

**Please note that the following Policy Statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.**

### **GST/HST Policy Statement**

P-242 Whether a customer list is personal property that can be produced by a person for purposes of paragraphs 141.1(1)(a) & (b) of the *Excise Tax Act* (the “Act”)

#### **Date of Issue**

July 15, 2003

#### **Subject**

Whether a customer list is personal property that can be produced by a person for purposes of paragraphs 141.1(1)(a) & (b) of the *Excise Tax Act* (the “Act”)

#### **Legislative Reference(s)**

Subparagraphs 141.1(1)(a)(ii) and 141.1(1)(b)(ii)

#### **National Coding System File Number(s)**

11710-1

#### **Issue and Decision:**

Is the supply of a customer list of a business (e.g. an insurance agency or a medical professional), in the context of the sale of the business’ assets but where sections 167 or 167.1 do not apply, personal property that can be produced by a person for purposes of subparagraphs 141.1(1)(a)(ii) and 141.1(1)(b)(ii) of the *Act*?

#### **Decision:**

Under subparagraph 141.1(1)(a)(ii), supplies of personal property by a person shall be deemed to have been made in the course of a commercial activity if the property was produced by the person in the course of a commercial activity of the person or for consumption or use in the course of a commercial activity, or was produced by the person and was consumed or used by the person in the course of a commercial activity under the condition that there is no deemed acquisition under Part IX of the *Act*.

Subparagraph 141.1(1)(b)(ii) is the corollary to subparagraph 141.1(1)(a)(ii) and addresses supplies of personal property not used in commercial activities. It provides that supplies of personal property by a person shall be deemed to have been made otherwise than in the course of commercial activities if the property was produced by the person in the course of activities that are not commercial activities exclusively for consumption or use in the course of activities of the person that are not commercial activities, and was not consumed or used by the person in the course of a commercial activity of the person under the condition that there is no deemed acquisition under Part IX of the *Act*.

A supply of a customer list of a business in the context of the sale of the business' assets but where sections 167 or 167.1 do not apply, is personal property that can be "produced" in the course of the business for purposes of subparagraphs 141.1(1)(a)(ii) and 141.1(1)(b)(ii) of the *Act*.

### **Example #1**

#### **Facts**

- Corporation A operates an insurance brokerage business.
- All of its supplies are exempt supplies as described in section 1, Part VII of Schedule V to the *Excise Tax Act* (the "*Act*").
- It has been in the insurance brokerage business for ten years.
- Corporation A now decides to sell its insurance customer list and start a different business.
- Corporation B operates another insurance brokerage business and will acquire Corporation A's customer list but will not purchase any other assets used by Corporation A in its business.

#### **Issue**

Is Corporation A considered to have made a supply of personal property that was produced by Corporation A exclusively for use in the course of activities that are not commercial activities under subparagraph 141.1(1)(b)(ii) of the *Act*?

#### **Comments**

Corporation A is considered to have made a supply of personal property that was produced in the course of its activities that are not commercial activities. Hence, the supply of the customer list by Corporation A is deemed to have been made otherwise than in the course of commercial activities by virtue of subparagraph 141.1(1)(b)(ii) of the *Act*.

## Example #2

### Facts

- Dentist A is a medical practitioner as defined in section 1 of Part II (Health Care Services) of Schedule V to the Act and operates a dental practice.
- The business consists of two types of supplies provided to the same clientele.
- Eighty per cent of the supplies are exempt supplies of consultative, diagnostic, treatment or other health care services rendered to customers pursuant to section 5, Part II of Schedule V to the Act.
- Twenty per cent of the supplies provided by the dentist are dental services that are performed for cosmetic purposes and not for medical or reconstructive purposes.
- His clientele list is being sold to Dentist B who does not need to purchase the real property, dental equipment, et cetera, as she is already established in a dental practice.
- Dentist A recommends to all his customers to transfer their business to Dentist B and sells the customer list to Dentist B.
- For those customers who agree, Dentist A transfers dental records as well.

### Issue

Is Dentist A considered to have made a supply of personal property that was produced by Dentist A substantially all for use in the course of its non commercial activities, and is the supply of the customer list deemed to have been made otherwise than in the course of commercial activities by virtue of subparagraph 141.1(1)(b)(ii) of the *Act*?

### Comments

Dentist A is not considered to have made a supply of personal property that was produced *exclusively* for consumption or use in activities that are not commercial activities of the dental practice. The word exclusive is defined in the Act and in the case of a person who is not a financial institution it means “all or substantially all” of the consumption, use or supply of a property or service which is generally 90% or more. Therefore, the supply of the customer list is a supply of personal property produced for consumption or use in the course of a commercial activity. The supply of the customer list is deemed to have been made in the course of the commercial activity pursuant to subparagraph 141.1(1)(a)(ii) of the *Act*.