

# GST/HST Notice

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FOR DISCUSSION PURPOSES ONLY

## Draft GST/HST Policy Statement, *The GST/HST Real Property Implications of Constructing or Purchasing, and Operating a Residential Care Facility*

This policy statement is being disseminated by the Canada Revenue Agency in draft form for comments from the public. Comments or suggestions should be sent by April 30, 2006 to:

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### GST/HST Policy Statement

#### THE GST/HST REAL PROPERTY IMPLICATIONS OF CONSTRUCTING OR PURCHASING, AND OPERATING A RESIDENTIAL CARE FACILITY

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| <b>Date of issue</b>                       | To be determined   |
| <b>Legislative references</b>              | <i>Excise Tax Act</i> (the Act): Subsection 123(1) – definition of “builder”, “residential complex” and “residential unit”; subsection 136(2), sections 138, 169, 190, 191, 191.1, 192 and 256.2; Schedule V – Part I, sections 6 and 6.1; Part II, sections 1 and 2; Part IV, section 2 |
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La version française de ce document est intitulée *Incidence de la TPS/TVH sur la construction ou l'achat d'un établissement de soins pour bénéficiaires internes et sur l'exploitation d'un tel établissement.*



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## *General*

For the purposes of this policy statement, a residential care facility includes any residential facility at which an individual intends to reside for an indefinite period where the individual receives additional property and services together with a room or suite in the facility. Such additional property and services may include meals, nutritional, housekeeping, laundry, security monitoring and nursing care services, scheduled transportation, social, recreational, educational and religious services, personal supervision, personal care, and assistance with the activities of daily living (e.g., bathing, dressing, grooming, eating, ambulating).

This policy applies to facilities that are generically described as care homes, personal care homes, congregate housing, assisted living residences, seniors' residences, retirement residences, nursing homes and homes for the aged. However, a residential care facility does not include a facility described in paragraph (a) or (b) of the definition of "health care facility" in section 1 of Part II of Schedule V to the Act.

## *Issues and decisions*

### **Issue No. 1**

Whether a residential care facility is a residential complex.

#### **Decision**

A residential care facility, or a part thereof, including a facility that is a "health care facility" as defined in paragraph (c) of the definition of that term in section 1 of Part II of Schedule V to the Act, may be a residential complex.

#### **Discussion**

A "residential unit" is defined in subsection 123(1) of the Act to include:

- (a) a detached house, semi-detached house, rowhouse unit, condominium unit, mobile home, floating home or apartment,
  - (b) a suite or room in a hotel, a motel, an inn, a boarding house or a lodging house or in a residence for students, seniors, individuals with a disability or other individuals, or
  - (c) any other similar premises,
- or that part thereof that
- (d) is occupied by an individual as a place of residence or lodging.

A "residential complex" is defined in subsection 123(1) of the Act to include a building or that part of a building in which one or more residential units are located, together with certain other elements, such as common areas of the building and the land on which the building is situated that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals.

A room or suite in a residential care facility in which an individual resides or lodges is a residential unit. Shared accommodation (e.g., a semi-private room or suite) in which individuals reside may also be a

residential unit. A residential care facility, or that part of a facility, that includes a residential unit or units, together with the other elements discussed in the immediately preceding paragraph, is a residential complex.

## **Issue No. 2**

Whether a person who operates a residential care facility (“operator”) is making a supply that is exempt under section 6 of Part I of Schedule V to the Act (i.e., long-term residential rents).

### **Decision**

Based on the particular facts, an operator may be making a supply that is exempt under section 6 of Part I of Schedule V to the Act. In order to determine whether a particular supply falls within the exempting provision, it is first necessary to determine whether the operator is making a single supply or multiple supplies. Policy Statement P-077R2, *Single and Multiple Supplies*, will provide assistance in making that determination. It may also be necessary to determine if section 138 of the Act applies. Policy Statements P-159R1, *Meaning of the Phrase “Reasonably Regarded as Incidental”*, and P-160R, *Meaning of the Phrase “Where a Particular Property or Service is Supplied Together with any Other Property or Service”*, will provide assistance in making that determination.

### ***Supply of a residential unit***

An operator may make multiple (i.e., separate) supplies (e.g., a supply of a room or suite in the facility, a supply of meals, and other supplies of property and services that may be made at the facility). If an operator is making a separate supply of a residential unit, where the supply of the unit is not incidental to other supplies made by the operator and the unit is the only element of the supply, the supply is exempt under section 6 of Part I of Schedule V to the Act, provided the remaining conditions of that section are met.

### ***Supply comprising a residential unit and other property or services***

If an operator is making a single supply, one element of which is a residential unit, it is necessary to characterize the supply, i.e., to determine what is, in substance, being supplied. Similarly, if an operator is making multiple supplies and one of those multiple supplies includes a residential unit and at least one other element, it is also necessary to characterize that supply.<sup>1</sup> In addition, it may be necessary to determine if the supply that includes the provision of a residential unit is incidental to any other supply made by the operator.

If an operator is making a single supply and the supply is predominantly that of a room or suite in the facility in which an individual resides, the supply is considered to be a supply of a residential unit. Similarly, if an operator is making multiple supplies and one of those supplies includes a residential unit where the unit is the predominant element of the supply, that supply is also considered to be that of a residential unit, provided the supply is not incidental to any other supply made by the operator. The supply of a residential unit is exempt under section 6 of Part I of Schedule V to the Act provided the remaining conditions of that section are met.

### ***Supply of services that include a residential unit***

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<sup>1</sup> This policy will not attempt to characterize a single supply consisting of more than one element where no element is that of a residential unit.

If, in substance and reality, the nature of a supply being considered goes beyond that of a room or suite in a facility, such that the provision of the room or suite is not the predominant element of the supply, the supply is not considered to be a supply of a residential unit. In such cases, the supply would not be exempt under section 6 of Part I of Schedule V to the Act.

## **Discussion**

Section 6 of Part I of Schedule V to the Act exempts, in part, a supply of a residential complex or a residential unit in a residential complex by way of lease, licence or similar arrangement for the purpose of its occupancy as a place of residence or lodging by an individual, where the period throughout which continuous occupancy of the complex or unit is given to the same individual under the arrangement is at least one month.

The exemption in section 6 of Part I of Schedule V to the Act can apply to a supply that contains elements other than that of a residential complex or a residential unit as long as the predominant element of the supply is that of a residential complex or residential unit. In the context of a residential care facility, the operator may ensure that the general health of an individual is maintained by monitoring medications taken or may provide some assistance with the activities of daily living. Provided that the predominant element of any such supply is that of a residential unit, and the remaining conditions of section 6 of Part I of Schedule V to the Act are met, the entire supply is exempt. For example, if an operator provides, as a single supply that is not incidental to any other supply, long-term occupancy of a residential unit, weekly cleaning services and three meals per day to individuals, the supply will generally be exempt under section 6 of Part I of Schedule V to the Act. Such additional properties and services that are elements of the supply, referred to in this policy statement as “ancillary property and services,” are not sufficient, in these circumstances, to alter the characterization of the supply as that of a residential unit.

### ***Ancillary property and services***

Ancillary property and services are those properties and services that may form an important part of a supply (e.g., administering or monitoring medication), but are nonetheless only elements of a supply that is predominantly that of a residential unit. Ancillary property and services do not alter the fundamental nature of the supply. Examples of ancillary property and services include: meals, a laundry service for bed linens and towels; housekeeping services; entertainment and activities for the benefit of all residents including religious services, gardening, musical programs, exercise classes, bingo and shuffleboard; use of a recreation area and lounge rooms; a library at the facility; or any of the following services provided on a 24-hour per day basis: general building security, medic alert system monitoring, building patrol, security camera monitoring, telephone and door reception and responding to general emergencies.

Depending on the nature of the entire supply, the provision of certain property and services may or may not be ancillary. For example, an operator may provide, together with long-term occupancy of a room, daily services of administering medication and weekly assistance with bathing individuals staying at the facility. These services would not, on their own, be sufficient to alter the characterization of the supply as that of a residential unit.

However, some residential care facilities, such as nursing homes or extended care facilities, provide significant nursing and personal care services to individuals on a regular basis. These services may be essential to the overall supply made by the operator and may alter the fundamental nature of the supply. Such services may not be ancillary to the provision of a residential unit, but may be fundamental, in their own right, to the individual’s reason for staying at the facility. As such, the supply may no longer be predominantly that of a residential unit.

***Factors for determining the predominant element of a supply made in a residential care facility (characterizing the supply)***

In determining the nature of a supply or the predominant element of a supply made in a residential care facility, a number of factors should be considered based on the circumstances of a particular case. Such factors would include:

(a) The purpose of acquiring the supply.

Why does an individual move into this facility? What need(s) is the individual looking to satisfy by moving into this facility?

(b) The purpose of making the supply and the business in which the operator is engaged.

What property and services does the operator make available? Does the operator want to attract individuals that are essentially independent or individuals that require significant assistance on a daily basis? At its core, in what business is the operator engaged? How is the operator required to report income for income tax purposes (e.g., is an amount reported as income from rental property)?

(c) The consideration charged for the supply and the operator's costs of providing the property and services.

What is the relative value of each element of the supply? Is the consideration for one element significantly more than the consideration for other elements? What are the relative costs to the operator of making available each element of the supply?

