

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-112R Assessment of Tax Payable where a Purchaser is Insolvent

Date of Issue

March 8, 2000

Subject

ASSESSMENT OF TAX PAYABLE WHERE A PURCHASER IS INSOLVENT

Legislative Reference(s)

Sections 165, 221, 228, 296, 313, 315 and 318 of the *Excise Tax Act*

National Coding System File Number(s)

11620-6

Effective Date

January 1, 1991 for GST; April 1, 1997 for HST

Issue and Decision

This policy statement discusses whether the CCRA should assess the tax payable by a purchaser in respect of the tax not paid to a supplier and offset the amount assessed against a GST/HST refund or rebate payable to the purchaser under the *Excise Tax Act* (ETA).

Under section 165 of the ETA, every recipient of a taxable supply made in Canada is required to pay to Her Majesty the GST/HST payable in respect of the supply. In general, the ETA places an obligation on the supplier, as agent of Her Majesty, to collect the tax payable by the recipient, account for the tax in its net tax calculation and remit any positive amount of net tax.

Section 296 of the ETA allows the Minister to assess any tax payable by a person under Division II as well as Division IV or IV.1. The CCRA will not generally intervene to assess the tax payable by the purchaser under section 165. However, in circumstances of potential revenue loss, the Minister may exercise its authority under paragraph 296(1)(b) of the ETA and assess a purchaser who is insolvent or bankrupt in respect of the GST/HST not paid to a supplier.

For example, an assessment of tax payable may be made where a purchaser has claimed an input tax credit (ITC) in respect of a taxable purchase, for which payment to the supplier remains outstanding, and the supplier is entitled to a bad debt deduction in calculating its net tax. Under these circumstances, an assessment of tax payable addresses the net revenue loss position that would occur if the supplier deducts the bad debt adjustment in its net tax calculation.

All taxes and other amounts payable under Part IX of the ETA, including assessments of tax payable, are debts due to the Crown. Such debts may be offset against amounts payable to the person by the Crown, such as a net tax refund or a GST/HST rebate. Although the person may be a bankrupt at the time the offset is processed, this will not restrict the Crown's authority to offset the debt against amounts payable to the person provided: (a) amounts payable to the person which relate to pre-bankruptcy periods are used to offset pre-bankruptcy amounts owing; and (b) post-bankruptcy amounts payable are used to offset post-bankruptcy amounts owing.

SAMPLE RULING

Statement of Facts

1. A registrant goes into bankruptcy on June 30, 1998.
2. At the time of bankruptcy, the registrant had accounts payable which included the GST/HST owing to an unsecured creditor on taxable purchases for which the registrant is entitled to claim input tax credits (ITCs).
3. As an unsecured creditor, the supplier is unsuccessful in collecting the accounts receivable from the registrant/bankrupt and writes them off as bad debts.
4. Pursuant to section 231 of the *Excise Tax Act*, the supplier deducts an amount in respect of the bad debts in calculating its net tax.
5. The registrant/bankrupt has claimed a net tax refund in its GST/HST return for a pre-bankruptcy period which includes ITCs for the GST/HST payable on its taxable purchases which it has not paid to the supplier.

Ruling Given

The registrant may claim input tax credits in respect of the taxable purchases even though the tax payable on the purchases remains unpaid.

The registrant may be assessed for the tax payable that was not paid to the supplier.

The assessment of tax payable may be offset against the net tax refund claimed by the registrant.