

GST POLICY STATEMENT

P-213 GST/HST Status Of Certain Ice Cream, Ice Milk, Sherbet, Frozen Yoghurt, Frozen Pudding Products

DATE OF ISSUE

October 16, 1997

SUBJECT

GST/HST Status Of Certain Ice Cream, Ice Milk, Sherbet, Frozen Yoghurt, Frozen Pudding Products

LEGISLATIVE REFERENCE(S)

Paragraph 1(k) of Part III of Schedule VI to the *Excise Tax Act* (ETA)

NATIONAL CODING SYSTEM FILE NUMBER(S)

11850-2k

EFFECTIVE DATE

The interpretation of the term "packaged in single servings" is effective as of January 1, 1991. The interpretation of the term "sold in single servings" is effective as of May 14, 1996. (See subparagraph 1(o)(v) of Part III of Schedule VI for the period prior to May 14, 1996.)

Issue and Decision:

The object of this policy is to determine in what circumstances the products listed in paragraph 1(k) of Part III of Schedule VI of the ETA are considered to be packaged or sold in single servings. These products are: ice cream, ice milk, sherbet, frozen yoghurt or frozen pudding, non-dairy substitutes of these products and any products containing these products. Where packaged or sold in single servings, these products are taxable at 7% GST or 15% HST in the participating provinces. For the products at issue, a single serving referred to herein as the "administrative volume or weight threshold", is a serving of less than 500 ml or 500 g.

Packaged in Single Servings

In determining if a product is considered to be packaged in single servings, the key criterion is whether each single serving is individually packaged. The packaging would generally be of such a nature that it provides an identity to each serving. In other words, the individual servings must be packaged in their own right for the product to be considered as "packaged in single servings".

For example, this criterion would be met in the case of a box containing multiple ice cream cones where the quantity of each portion corresponds to the administrative volume or weight threshold and where each is individually wrapped.

On the other hand, a product that is a 2 litre container of ice cream, divided into multiple portions where each portion is not individually contained or wrapped, would not be considered as packaged in single servings. Each portion is not packaged in its own right and it would not be possible in this case to remove one portion of ice cream from the container without exposing the other portions. Therefore, these portions would not be considered as packaged in single servings even if the quantity of each portion corresponds to the administrative volume or weight threshold of a single serving.

Sold in Single Servings

The Department considers that a product is sold in single servings where the product is designed and marketed for sale in single servings. The product may be suitable for immediate consumption on or off the supplier's premises.

For example, a specialized establishment sells a product which is a cone containing ice cream in a quantity corresponding to the administrative volume or weight threshold for single servings. The product is suitable for immediate consumption on or off the supplier's premises. In this case, the sale of a single cone will be taxable at 7% GST or 15% HST in the participating provinces, in the same manner as a sale of many cones put in a tray for the client for transportation purposes.

Preparation or separation of a product into multiple portions does not necessarily result in a sale in single servings. Where the product is not designed and marketed for sale in single servings, and provided the portions are not packaged in single servings, the product is not considered to be sold in single servings.

For example, where the supply is a container with an ice cream cake (the total volume is greater than a single serving) that is divided into portions each of which corresponds to the quantity of a single serving, the sale will not be considered as a sale in single servings as the product is not designed and marketed for sale in single servings.

NOTE

Unpackaged multiple or single portions of ice cream products or other products named in paragraph 1(k) of Part III of Schedule VI are taxable at 7% GST or 15% HST in the participating provinces where the portions constitute single servings.

For example, even if a store owner or employee unwraps an individually packaged ice cream product immediately before selling it to the consumer, the supply of the product is taxable at 7% GST or 15% HST in the

participating provinces, as it is designed or marketed to be consumed as sold.

SAMPLE RULING 1

Statement of Facts

1. Ice cream is packaged in a container, in which there are four "shaped" recessed spaces.
2. Each of these spaces is filled with ice cream forming a cylinder.
3. Each portion of ice cream represents a volume of 175 ml, for a total of 700 ml in the container.
4. Only one lid covers all the portions that are in the container. There is no covering for the top of each ice cream portion.
5. The product is marketed to be sold in restaurants or grocery stores.

Ruling Requested

The supply of the product is zero-rated by the effect of section 1 of Part III of Schedule VI of the ETA.

Ruling Given

Amongst paragraphs (a) to (r) of the above-noted provision excluding certain foodstuffs from zero-rating, only paragraph 1(k) is relevant in the case at issue as it is the only provision in respect of ice cream. Paragraph 1(k) of Part III of Schedule VI of the ETA does not exclude the product at issue from the application of section 1 which zero-rates the supply of food for human consumption.

The product is not considered as packaged in single servings in that each portion is not packaged in its own right. The packaging of each portion is dependent on the packaging of the entire container in the fact situation at issue. The product is also not considered to be sold in single servings as each portion is not designed or marketed for sale in an autonomous manner.

This ruling is subject to the general limitations and qualifications outlined in the GST/HST Memoranda Series (1.4). We are bound by this ruling provided that none of the above issues is currently under audit, objection or appeal, that there are no relevant changes in the future to the *Excise Tax Act*, and that you have fully described all necessary facts and transactions for which you requested a ruling.

SAMPLE RULING 2

Statement of Facts

1. An ice cream cake is sold in a single container and is cut or scored in different pieces.
2. Each piece is separated from the other ones by a light plastic sheet or waxed paper.
3. The cake is separated in eight pieces of 175 ml each for a total quantity of 1,400 ml.

Ruling Requested

The supply of the product is zero-rated by the effect of section 1 of Part III of Schedule VI of the ETA.

Ruling Given

Amongst paragraphs (a) to (r) of the above-noted provision excluding certain foodstuffs from zero-rating, only paragraph 1(k) is relevant in the case at issue as it is the only provision in respect of ice cream. Paragraph 1(k) of Part III of Schedule VI of the ETA does not exclude the product at issue from the application of section 1 which zero-rates the supply of food for human consumption.

The product is not considered as packaged in single servings in that each portion is not packaged in its own right. The introduction of a separator (the paper) mainly to avoid contact between the different pieces is not sufficient to consider that each piece is packaged in its own right. The product is also not considered to be sold in single servings as the sale is treated as a sale of a complete ice cream cake rather than as a sale of multiple ice cream cake pieces. Consequently, the supply is treated as a zero-rated supply.

This ruling is subject to the general limitations and qualifications outlined in the GST/HST Memoranda Series (1.4). We are bound by this ruling provided that none of the above issues is currently under audit, objection or appeal, that there are no relevant changes in the future to the *Excise Tax Act*, and that you have fully described all necessary facts and transactions for which you requested a ruling.

DECISION TREE

GST/HST tax status of certain ice cream, ice milk, sherbet, frozen yoghurt, non-dairy substitutes of these products and any products containing these products

Is the product divided in portions corresponding to less than 500 ml where measured in volume, of less than 500 g, where measured in weight ?

NO ---

ZERO-RATED
(Section 1 of Part III of Schedule VI)

YES

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Is each portion packaged in its own right?

YES ---

**TAXABLE AT 7%
GST OR 15% HST**
(Paragraph 1(k) of Part III of Schedule VI, Subsection 165(1))

NO

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Is each portion designed or marketed to be consumed in an autonomous manner?

YES ---

**TAXABLE AT 7%
GST OR 15% HST**
(Paragraph 1(k) of Part III of Schedule VI, Subsection 165(1))

NO

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ZERO-RATED
(Section 1 of Part III of Schedule VI)