(d) The legislation and regulations that govern the supply.

Is there any federal, provincial or municipal legislation that governs the operation or the supplies made at the facility? Is the legislation in the nature of landlord-tenant, residential care, personal care, or health care? Does the individual undergo an evaluation to ensure they are suitable for the facility given the nature of the property and services available at the facility?

(e) The marketing undertaken by the operator.

How is the facility marketed? Is it promoted as a facility at which personal and/or nursing care services are provided or as a retirement home?

It should be noted that where a supply is not exempt under section 6 of Part I of Schedule V to the Act, the supply may be exempt under Part II or Part IV of Schedule V to the Act. Further, if the supplier is a charity, non-profit organization or other public service body, other exempting provisions of Schedule V to the Act may apply.

**Issue No. 3**

Whether a person who constructs a residential care facility and gives possession of a room or suite in the facility to an individual is deemed to make a supply of the facility (i.e., a "self-supply") pursuant to section 191 of the Act.

## **Decision**

A builder who constructs a residential care facility that is, or includes, a residential complex and gives possession to an individual of a room or suite (a residential unit) in the facility may be deemed to make a self-supply of the complex pursuant to section 191 of the Act. In order for a self-supply to take place, all of the conditions of section 191 of the Act must be met.

## **Discussion**

A self-supply occurs under section 191 of the Act where the construction or substantial renovation of a residential care facility, or a part thereof, that is a residential complex is substantially complete and:

- (a) the builder of the residential complex gives possession of the complex (or in the case of a multiple unit residential complex, a residential unit in the complex) to an individual who is the first individual to occupy the complex (or a residential unit in the complex) as a place of residence after substantial completion,
- (b) possession of the complex (or a residential unit in the complex) is given under a lease, licence or similar arrangement, and
- (c) the lease, licence or similar arrangement is entered into for the purpose of occupancy of the complex (or a residential unit in the complex) by the individual as a place of residence.

Whether a resident of a residential care facility is given possession of a residential complex (or a residential unit in the complex) under a lease, licence or similar arrangement, for the purpose of its occupancy as a place of residence must generally be determined on a case-by-case basis.

### ***Factors for determining whether possession is given***

While the facts surrounding residency at a particular facility, especially any entrance or occupancy agreement, must always be considered, the following factors may assist in determining whether an individual has been given possession of a residential complex (or a residential unit in the complex).

1. Is the individual assigned a specific room pursuant to the agreement? Can the individual be moved from one room to another, under whose authority, and under what circumstances?
2. Does the individual have the ability to exclude others from the room?
3. Is the individual entitled to alter or make changes to the room (e.g., furnishing or decorating the room)?
4. Can the individual control the temperature in the room?
5. Does the individual obtain insurance for their personal property in the room?

If the facts of a particular case indicate that an individual is not given possession of a room or suite in the facility, then section 191 of the Act will not apply, even if the remaining conditions of that section are met. It is important to note that it is possible for an individual to have possession of a room or suite in a residential care facility even if the operator has access rights to that room or suite to perform their obligations under the agreement (e.g., cleaning, changing linens, responding to emergency situations).

Some residential care facilities (e.g., nursing homes) often contain private and semi-private accommodations. The type of room or suite in which an individual stays is not necessarily determinative

of whether that individual has been given possession of a room or suite for purposes of section 191 of the Act. In the case of shared rooms, the above factors and any other relevant factors should be considered in determining whether individuals are given possession of a shared room or suite.

### ***Determining whether there is a lease, licence or similar arrangement***

If an agreement that provides for the granting of possession of a room or suite in a residential care facility contains characteristics similar to those found in a lease or licence,<sup>2</sup> section 191 of the Act may apply. An entrance or occupancy agreement at a residential care facility can be considered to be a “lease, licence or similar arrangement” if it has the following characteristics:

- (a) the agreement provides the individual with the right to occupy or use a room or suite in the facility (e.g., possession under a lease or a licence) in a certain manner and on certain terms and conditions,
- (b) the agreement is for a specified term or fixed period of time (e.g., a year or month to month), or indicates or implies an unspecified term (i.e., the individual will live at the facility for the foreseeable future), and
- (c) the agreement provides, in most cases, for periodic payments in respect of the occupancy to be made by or in respect of the individual while staying at the facility.

### ***Determining the purpose of occupancy***

In the context of a residential care facility, if the occupancy of the residential unit as a place of residence is the primary purpose of the supply, section 191 of the Act will apply where the other conditions of that section are also met, as discussed above. In determining the primary purpose of occupancy in a residential care facility, the factors set out in determining the nature of a supply (see Issue 2) will be relevant.

## **Issue No. 4**

Whether a person who builds or purchases, and operates a residential care facility, where the facility is or contains a residential complex, is eligible to claim a NRRP rebate under section 256.2 of the Act.

### **Decision**

A person is eligible to claim a NRRP rebate in respect of a residential care facility that is or contains a residential complex, if the person is making a supply under section 6 of Part I of Schedule V to the Act and the remaining criteria for the rebate, as set out in section 256.2 of the Act, are satisfied. If the person is a builder of a facility, or that part of a facility, that is a residential complex, one of those criteria is that the builder must be deemed to have made and received a taxable supply of the residential complex (i.e., a self-supply of the complex) pursuant to section 191 of the Act.

### **Discussion**

The determination as to whether a person makes an exempt supply under section 6 of Part I of Schedule V to the Act to a resident of a residential care facility will be made in accordance with the foregoing. Where a person makes a supply that is not exempt under section 6 or section 6.1 of Part I of Schedule V to the Act even if the supply is exempt under another provision of Schedule V to the Act, a NRRP rebate under section 256.2 of the Act cannot be claimed.

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<sup>2</sup> See Policy Statement P-062, *Distinction Between Lease, Licence and Similar Arrangement*, for descriptions of these terms.





## *Other Issues*

### **Application of section 6.1 of Part I of Schedule V to the Act**

If a particular person supplies land, a residential complex, or a building, or that part of a building, that forms a residential complex by way of lease, licence or similar arrangement (the first lease) to another person, the supply may be exempt under section 6.1 of Part I of Schedule V to the Act. If, during a lease interval, the other person makes, or holds the property or part of the property for making, one or more supplies of the property, by way of lease, licence or similar arrangement and all or substantially all of those supplies are exempt under section 6 of Part I of Schedule V to the Act, then the first lease is also exempt throughout the same lease interval under section 6.1 of Part I of Schedule V to the Act.

For example, a person may own a residential care facility that is a residential complex and lease the facility to another person who operates the facility. Provided that all or substantially all of the operator's supplies of the facility or parts of the facility, for a given interval, are exempt under section 6 of Part I of Schedule V to the Act, the lease of the property to the operator is also exempt under section 6.1 of Part I of Schedule V to the Act.

Where the person is making exempt supplies under section 6.1 of Part I of Schedule V to the Act, the person may claim a NRRP rebate as set out in section 256.2 of the Act if the remaining conditions of that section are met.

### **Eligibility to claim input tax credits on the construction or purchase of a residential care facility**

If a builder-operator of a residential care facility that includes a residential complex undergoes a self-supply of the complex, the builder-operator may claim input tax credits (ITCs) in respect of the construction of the residential complex in accordance with the provisions of the Act. If there is a self-supply and the builder-operator subsequently uses the complex exclusively in the course of making exempt supplies, there is no ITC eligibility in respect of the tax paid on the self-supply. If there is a self-supply and the builder-operator (other than a builder-operator who is a public service body) uses the complex more than 10% in the course of commercial activities, there is an ITC eligibility in respect of the tax paid on the self-supply based on the extent to which the complex is used in the course of commercial activities.

In the case of a self-supply by a public service body that has not filed an election under section 211 of the Act in respect of the facility, a full ITC is available only if the facility is used primarily in the course of commercial activities. Where a public service body has filed an election under section 211 of the Act in respect of the facility, an ITC is available where, and to the extent that, the facility is used more than 10% in commercial activities of the public service body.

If there is no self-supply and the facility is used exclusively in the course of making exempt supplies, there is no ITC eligibility in respect of the construction of the facility.

If there is no self-supply and the facility is used more than 10% in the course of commercial activities, there is an ITC eligibility in respect of the construction of the facility for the builder-operator who is not a public service body, based on the extent to which the facility is used in the course of commercial activities, subject to the provisions of the Act relating to ITCs. In the case of a public service body that has not filed an election under section 211 of the Act in respect of the facility, a full ITC is available only if the facility is used primarily in the course of commercial activities. Where a public service body has

filed an election under section 211 of the Act in respect of the facility, an ITC is available where, and to the extent that, the facility is used more than 10% in commercial activities of the public service body.

A person who acquires a residential care facility may not claim an ITC in respect of the tax paid or payable on the acquisition of the facility if the person uses the facility exclusively in the course of making exempt supplies. Conversely, a person, other than a public service body, who acquires a facility for use more than 10% in commercial activities, may claim an ITC for the tax paid or payable on the acquisition of the facility to the extent the facility is used in the course of commercial activities, subject to the ITC provisions of the Act. If the person is a public service body that has not filed an election under section 211 of the Act in respect of the facility, a full ITC is available only if the facility is used primarily for commercial activities. Where a public service body has filed an election under section 211 of the Act in respect of the facility, an ITC is available where, and to the extent that, the facility is used more than 10% in commercial activities of the public service body.

