitutes a full and final settlement of the class action, including capital, interest and additional costs. The agreement covers the period ending June 30, 2011.

### **Claims**

A settlement administrator will be chosen by the Agence du Revenu Québec based on a call for tenders and after consultation with the AFNQL. Each registered Indian who wishes to receive compensation must file a claim with the settlement administrator within one year after publication of the final notice of settlement, using a form still to be determined.

The claimants must attach supporting documents to their claims confirming:

- their status as registered Indians on the date their claim is filed;
- their date of birth;
- their place of residence on the date their claim is filed.

Group members who are not residents of Quebec or Akwesasne, nor members of a Quebec band, must also provide proof that they paid the fuel tax on at least one purchase of fuel in Quebec before July 1, 2007.

### **Payment of compensation**

You may make a claim after the agreement is approved. Further notices will be published.

No compensation will be paid to heirs of a group member if s/he died before filing a claim.

### ***Residents of Quebec and Akwesasne***

In order to compensate fairly those likely to have paid more tax, the compensation of \$24,300,000 will be distributed to group members on the basis of their age on the date their claim is filed, without their having to prove that they bought gasoline or diesel on an Indian

reserve or on Cree or Naskapi land, and without their having to prove that they paid the fuel tax. Compensation will be paid based on the following criteria:

- a basic amount for those between the ages of 18 and 24;
- double the basic amount for those between the ages of 25 and 34;
- triple the basic amount for those between the ages of 35 and 44;
- four times the basic amount for those between the ages of 45 and 54;
- five times the basic amount for those between the ages of 55 and 64;
- six times the basic amount for those 65 years and older.

The amount that each individual receives will depend on the total number of claimants.

### ***Non-resident members of Quebec bands***

Compensation will be reduced by 50% for members of Quebec bands who reside outside of Quebec or Akwesasne.

### ***Non-residents who are not members of Quebec bands***

Registered Indians who are neither members of a Quebec band, nor residents of Quebec or Akwesasne, and who file a claim form will share a total maximum amount of \$300,000 and will each receive a maximum individual compensation of \$50. If the \$300,000 is not distributed, in whole or in part, the balance will be added to the fund to be distributed to the other group members.

### ***The possibility of new methods of distribution***

The parties to the agreement may determine new methods or criteria for the distribution of the compensation if they decide that an insufficient number of group members have filed claims. In the event of disagreement on the matter, the parties will bring the issue before the Court.

### **Release**

As a result of the settlement agreement, the group members grant a full and final release to the Agence du Revenu Québec and the Government of Quebec with respect to all claims related to the class action.

However, the Agence du Revenu du Québec will continue to provide refunds of the fuel tax to registered Indians who apply for a refund of any tax paid before July 1, 2011.

### **No admissions**

The parties agree that the sole purpose of the settlement agreement is to reach a negotiated resolution of this matter and thereby avoid long and costly litigations.

The settlement shall be without prejudice to the legislative and constitutional immunities enjoyed or claimed by the Government of Quebec, the registered Indians who make up the group and the bands to which they belong.

### **Professional fees and disbursements**

The Agence du Revenu du Québec will pay the legal fees as well as the professional fees and disbursements of the AFNQL's legal counsel, experts and external consultants as well as the time the AFNQL's staff spent on this matter, up to the date of approval of the Settlement Agreement by the Court.

The costs of distribution and implementation of the settlement payable to the settlement administrator will also be assumed by the Agence du Revenu du Québec.

### **INTERPRETATION**

This notice summarizes certain terms of the settlement agreement. In the event of a conflict between the terms of this notice and the provisions of the settlement agreement, the terms of the settlement agreement prevail.

### **FOR MORE INFORMATION**

This notice is a summary of the settlement agreement and the terms and conditions for compensation. Group members are encouraged to consult the full text of the settlement agreement on the website [www.apnql-afnql.ca](http://www.apnql-afnql.ca). The settlement agreement can also be consulted at the registry of the Superior Court for the district of Quebec City at 300 Boulevard Jean-Lesage in Quebec City, G1K 8K6.

If you have questions or if you wish to obtain a copy of the settlement agreement, please contact legal counsel for the Plaintiff:

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### **PLEASE BE ADVISED**

A hearing will be held in Superior Court on **November 29, 2011, at 9:30AM in room 3.21 of the Quebec City Courthouse located at 300 Jean-Lesage Boulevard in Quebec City, G1K 8K6** concerning approval of the settlement agreement, various orders provided for in the

agreement, the selection of a settlement administrator and the adjudication of other related issues.

As a group member, you have the right to make representations at this hearing. If you prefer, you can submit your representations in writing to the address indicated above **before November 25, 2011**, to the attention of Justice Jean Lemelin, or by fax to 418-528-9883 or by email to *sonia.levasseur@judex.qc.ca*.

THE PUBLICATION OF THIS NOTICE IS AUTHORIZED BY THE SUPERIOR COURT OF QUEBEC