Any available ITCs must be claimed in accordance with the provisions of the Act relating to ITCs.

### *Examples*

#### **EXAMPLE NO. 1**

##### **Facts**

1. All of the owners of condominium units in a certain condominium complex offer their units for rental purposes. Each unit owner enters into a Service Agreement with an agent for the purpose of renting the unit and providing other property and services to the occupant(s) of the unit.
2. The Service Agreement states that the agent of the unit owner will provide the following to the occupant(s):
  - (a) certain areas in the condominium complex for social and recreational purposes;
  - (b) a library in the condominium complex;
  - (c) general building security, medic alert system monitoring, building patrol, telephone and door reception;
  - (d) weekly laundering of bed linens, towels and mats;
  - (e) weekly housekeeping services;
  - (f) entertainment and activities including religious services, gardening, musical programs, exercise classes, bingo, shuffleboard;
  - (g) two meals per day and morning and afternoon snacks;
  - (h) a weekly visit to the complex by a representative of a local banking institution;
  - (i) a fee for use barber shop; and
  - (j) a fee for use service for laundering items not listed in (d).

3. An occupant of a condominium unit enters into a lease agreement for month-to-month tenancy (subject to provincial landlord and tenant legislation). Some of the features of the lease agreement are as follows:
  - (a) The agent of the unit owner is required to provide the property and services listed in Fact 2. These are described in an appendix to the lease agreement. There are no additional charges for the property and services, other than the fee for use supplies set out in Facts 2(i) and 2(j).
  - (b) Failure to pay rent entitles the agent of the unit owner to terminate the lease and regain vacant possession of the unit.
  - (c) The unit is intended to accommodate seniors who are able to independently carry out their daily living needs. The tenancy will be terminated if the agent of the unit owner determines that this is no longer the case. While a medical assessment of an occupant is not required prior to their moving into a unit, the occupant is made aware that nursing and personal care services are not provided.
4. Occupants pay a monthly fee to the agent of the unit owner for all of the property and services provided under the lease agreement, including the property and services set out in the appendix to the lease agreement. The monthly fee payable by an occupant of a condominium unit is \$1,900 per month.
5. The agent of the unit owner subcontracts with another person to supply the property and services set out in the appendix to the lease agreement and pays the subcontractor \$600 per month for each unoccupied unit in the facility and \$875 per month for each occupied unit in the facility.

#### **Issues**

1. Is a condominium unit in the condominium complex a residential complex for GST/HST purposes?
2. Is the provision of a condominium unit and the other property and services supplied by a unit owner to an occupant of the condominium complex exempt under section 6 of Part I of Schedule V to the Act?

#### **Decisions**

1. Each condominium unit, along with a proportion of any common areas, appurtenances and an amount of land attributable to the unit that is reasonably necessary for its use and enjoyment as a place of residence for individuals, form a residential complex.
2. The supply made by a unit owner to an occupant under the lease agreement is a single supply of a residential complex made by way of lease, licence or similar arrangement for the purpose of occupancy of the complex as a place of residence and is exempt under section 6 of Part I of Schedule V to the Act.

The barber services and additional laundry services, as identified in Facts 2(i) and 2(j), are not part of the single, exempt supply of a residential complex and, unless another exemption applies, are subject to tax.

## Rationale

1. Each condominium unit is occupied by an individual as a place of residence or lodging and is therefore a residential unit. As such, each unit, along with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for its use and enjoyment as a place of residence for individuals, will form a residential complex.
2. The occupants move into the condominium complex for the purpose of receiving accommodation, property and services. The property and services in Facts 2(a) through to 2(h) and the condominium unit are elements supplied by the unit owner (through the agent of the unit owner) under the lease agreement for one all-inclusive fee. The unit owner is considered to be making a single supply to an occupant. All of the property and services are elements that are interdependent and each element is an integral part of the whole supply made by the unit owner (Policy Statement P-077R2, *Single and Multiple Supplies*). The property and services included in the supply are considered to be ancillary property and services. The provision of the condominium unit is the predominant element of the supply. The supply is subject to provincial landlord and tenant legislation, there is no medical evaluation process for prospective occupants, and the complex is not promoted as a facility at which nursing or personal care services are provided. At its core, the supply remains predominantly that of a residential condominium unit.

As the residential condominium unit is a residential complex and the supply is made by way of lease, licence or similar arrangement for periods of continuous occupancy of at least one month, as a place of residence for the occupant, the supply is exempt under section 6 of Part I of Schedule V to the Act.

The fee for use services of barbering and laundering are not part of the single supply of the residential unit. These supplies are separate supplies. Section 138 of the Act does not apply since the residential condominium unit and these services are not provided for a single consideration. Unless another exempting provision applies, these supplies are subject to tax.

## EXAMPLE NO. 2

### Facts

1. A Corporation constructs a residential care facility on land that it owns. The facility consists of a single building, composed of two sections, and contains 50 units in total. In one section (Part A of the facility), 35 units are supplied to individuals who are seniors (Residents of Part A) in a retirement home setting, while the 15 units in the other section (Part B of the facility) are for use by individuals with a disability (Residents of Part B) who live at the facility.
2. Part A of the facility is governed by landlord and tenant legislation. The services offered by the Corporation to Residents of Part A include water, heat, hydro, cable television and weekly dusting and cleaning of the unit. Residents of Part A are entitled to use the recreational areas of the facility and the Corporation regularly sponsors social activities for the Residents of Part A. Under a standard residential tenancy agreement, a Resident of Part A pays a set monthly fee for the unit and services supplied by the Corporation. Units provided in Part A of the facility are fully self-contained one and two bedroom apartments. After construction of the facility was substantially complete, Residents of Part A occupied the 35 units in Part A of the facility. Shortly thereafter, Residents of Part B began to move into the remaining 15 units in Part B of the facility.

3. In respect of the units supplied to Residents of Part B, the facility is licensed under provincial care legislation as a Level II care facility. Level II care recognizes an individual's need for care planning and supervision under the direction of a health care professional on a daily basis. The characteristics of the different stages of Level II care are as follows:
  - a) Stage I – The individual requires moderate assistance with activities of daily living and some professional care and supervision.
  - b) Stage II – The individual has more complex care needs and requires additional professional care and supervision.
  - c) Stage III – The individual exhibits severe behavioral disturbances on a continuing basis and presents significant management problems. The individual has very heavy care requirements, requiring significant staff time.
4. The services offered by the Corporation to Residents of Part B include: three meals and two snacks per day; weekly housekeeping and personal laundry; regularly scheduled social and recreational activities; security monitoring; transportation to and from medical and dental appointments; an emergency call system; personal care services of bathing, dressing and grooming, and nursing services provided by a registered nurse on a 24-hour per day basis, including the administration of medication and attending to physician prescribed treatments and the Residents' health concerns. A Resident of Part B pays a fee based on the stage of Level II care they receive. This all-inclusive fee provides a Resident of Part B with an assigned unit at the facility and the services set out above according to the stage of Level II care that the Resident requires.
5. There are no kitchens or cooking facilities in any of the 15 units in Part B of the facility. Each unit in Part B of the facility contains a toilet and sink; there is a common area in the facility that contains a bathing room and a shower room for use of all Residents of Part B. Upon entrance to the facility, each Resident of Part B is assigned a specific unit that can only be changed if agreed to by both the Corporation and the Resident. However, there is no formal written lease or occupancy agreement in place to cover a Resident's stay in Part B of the facility. Residents of Part B have a right to their privacy in that all the units have locks for which a Resident may request a key, however, staff of the facility have a master key to each unit to allow access at any time. The Corporation furnishes the units in Part B of the facility, however a Resident of Part B can furnish their own unit if they wish. A Resident of Part B that is away from the facility for more than 3 days must advise the nursing manager. Residents of Part B are allowed to hang their own pictures on the walls.
6. The Corporation promotes the facility in a two-fold manner. Part A of the facility is promoted as a retirement residence for seniors; and Part B of the facility is promoted as a facility that provides quality personalized care and services which allows Residents of Part B to age in place, thereby addressing their physical, social and safety needs.

### **Issues**

1. Is the facility a residential complex for GST/HST purposes?
2. a) Is the provision of a unit and the other property and services supplied by the Corporation to a Resident of Part A exempt under section 6 of Part I of Schedule V to the Act?

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- b) Is the provision of a unit and the other property and services supplied by the Corporation to a Resident of Part B exempt under section 6 of Part I of Schedule V to the Act?
  3. Does section 191 of the Act apply when a Resident of Part A moves into a unit in Part A of the facility?
  4. Is the Corporation eligible to claim ITCs in respect of the construction of the facility?
  5. Is the Corporation eligible to claim a NRRP rebate, under s. 256.2 of the Act, in respect of any units in the facility?

### **Decisions**

1. The rooms in which the Residents of Part A and the Residents of Part B reside are residential units. That part of the facility (Part A and Part B) in which the units are located, together with that part of any common areas and appurtenances to the building and the land attributable to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, form a residential complex and more specifically, a multiple unit residential complex. For purposes of this example, it is assumed that the entire building and the land on which it is situated form a residential complex. Based on the fact that the facility is a residential complex and Fact 1, the Corporation is a builder for GST/HST purposes.
2. (a) The supply made by the Corporation to a Resident of Part A is a single supply of a residential unit made by way of lease, licence or similar arrangement for the purpose of occupancy of the unit as a place of residence and is exempt under section 6 of Part I of Schedule V to the Act.  
  
(b) The supply made by the Corporation to a Resident of Part B is not exempt under section 6 of Part I of Schedule V to the Act.
3. Subsection 191(3) of the Act applies at the time possession of a residential unit in the facility is first given to a Resident of Part A who occupies the unit as a place of residence pursuant to the tenancy agreement. The Corporation is required to account for tax at that time on the fair market value of the entire residential complex, including the 15 units used by the Residents of Part B.
4. Subject to the provisions of the Act relating to ITCs, the Corporation is eligible to claim ITCs in respect of the construction of the entire facility.
5. The Corporation is eligible to claim a NRRP rebate with respect to each qualifying residential unit in Part A of the facility that is supplied to a Resident of Part A, provided the other criteria in section 256.2 of the Act are met. The Corporation is not eligible to claim a NRRP rebate with respect to a unit in Part B of the facility that is supplied to a Resident of Part B.

### **Rationale**

1. Rooms in the facility in which Residents of Part A or Residents of Part B reside are rooms or suites in a residence for seniors, individuals with a disability or other individuals and are occupied as a place of residence or lodging. As such, these rooms are residential units. Further, that part of the facility (Part A and Part B) that includes the residential units and any common areas and other appurtenances to the building, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and that proportion of the

subjacent land attributable to the residential units will together form a residential complex. As the complex contains more than one residential unit and it is not a condominium complex, it is a multiple unit residential complex.

2. (a) The Residents of Part A move into Part A of the facility for the purpose of receiving accommodation, property and services. The property and services in Part A and the residential unit are elements supplied by the Corporation under the lease agreement for one all-inclusive fee. The Corporation is considered to be making a single supply to a Resident of Part A. All of the property and services are elements that are interdependent and each element is an integral part of the whole supply made by the Corporation (Policy Statement P-077R2, *Single and Multiple Supplies*.) The property and services included in the supply are considered to be ancillary property and services. The predominant element of the supply is that of a residential unit. The supply is subject to provincial landlord and tenant legislation and is not governed by any health care legislation. There is no medical evaluation process for prospective Residents of Part A and Part A of the facility is not promoted as a place that provides nursing and personal care. At its core, the supply to a Resident of Part A remains predominantly that of a residential unit. As such, the supply of the residential unit in Part A of the facility made by way of lease, licence or similar arrangement for periods of continuous occupancy of at least one month, as a place of residence for the Resident of Part A, is exempt under section 6 of Part I of Schedule V to the Act.
- (b) Residents of Part B move into Part B of the facility for the purpose of receiving personal care as well as accommodation, property and services. While a residential unit is provided, the unit is only one of the elements supplied by the Corporation for one all-inclusive fee. The Corporation is considered to be making a single supply. All of the property and services are elements that are interdependent and each element is an integral part of the whole supply made by the Corporation (Policy Statement P-077R2, *Single and Multiple Supplies*). The significant amount of personal care services required to meet the needs of the Residents of Part B on a regular basis are not considered to be ancillary property and services. Given the extent and level of personal care that is given, these services are fundamental to the supply made by the Corporation and as such, form the predominant element of the supply. Since the nature of the supply is that of providing care, the supply is not that of a residential unit (i.e., the unit is not the predominant element of the supply). As such, the supply made by the Corporation is not exempt under section 6 of Part I of Schedule V to the Act. However, the supply may be exempt under section 2 of Part IV of Schedule V to the Act.<sup>3</sup>
3. As the Corporation is a builder, the residential care facility is a residential complex and possession of a residential unit in the facility is given to a Resident of Part A under a lease, licence or similar arrangement for the purpose of occupying the unit as a place of residence, the self-supply provisions of subsection 191(3) of the Act apply to the entire facility (Part A and Part B). Accordingly, the Corporation is deemed to make and receive a taxable supply by way of sale of the residential complex and is required to account for tax on the fair market value of the complex on the day possession of the residential unit is first given to a Resident of Part A.
4. Subject to the provisions of the Act relating to ITCs, the Corporation is entitled to claim ITCs for the GST/HST paid or payable in respect of the construction of the facility, as there is a deemed taxable supply by way of sale of the complex pursuant to subsection 191(3) of the Act.
5. The Corporation is entitled to claim a NRRP rebate with respect to all qualifying residential units in Part A of the facility supplied to Residents of Part A, subject to the other conditions in section 256.2

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<sup>3</sup> For further information on this exemption, see GST Memorandum 300-4-4, *Child and Personal Care Services*.

of the Act. As indicated above, the supply made to a Resident of Part A is considered to be a single supply of a residential unit and is exempt under section 6 of Part I of Schedule V to the Act. As such, the residential unit provided to a Resident of Part A meets subparagraph (a)(ii) of the definition of “qualifying residential unit” for purposes of section 256.2 of the Act.

However, the Corporation is not entitled to claim a NRRP rebate with respect to those units in Part B that are provided to Residents of Part B, as the conditions under section 256.2 of the Act are not met with respect to those units. In order to be eligible for the NRRP rebate on these units, the supply made by the Corporation to a Resident of Part B must be exempt under section 6 of Part I of Schedule V to the Act. As indicated above, the supply made to a Resident of Part B is not exempt under this section. As such, a residential unit provided to a Resident of Part B is not a “qualifying residential unit” for purposes of section 256.2 of the Act. As it is only qualifying residential units that give rise to a NRRP rebate and none of the units supplied to the Residents of Part B are qualifying residential units, there is no NRRP rebate eligibility in respect of the units supplied to Residents of Part B.

### EXAMPLE NO. 3

#### Facts

1. A corporation S Ltd. leases land to D Ltd., which constructs and operates a residential care facility on the land. The construction of the facility is substantially completed before any unit in the facility is occupied by an individual as a place of residence. The lease agreement provides that the improvements to the land are owned by D Ltd. throughout the term of the lease.
2. The facility is a 160-bed nursing home licensed under the governing provincial legislation where the primary purpose of nursing homes is to provide care and services to elderly persons whose needs cannot be met through in-home services and who require services that are provided in an institutional setting.
3. The nursing home provides residents with limited physical or mental capacity for self-supervision and self-care with nursing and personal care under the direction of qualified medical and nursing care staff; assistance with the activities of daily living and social, recreational and other related services to meet the psycho-social needs of the residents; and meals and accommodation.
4. An individual wishing to move into a nursing home must apply through a community health centre, which conducts an evaluation of the individual in accordance with provincially established criteria. The evaluation assesses the individual’s capacity for self-supervision and self-care, as well as their need for 24-hour nursing care, assistance with activities of daily living, and daily supervision and monitoring of their activities.
5. Upon being accepted into a nursing home, an individual signs an admission contract with D Ltd. The admission contract is referred to therein as a fee for service business agreement and sets out the property and services that D Ltd. is required to provide in accordance with the provincial legislation. The property and services include: accommodation in a private, semi-private or ward room; nursing and personal care services on a 24-hour basis; supervision and assistance with activities of daily living; medical supplies and nursing equipment necessary for the care of the individual; medical devices used in the care of the individual; supplies and equipment necessary for personal hygiene and grooming; nutritional care services including three meals and snacks per day; organizing social, spiritual, recreational and physical activities; a laundry service; maintenance of the individual’s room,



and furnishings as required. It is expected that residents will reside at the facility for the foreseeable future.

6. An individual living at the nursing home (Resident) is assigned a specific room when they enter the nursing home, and cannot be moved to another room without their consent or the consent of the provincial Ministry of Health that licences the nursing home. A Resident is not permitted to enter another Resident's room, except by invitation. To the extent of available space, a Resident can bring their own furnishings into their room (e.g., a favourite chair or their own bed) and D Ltd. removes the furniture ordinarily provided with the room. However, Residents cannot bring any heat producing items (e.g., space heaters, hot plates) into their room. Residents that do bring furnishings into the room would usually not obtain content insurance for their rooms.
7. The regulations under the legislation that governs nursing homes stipulate the maximum amount a resident of a nursing home is to pay for the property and services received under the admission contract. Residents pay the amount on a monthly basis, due the first day of every calendar month. The provincial government provides funding to D Ltd. for the construction, operation and maintenance of the nursing home.

### **Issues**

1. Is the nursing home a residential complex for GST/HST purposes?
2. Is the provision of a room and the other property and services supplied by D Ltd. to a Resident of the nursing home exempt under section 6 of Part I of Schedule V to the Act?
3. Does section 191 of the Act apply when a Resident moves into the nursing home?
4. Is D Ltd. eligible to claim ITCs in respect of the construction of the nursing home?
5. Is D Ltd. eligible to claim a NRRP rebate under section 256.2 of the Act with respect to the nursing home?
6. Is the lease of the property from S Ltd. to D Ltd. an exempt supply?

### **Decisions**

1. The rooms in which the Residents of the nursing home reside are residential units. That part of the nursing home in which the units are located, together with that part of any common areas and appurtenances to the building and the land attributable to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, form a residential complex and more specifically, a multiple unit residential complex. In addition, the nursing home is a "health care facility" as defined in paragraph (c) of the definition in section 1 of Part II of Schedule V to the Act based on Fact 3. For purposes of this example, it is assumed that the entire building and the land on which it is situated form a residential complex. Based on the fact that the nursing home is a residential complex and Fact 1, D Ltd. is a builder for GST/HST purposes.
2. The supply made by D Ltd. to a Resident under the admissions contract is not exempt under section 6 of Part I of Schedule V to the Act, but is exempt under section 2 of Part II of Schedule V to the Act.

3. Section 191 of the Act does not apply. Accordingly, D Ltd. is not required to account for tax on the fair market value of the residential complex.
4. To the extent that the supplies made by D Ltd. are exempt supplies, D Ltd. is not eligible to claim ITCs in respect of the construction of the residential complex.
5. D Ltd. is not eligible to claim a NRRP rebate with respect to the nursing home.
6. The supply of the property by S Ltd. to D Ltd. is not exempt under section 6.1 of Part I of Schedule V to the Act and is a taxable supply.

### **Rationale**

1. Rooms in the nursing home in which Residents reside are rooms or suites in a residence for seniors, individuals with a disability or other individuals and are occupied as a place of residence or lodging. As such, these rooms are residential units. Further, that part of the nursing home that includes the residential units and any common areas and other appurtenances to the building, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and that proportion of the subjacent land attributable to the residential units will together form a residential complex. As the complex contains more than one residential unit and it is not a condominium complex, it is a multiple unit residential complex.
2. The Residents, who have met the provincially established criteria, move into the nursing home for the purpose of receiving the required care and services in an institutional setting, as their needs cannot be met through in-home services. In accordance with the regulations under the provincial legislation, which are in the nature of health care, D Ltd. provides all the property and services set out in Fact 5 to the Residents of the nursing home on an as needed basis. It is not possible for D Ltd. to provide only the residential unit and ancillary property and services to the exclusion of other programs and services. The property and services, including the residential unit, are elements supplied by D Ltd. under the admission contract for one all-inclusive fee. D Ltd. is considered to be making a single supply to a Resident. All of the property and services are elements that are interdependent and each element is an integral part of the whole supply made by D Ltd. (Policy Statement P-077R2, *Single and Multiple Supplies*). The significant amount of nursing and personal care services required to meet the needs of the Residents on a regular basis are considered to be non-ancillary services. Given the extent and level of care; the significant needs of the Residents which cannot be met through in-home services; and the primary purpose of the nursing home which is to provide the required care, these services are fundamental to the supply made by D Ltd. and as such, form the predominant element of the supply. Since the nature of the supply is that of a service, the supply is not that of a residential unit (i.e., the unit is not the predominant element of the supply). As such, the supply is not exempt under section 6 of Part I of Schedule V to the Act.

However, section 2 of Part II of Schedule V to the Act provides exemption for a supply of an institutional health care service made by the operator of a health care facility where the service is rendered to a patient or resident of the facility (other than certain services performed for cosmetic purposes and not for medical or reconstructive purposes). The supply made to a Resident is therefore exempt under section 2 of Part II of Schedule V to the Act.

3. The nursing home is a residential complex. D Ltd. is the builder of the residential complex for GST/HST purposes. Possession of a residential unit in the home is given to a Resident as evidenced by the fact that they are assigned a specific room that generally cannot be changed; they have the

right to exclude other Residents and visitors from their room; and they may furnish the room except for certain appliances that could cause safety concerns. Possession is given under the admission contract, which has the characteristics of a lease, licence or similar arrangement. The Resident has access to other parts of the nursing home, they are expected to live at the nursing home for the foreseeable future, and they make monthly payments to D Ltd. However, in applying the factors for determining the nature of the supply made by D Ltd., the Residents' primary purpose of occupancy in the nursing home is to receive the services provided by D Ltd. Although, the Residents do occupy the units in the nursing home as their place of residence, it is not the primary purpose of occupancy. As such, subsection 191(3) of the Act does not apply.

4. The construction activities of the nursing home are not undertaken in the course of a commercial activity, as the nursing home will be used to make supplies that are exempt under section 2 of Part II of Schedule V to the Act. Accordingly, D Ltd. is not eligible to claim ITCs with respect to the construction of the nursing home.
5. D Ltd. is not entitled to claim a NRRP rebate, as the conditions under section 256.2 of the Act are not met. For example, in order to be eligible for the NRRP rebate, D. Ltd., who is the builder of the nursing home, must be deemed to make a taxable supply of the nursing home pursuant to section 191 of the Act and must make supplies of residential units that are exempt supplies under section 6 of Part I of Schedule V to the Act. As indicated above, section 191 of the Act does not apply in these circumstances. Further, the supplies made by D Ltd. are not exempt supplies under section 6 of Part I of Schedule V to the Act. Therefore, these conditions are not met and there is no eligibility for a NRRP rebate.
6. Section 6.1 of Part I of Schedule V to the Act, in part, exempts the lease of land for a lease interval throughout which the lessee makes, or holds the property for the purpose of making, one or more supplies of the property where all or substantially all of those supplies are exempt supplies described by section 6 of Part I of Schedule V to the Act. As the supply made by D. Ltd. to a Resident is not exempt under section 6 of Part I of Schedule V to the Act, the supply made by S Ltd. to D Ltd. is not exempt under section 6.1 of Part I of Schedule V to the Act. No other provisions exempt the supply made by S Ltd. Accordingly, the supply is taxable.

#### **EXAMPLE NO. 4**

##### **Facts**

1. An individual (Owner) owns a house that he uses as his place of residence and from which he operates a long-term seniors' residence (i.e., a residential care facility). The facility can accommodate three individuals in addition to the Owner. The Owner is a licensed nurse.
2. An individual who chooses to live at the facility (Resident) enters into a monthly residential lease agreement (subject to provincial landlord and tenant legislation) with the Owner. Under the lease agreement, the Owner agrees to provide accommodation, water, heat, hydro, use of a telephone, weekly cleaning of the Resident's bedroom, three meals per day, laundry services for linens and towels, and transportation to and from doctor appointments not more than once a month. The Owner also monitors Residents to ensure they are taking any prescribed medication and can give injections if necessary. The Owner is in daily contact with Residents to ensure their general health is maintained. On a non-scheduled basis, the Owner occasionally provides minimal assistance with activities of

daily living (e.g., helping a Resident into a bathtub) and spends social time with the Residents. A Resident pays a single monthly amount for all that he or she receives under the lease agreement.

3. The facility is not regulated under any provincial health care legislation. The Owner ensures that a potential Resident is independent, continent and able to walk about before the Owner enters into a lease agreement with the Resident. If a Resident's condition declines such that they are no longer able to walk about the facility, they become incontinent, or they begin to require regular personal assistance while living at the facility, the lease agreement is terminated and the Resident moves into a facility that offers a greater degree of care.

### **Issue**

1. Is the long-term seniors' residence a residential complex for GST/HST purposes?
2. Is the provision of a room and the other property and services supplied by the Owner to a Resident of the long-term seniors' residence exempt under section 6 of Part I of Schedule V to the Act?

### **Decision**

1. The rooms in which the Residents of the long-term seniors' residence reside are residential units. That part of the seniors' residence in which the units are located and that part of the house in which the Owner resides together with that part of any common areas and appurtenances to the building and the land attributable to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, form a residential complex.
2. The supply made by the Owner to a Resident under the residential lease agreement is a single supply of a residential unit made by way of lease, licence or similar arrangement for the purpose of occupancy of the unit as place of residence and is exempt under section 6 of Part I of Schedule V to the Act.

### **Rationale**

1. Rooms in the long-term seniors' residence in which Residents reside are rooms or suites in a residence for seniors and are occupied as a place of residence or lodging. As such, these rooms are residential units. Further, that part of the seniors' residence that includes the residential units and that part of the house in which the Owner resides together with any common areas and other appurtenances to the building, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and that proportion of the subjacent land attributable to the residential units will together form a residential complex.
2. The Residents move into the long-term seniors' residence for the purpose of receiving accommodation, property and services. The property and services in Fact 2 and the residential unit are elements supplied by the Owner under the lease agreement for one all-inclusive fee. The Owner is considered to be making a single supply to a Resident. All of the property and services are elements that are interdependent and each element is an integral part of the whole supply made by the Owner (Policy Statement P-077R2, *Single and Multiple Supplies*.) The property and services included in the supply are considered to be ancillary property and services. While some services in the nature of nursing and personal care are elements of the supply, the predominant element of the supply is that of a residential unit. The supply is subject to provincial landlord and tenant legislation and is not

governed by any health care legislation. There is no medical evaluation process for prospective Residents and the seniors' residence is not promoted as a facility that provides nursing and personal care. At its core, the supply remains predominantly that of a residential unit. As such, the supply of the residential unit made by way of lease, licence or similar arrangement for periods of continuous occupancy of at least one month, as a place of residence for the Resident, is exempt under section 6 of Part I of Schedule V to the Act.

#### **EXAMPLE NO. 5**

##### **Facts**

1. A Corporation purchased a newly constructed residential care facility that will be used as a personal care home for seniors, licensed under provincial health care legislation. The home can accommodate up to 10 individuals. The Corporation paid tax on the purchase of the home.
2. An individual who moves into the home (Resident) enters into an admission agreement that outlines the terms and conditions of living at the home. The Corporation provides each Resident with accommodation in a private or shared room, three nutritionally balanced meals and two snacks per day; 24-hour supervision; laundry services; supervision and assistance with grooming, bathing, dressing, eating and nail care; a safe place to store medications; home-based social and recreational activities; a prescription pick-up service; recognition of special occasions such as a Resident's birthday; and arranges for transportation.
3. The regulations to the governing legislation define a Resident as an individual who resides in the home for the purpose of receiving personal care. The regulations further stipulate that the regional health authority make a determination that an individual moving into the home no longer has the capacity for self-care and self-supervision before admittance to the home is granted.
4. The Corporation receives a written assessment of a Resident's personal care needs by the regional health authority within seven days of the Resident moving into the home. As a result of that assessment, the Corporation provides the additional increased level of care and assistance that is required, including mobility assistance, specialized care and cognitive care. Also within seven days of a Resident's move into the home, the Corporation develops an individual care plan for the Resident that includes the type of regular and on-going assistance and supervision the Resident requires in their activities of daily living and addresses their physical, cognitive, social and spiritual needs. A Resident pays a fixed monthly fee for all of the property and services provided by the Corporation.
5. The Corporation charges an all-inclusive fee of \$1,700 per month to each Resident for the property and services supplied. The average rental charge for similar accommodations in an apartment building in the same community are \$500 - \$600 per month. A part of the monthly fee, \$900 - \$1,000, is attributable to the services provided.

##### **Issues**

1. Is the personal care home a residential complex for GST/HST purposes?
2. Is the provision of a room and the other property and services supplied by the Corporation to a Resident of the personal care home exempt under section 6 of Part I of Schedule V to the Act?

3. Is the Corporation eligible to claim an ITC in respect of the tax paid on the purchase of the personal care home?
4. Is the Corporation eligible to claim a NRRP rebate under section 256.2 of the Act in respect of the GST/HST paid on the acquisition of the personal care home?

### Decisions

1. The rooms in which the Residents of the personal care home reside are residential units. That part of the personal care home in which the units are located together with that part of any common areas and appurtenances to the building and the land attributable to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, form a residential complex, and more specifically, a multiple unit residential complex.
2. The supply made by the Corporation to a Resident under the admission agreement is not exempt under section 6 of Part I of Schedule V to the Act.
3. To the extent that the supplies made by the Corporation to the Residents are exempt supplies, the Corporation is not eligible to claim an ITC in respect of the tax paid on the acquisition of the residential complex.
4. The Corporation is not eligible to claim a NRRP rebate in respect of the tax paid on the acquisition of the residential complex.

### Rationale

1. Rooms in the personal care home in which Residents reside are rooms or suites in a residence for seniors and are occupied as a place of residence or lodging. As such, these rooms are residential units. Further, that part of the personal care home that includes the residential units together with any common areas and other appurtenances to the building, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and that proportion of the subjacent land attributable to the residential units will together form a residential complex.
2. Residents move into the personal care home for the purpose of receiving personal care as well as accommodation, property and services. While a residential unit is provided, the unit is only one of the elements supplied by the Corporation under a single contract (i.e., the admission agreement) for one all-inclusive fee. The Corporation is considered to be making a single supply. All of the property and services are elements that are interdependent and each element is an integral part of the whole supply made by the Corporation (Policy Statement P-077R2, *Single and Multiple Supplies*). The significant amount of personal care services required to meet the needs of the Residents on a regular basis are considered to be non-ancillary services. Given the extent and level of personal care that is given under the individual care plans, the charges in that community for accommodation similar to that provided in the personal care home, and the consideration attributable to the provision of the unit and the services, the services are fundamental to the supply made by the Corporation. As such, the services form the predominant element of the supply. Since the nature of the supply is that of providing care, the supply is not that of a residential unit (i.e., the unit is not the predominant element of the supply). As such, the supply made by the Corporation is not exempt under section 6 of Part I of

Schedule V to the Act. However, the supply may be exempt under another provision in Schedule V to the Act, e.g., Part II - Health Care Services.<sup>4</sup>

3. Although the supply made by the Corporation to a Resident is not exempt under section 6 of Part I of Schedule V to the Act, the supply may be exempt under another provision of Schedule V to the Act. To the extent that the Corporation is making exempt supplies, it may not claim an ITC for the tax payable on the acquisition of the home.
4. The Corporation is not entitled to claim a NRRP rebate, as the conditions under section 256.2 of the Act are not met. For example, in order to be eligible for the NRRP rebate, the supply made by the Corporation to a Resident must be exempt under section 6 of Part I of Schedule V to the Act. As indicated above, the supply made to a Resident is not exempt under section 6 of Part I of Schedule V to the Act. As such, the residential unit provided to a Resident is not a “qualifying residential unit” for purposes of section 256.2 of the Act. As it is only qualifying residential units that give rise to a NRRP rebate and none of the units supplied to the Residents are qualifying residential units, there is no NRRP rebate eligibility in respect of the tax paid by the Corporation on the acquisition of the residential complex.

#### EXAMPLE NO. 6

##### Facts

1. A Corporation owns land and engages another person to construct a 150-unit residential care facility on the land. The 150 units are comprised of one and two bedroom suites for seniors. All suites include a three-piece bathroom, individually controlled heating and cooling systems and are unfurnished. The building also contains a central common area, games area, dining room and laundry facilities. Eighty suites contain kitchenettes while the remaining suites do not. The facility is substantially completed before it is occupied as a place of residence.
2. An individual living at the facility (Resident) enters into a tenancy agreement with the Corporation for a one-year term. The agreement is covered by provincial landlord and tenant legislation. The Resident is given possession of a suite pursuant to the agreement. No medical examination of a potential Resident is required prior to their move into the facility, nor is the facility promoted as a residence where extensive personal care or nursing services are provided.
3. The supply made by the Corporation includes a suite, utilities, the use of activity rooms, the dining room, laundry rooms, a library, and outdoor patios within the facility, and landscaping, snow removal and other services. The Corporation offers two types of residential packages, Package A and Package B, described below, for a single all-inclusive amount. Residents cannot rent a suite in the facility without choosing one of the packages and cannot substitute or delete elements included in the package.
4. Package A includes:
  - a suite and the property and services indicated in Fact 3,
  - call-bell monitoring (i.e., a personal emergency response system),

<sup>4</sup> For more information on the exempting provisions in Parts II, Health Care Services and IV, Child and Personal Care Services, of Schedule V to the Act, see GST Memorandum 300-4-2, *Health Care Services* and GST Memorandum 300-4-4, *Child and Personal Care Services*.

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- an on-site nurse manager and at least one nurse on duty 24 hours per day to respond to emergency situations,
  - activity programs tailored to the needs of the Residents,
  - weekly housekeeping services including a change of bed linens and towels, and
  - one dinner served daily that takes into consideration special dietary needs of the Residents.
5. Package B includes:
- a suite and the property and services indicated in Fact 3,
  - call-bell monitoring,
  - an on-site nurse manager and at least one nurse on duty 24 hours per day to respond to emergency situations,
  - activity programs tailored to the needs of the Residents,
  - administering medication to residents on an as-needed basis,
  - daily light housekeeping and weekly housekeeping services including a change of bed linens and towels,
  - assistance with bathing once a week, and
  - three meals daily (that take into consideration special dietary needs of the Residents) and meals delivered to a Resident's room when authorized by the nursing manager.
6. In addition to Packages A and B, Residents can purchase additional services on a fee for service basis. These services and the prices are as follows:
- assistance with bath or extra bath - \$15/bath,
  - personal laundry - \$15/load,
  - more frequent or daily housekeeping – \$150/month,
  - one extra full clean of a suite per week - \$75/month,
  - extra assistance for dressing or other personal services - \$18/hour, and
  - escort services to and from the dining room - \$200/month.

### **Issues**

1. Is the 150-unit residential care facility a residential complex for GST/HST purposes?
2. Is the provision of a suite and the other property and services supplied by the Corporation to a Resident of the 150 unit residential care facility exempt under section 6 of Part I of Schedule V to the Act?
3. Does section 191 of the Act apply?
4. Is the Corporation eligible to claim ITCs in respect of the construction of the 150-unit residential care facility?
5. Is the Corporation eligible to claim a NRRP rebate under section 256.2 of the Act with respect to the facility?



## Decisions

1. The suites in which the Residents of the residential care facility reside are residential units. That part of the facility in which the units are located together with that part of any common areas and appurtenances to the building and the land attributable to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, form a residential complex and more specifically, a multiple unit residential complex. For purposes of this example, it is assumed that the entire building and the land on which it is situated form a residential complex. Based on the fact that the residential care facility is a residential complex and Fact 1, the Corporation is a builder for GST/HST purposes.
2. The supply of Package A or B made by the Corporation to a Resident under the tenancy agreement is a single supply of a residential unit made by way of lease, licence or similar arrangement for the purpose of occupancy of the unit as a place of residence and is exempt under section 6 of Part I of Schedule V to the Act. The supplies of additional services listed in Fact 6 are not exempt under section 6 of Part I of Schedule V to the Act and unless another exemption applies, are subject to tax.
3. Subsection 191(3) of the Act applies at the time possession of a residential unit in the facility is first given to a Resident who occupies the unit as a place of residence pursuant to the tenancy agreement. Accordingly, the Corporation is required to account for tax at that time on the fair market value of the residential complex at that time.
4. Subject to the provisions of the Act relating to ITCs, the Corporation is eligible to claim ITCs in respect of the construction of the facility.
5. The Corporation is eligible to claim a NRRP rebate with respect to each qualifying residential unit in the facility, provided the other criteria in section 256.2 of the Act are met.

## Rationale

1. The suites in the 150-unit residential care facility in which Residents reside are suites in a residence for seniors and are occupied as a place of residence or lodging. As such, these rooms are residential units. Further, that part of the residential care facility that includes the residential units together with any common areas and other appurtenances to the building, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and that proportion of the subjacent land attributable to the residential units will together form a residential complex. As the complex contains more than one residential unit and it is not a condominium complex, it is a multiple unit residential complex.
2. The Residents move into the residential care facility for the purpose of receiving accommodation, property and services. The property and services in Fact 4 and 5 for either Package A or B including the residential unit are elements supplied by the Corporation pursuant to a single contract (i.e., the tenancy agreement) for one all-inclusive fee. The Corporation is considered to be making a single supply to a Resident. All of the property and services under either Package are elements that are interdependent and each element is an integral part of the whole supply made by the Corporation (Policy Statement P-077R2, *Single and Multiple Supplies*). The property and services included in the supply are considered to be ancillary property and services. While some services in the nature of nursing and personal care are elements of the supply, the predominant element of the supply of either Package A or B is the provision of the residential unit. The supply is subject to provincial landlord and tenant legislation and is not governed by any health care legislation. There is no medical

evaluation process for prospective Residents and the residential care facility is not promoted as a facility that provides nursing and personal care. At its core, the supply remains predominantly that of a residential unit. As such, the supply of the residential unit made by way of lease, licence or similar arrangement for periods of continuous occupancy of at least one month, as a place of residence for the Resident, is exempt under section 6 of Part I of Schedule V to the Act.

Supplies of additional services listed in Fact 6 are separate from the supply of the residential unit. A supply of any of the additional services is not exempt under section 6 of Part I of Schedule V to the Act and unless another exemption applies, is subject to tax. Section 138 of the Act does not apply since the residential unit and these separate additional supplies are not provided for a single consideration.

3. As the Corporation is the builder of the residential care facility, the facility is a residential complex and possession of a residential unit in the facility is given to a Resident under a lease, licence or similar arrangement for the purpose of occupying the unit as a place of residence, the self-supply provisions of subsection 191(3) of the Act apply. Accordingly, the Corporation is deemed to make and receive a taxable supply by way of sale of the residential complex and is required to account for tax on the fair market value of the complex on the day possession of the residential unit is first given to a Resident.
4. Subject to the provisions of the Act relating to ITCs, the Corporation is entitled to claim ITCs for the GST/HST paid or payable in respect of the construction of the facility, as there is a deemed taxable supply by way of sale of the complex pursuant to subsection 191(3) of the Act.
5. The Corporation is entitled to claim a NRRP rebate with respect to all qualifying residential units in the facility, subject to the other conditions in section 256.2 of the Act. As indicated above, the supply made to a Resident is considered to be a single supply of a residential unit and is exempt under section 6 of Part I of Schedule V to the Act. As such, the residential unit provided to a Resident meets subparagraph (a)(ii) of the definition of “qualifying residential unit” for purposes of section 256.2 of the Act.

#### **EXAMPLE NO. 7**

##### **Facts**

1. A town (Municipality) owns a property that was formerly a nursing home, but has been vacant for several years. The Municipality has converted the nursing home into a residential care facility comprising 60 self-contained apartments for seniors. Each apartment contains a full kitchen with appliances, a living area, at least one bedroom that is separate from the living area, and a four-piece bathroom.
2. The conversion of the building involved the removal and reconstruction of the entire interior of the complex, certain parts of the exterior, and changes to the surrounding grounds.
3. Subsequent to the substantial completion of the renovation of the facility, a non-profit housing corporation (Corporation), a wholly owned subsidiary of the Municipality, entered into a 50-year lease of the facility with the Municipality. Lease payments for the first 25 years are equal to the principal and interest payments that the Municipality incurs as a result of the financing it undertook to

affect the renovations to the facility. The lease payments for the last 25 years of the lease are \$2 per annum.

4. All of the apartments in the facility are supplied by the Corporation by way of lease to low-income seniors (Residents). The Corporation also provides general building security and building patrol services. The Residents are fully independent and no nursing or personal care services are available at the facility. Residents can, however, hire third party service providers to come into their apartment to provide such services. The Municipality provides a rent supplement for the apartments such that Residents pay no more than 30% of their gross income on rent.

### **Issues**

1. Is the residential care facility a residential complex for GST/HST purposes?
2. Does subsection 190(1) of the Act apply to the conversion of the former nursing home?
3. Is the provision of an apartment and the other services supplied by the Corporation to a Resident of the residential care facility exempt under section 6 of Part I of Schedule V to the Act? What is the tax status of the supply of the facility made by way of lease by the Municipality to the Corporation?
4. Does section 191 of the Act apply? If so, is it the Municipality or the Corporation that accounts for tax pursuant to section 191 of the Act?
5. Is the Municipality eligible to claim ITCs or a rebate in respect of the cost of renovation?
6. Is there a NRRP rebate under section 256.2 of the Act that is available in respect of the facility? If so, is the Municipality or the Corporation eligible to claim the NRRP rebate?

### **Decisions**

1. The apartments in which the Residents of the residential care facility reside are residential units. That part of the facility in which the units are located together with that part of any common areas and appurtenances to the building and the land attributable to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, form a residential complex and more specifically, a multiple unit residential complex. For purposes of this example, it is assumed that the entire building and the land on which it is situated form a residential complex. Based on the fact that the residential care facility is a residential complex and Fact 1, the Municipality is a builder for GST/HST purposes (i.e., it owned the real property that forms part of the complex at the time the Municipality engaged a person to substantially renovate the complex).
2. Subsection 190(1) of the Act does not apply to the conversion of the former nursing home.
3. The supply made by the Corporation to a Resident under the lease agreement is a single supply of a residential unit made by way of lease, licence or similar arrangement for the purpose of occupancy of the unit as a place of residence and is exempt under section 6 of Part I of Schedule V to the Act. The lease of the facility by the Municipality to the Corporation is exempt under section 6.1 of Part I of Schedule V to the Act for each lease interval throughout which the Corporation makes, or holds the facility or parts of the facility for the purpose of making, exempt supplies under section 6 of Part I of Schedule V to the Act.

4. Subsection 191(3) of the Act applies at the time possession of the facility is given to the Corporation under the lease agreement between the Municipality and the Corporation. The Municipality must account for tax on the fair market value of the substantially renovated residential complex at that time.
5. Subject to the provisions of the Act relating to ITCs, the Municipality is eligible to claim ITCs for the tax paid or payable in respect of the cost of substantially renovating the facility.
6. The Municipality is not eligible to claim a NRRP rebate, but is entitled to claim the municipal rebate with respect to the tax paid on the self-supply. The Corporation is not eligible to claim a NRRP rebate with respect to the facility.

### **Rationale**

1. The apartments in the residential care facility in which Residents reside are occupied as a place of residence or lodging. As such, these apartments are residential units. Further, that part of the residential care facility that includes the residential units together with any common areas and other appurtenances to the building, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and that proportion of the subjacent land attributable to the residential units will together form a residential complex. As the complex contains more than one residential unit and it is not a condominium complex, it is a multiple unit residential complex.
2. Subsection 190(1) of the Act applies in certain circumstances where real property that is not a residential complex is converted for use as a residential complex without the property being substantially renovated. In this case, the property was a residential complex both before the conversion began (the nursing home would have been a residential complex) and after it was completed (the renovated facility is a residential complex). Further, the property is substantially renovated for GST/HST purposes. Therefore, subsection 190(1) of the Act does not apply.
3. The supply made by the Corporation to a Resident is a single supply of a residential unit where the unit is the predominant element of the supply. As such, the supply of the residential unit made by way of lease, licence or similar arrangement for periods of continuous occupancy of at least one month, as a place of residence for the Resident, is exempt under section 6 of Part I of Schedule V to the Act. The Municipality's supply to the Corporation is exempt under section 6.1 of Part I of Schedule V to the Act for those lease intervals throughout which the Corporation makes, or holds the facility for the purpose of making, exempt supplies under section 6 of Part I of Schedule V to the Act.
4. Subsection 191(3) of the Act applies at the later of the time substantial renovation of the complex is substantially complete and the time possession of the complex is given to the Corporation under the lease agreement between the Municipality and the Corporation. Note that under the provisions of subsection 191(10) of the Act, when the Municipality gives possession of the facility to the Corporation under the lease agreement between the two parties, the Municipality is deemed to have given possession of a unit in the complex to an individual under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence. As the Municipality is the builder of the facility and the remaining conditions of subsection 191(3) of the Act are met, the Municipality must account for tax on the fair market value of the substantially renovated complex at the time the Municipality gives possession of the complex to the Corporation pursuant to the lease agreement.

5. The Municipality makes a taxable supply of the facility (the self-supply deemed pursuant to subsection 191(3) of the Act). Accordingly, the Municipality is eligible to claim ITCs for the tax paid or payable on the costs of substantially renovating the facility subject to the provisions of the Act relating to ITCs.
6. If a person is eligible to claim a rebate under section 259 of the Act (this section provides for rebates to municipalities and other public service bodies) for any part of the tax otherwise included in determining the NRRP rebate, the person cannot claim the NRRP rebate. It should be noted that under section 259 of the Act, a municipality would generally be eligible for a 100% rebate for the tax paid on the self-supply.

In order for a person to be eligible for a NRRP rebate in respect of the facility described in this example, one of the following conditions must be met:

- (a) the person must be the recipient of a taxable supply by way of sale of a residential complex and not be a builder of the complex, or
- (b) the person must be a builder of a residential complex who makes exempt supplies of the complex under section 6 or 6.1 of Part I of Schedule V to the Act and the builder must be deemed to make a taxable supply of the complex pursuant to section 191 of the Act.

The Corporation is not eligible to claim a NRRP rebate because it is not a builder of the facility (i.e., condition (b) is not met), nor did it receive a taxable supply of the facility by way of sale (i.e., condition (a) is not met).

#### **EXAMPLE NO. 8**

##### **Facts**

1. A province has established a program to give individuals with modest incomes an affordable option between home care (i.e., nursing services provided in the individual's home) and institutional care (i.e., accommodation and care provided in an institutional setting). The program is available to those individuals whose personal care needs are not so great as to require constant access to professional health care, as in institutional care, but who have personal care needs too great for home care.
2. The program will involve the conversion of existing properties, either former nursing homes or former hospitals, to residential care facilities. The properties will not undergo major renovations as a result of the conversion. Each facility will include a common eating area and social areas. Each room will contain a sleeping area, a washroom and living area. Some facilities will include amenities for cooking meals that are eaten in the common area, while other facilities will contain no such amenities and meals will be prepared elsewhere and delivered to the facility.
3. The Operator of a facility will be a charity or a non-profit organization (NPO). The Operator will be responsible for purchasing the property and undertaking the necessary conversion. The Operator will receive government funding in respect of such the conversion. The Operator does not file an election under section 211 of the Act in respect of the facility
4. An individual who moves into a facility (Resident) must be selected and referred to the Operator by one of the province's health authorities. A Resident is eligible for admission to a facility only if they are able to self-direct their own care (i.e., they are cognitively capable of making decisions regarding

their own care), but have nevertheless been assessed by the provincial health authority as requiring assisted living services (i.e., meal preparation, housekeeping services, laundry services, availability of a 24-hour emergency response system) and personal care services (e.g., the administration of medication and regular assistance with activities of daily living including bathing, grooming, oral hygiene, hand care, skin care, toileting, lifting and transferring a Resident from one surface to another, with or without a mechanical aid, assisting a Resident to move around, with or without a mechanical aid, emptying an ostomy bag and emptying, cleaning and changing urinary drainage bags). Residents are required to move out of a facility if they are no longer able to self-direct their own care.

5. Residents pay a monthly fee equal to a fixed percentage of their monthly after tax net income to live in a facility. A portion of the monthly fee is considered to be in respect of the rental of a unit. The remainder of the monthly fee is considered to be in respect of the services provided to a Resident.
6. Residents enter into an agreement referred to as a tenancy agreement when moving into a facility. The agreement sets out the specific unit a Resident will move into and the various services that they will receive.

### **Issues**

1. Is a newly converted residential care facility a residential complex for GST/HST purposes?
2. Does subsection 190(1) of the Act apply to the conversion of the former nursing homes or hospitals?
3. Is the provision of a room and the other property and services supplied by the Operator to a Resident of a newly converted residential care facility exempt under section 6 of Part I of Schedule V to the Act?
4. Does section 191 of the Act apply?
5. Is the Operator eligible to claim ITCs for the tax paid or payable in respect of the cost of renovating a newly converted residential care facility?
6. Is the Operator eligible to claim a NRRP rebate under section 256.2 of the Act with respect to a facility?

### **Decisions**

1. The rooms in which the Residents of the newly converted residential care facility reside are residential units. That part of the facility in which the units are located together with that part of any common areas and appurtenances to the building and the land attributable to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, form a residential complex and more specifically, a multiple unit residential complex. For purposes of this example, it is assumed that the entire building and the land on which it is situated form a residential complex.
2. Subsection 190(1) of the Act does not apply to the conversion of a former nursing home, but does apply to the conversion of a former hospital.

3. The supply made by an Operator to a Resident under an agreement to provide the accommodations, property and services is not exempt under section 6 of Part I of Schedule V to the Act.
4. Whether a facility was a hospital or a nursing home immediately before the conversions began, subsection 191(3) of the Act does not apply.
5. The Operator is not eligible to claim ITCs with respect to any tax paid or payable in respect of acquiring or converting the facility if the facility is used less than primarily in the course of its commercial activities.
6. An Operator is not eligible to claim a NRRP rebate in respect of the acquisition or conversion of a facility.

### **Rationale**

1. The rooms in the residential care facility in which Residents reside are rooms in a residence for seniors, individuals with a disability or other individuals and are occupied as a place of residence or lodging. As such, these rooms are residential units. Further, that part of the residential care facility that includes the residential units together with any common areas and other appurtenances to the building, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and that proportion of the subjacent land attributable to the residential units will together form a residential complex. As the complex contains more than one residential unit and it is not a condominium complex, it is a multiple unit residential complex.
2. Subsection 190(1) of the Act applies in certain circumstances where real property that is not a residential complex is converted for use as a residential complex without the property being substantially renovated. In the case of a nursing home, the property was a residential complex both before the conversion began (the nursing home would have been a residential complex) and after it is complete (the renovated facility is a residential complex). Therefore, subsection 190(1) of the Act does not apply.

In the case of a former hospital, however, the facility was not a residential complex before the conversion began and as the facility is a residential complex upon conversion and the renovations are not substantial renovations, subsection 190(1) of the Act applies to deem a substantial renovation of the facility.

3. Residents move into the residential care facility for the purpose of receiving extended personal care that is not available through home care as well as accommodation, property and services. While a residential unit is provided, the unit is only one of the elements supplied by an Operator pursuant to a single contract for one all-inclusive fee. The Operator is considered to be making a single supply to a Resident. All of the property and services are elements that are interdependent and each element is an integral part of the whole supply made by the Operator (Policy Statement P-077R2, *Single and Multiple Supplies*). The significant amount of personal care services required to meet the needs of the Residents on a regular basis, although self-directed, are non-ancillary services. Given the extent and level of personal care that goes beyond what can be provided through home care, these services are fundamental to the supply made by the Operator and as such, form the predominant element of the supply. Since the nature of the supply is that of providing care, the supply is not that of a residential unit (i.e., the unit is not the predominant element of the supply). As such, the supply made by the

Operator is not exempt under section 6 of Part I of Schedule V to the Act. However, other exempting provisions may be applicable, e.g. exempting provisions in Part IV of Schedule V to the Act.<sup>5</sup>

4. Where subsection 190(1) of the Act applies to the conversion of a facility (i.e., the facility was a hospital immediately before the conversion began), the facility is deemed to have been substantially renovated, the renovations are deemed to be substantially completed and the Operator is deemed to be a builder of the facility. However, in applying the factors for determining the nature of the supply made by the Operator, the Residents' primary purpose of occupancy in the residential care facility is to receive the personal care services provided by the Operator. Although, the Residents do occupy the units in the facility as their place of residence, it is not the primary purpose of occupancy. As such, subsection 191(3) of the Act does not apply.

When subsection 190(1) of the Act does not apply to a conversion (i.e., the facility was a nursing home before the conversion began) there is no substantial renovation of the facility, deemed or otherwise, and section 191 of the Act does not apply.

5. Although the supplies made by the Operator to a Resident are not exempt under section 6 of Part I of Schedule V to the Act, the supplies may be exempt under another provision of Schedule V to the Act. The Operator may not claim ITCs with respect to any tax paid or payable in respect of acquiring or converting the facility if the facility is used less than primarily in the course of its commercial activities.
6. The Operator is not entitled to claim a NRRP rebate, as the conditions under section 256.2 of the Act are not met. For example, in order to be eligible for the NRRP rebate, the Operator must be deemed to make a taxable supply of the facility pursuant to section 191 of the Act and must make supplies of residential units in the facility that are exempt supplies under section 6 of Part I of Schedule V to the Act. As indicated above, section 191 of the Act does not apply in these circumstances. Further, supplies made by the Operator are not exempt supplies under section 6 of Part I of Schedule V to the Act. Therefore, these conditions are not met and the Operator is not eligible to claim a NRRP rebate under section 256.2 of the Act.

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<sup>5</sup> For more information on the exempting provisions in Parts II and IV of Schedule V to the Act, see GST Memorandum 300-4-2, *Health Care Services* and GST Memorandum 300-4-4, *Child and Personal Care Services*. Further, since the Operator may be a charity or NPO, the exempting provisions that apply to supplies made by those bodies should be considered. See guide RC4082, *GST/HST Information for Charities* and guide RC4081, *GST/HST Information for Non-Profit Organizations*.