

# GST/HST News

No. 47

Winter 2002 – 2003

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## Agreement with the Retail Council of Canada

The CCRA has reached an agreement with the Retail Council of Canada (RCC) to publish a small flyer the size of a bank note to reinforce the fact that everyone purchasing goods and services in Canada, except Status Indians, has to pay the GST/HST.

The RCC has distributed the flyers to its members to place in cash registers across Canada (except for the province of Quebec). When clients argue that they do not want to pay GST/HST, the cashier can hand out one of these flyers and suggest they call 1-800-247-3577, indicated on the flyer, for more information.

Persons calling that number will receive a recorded message discussing the exceptions for Status Indians and individuals using credit cards issued to certain provincial governments. The message also explains how diplomats and visitors may receive a rebate of the tax they pay.

Copies of the flyer are available on the CCRA Web site in the Fall 2002 edition of the *GST/HST News*. The flyer can be printed from a link in the Retail Council of Canada article.

## Excise Act, 2001 – licensing and registration packages

Licensing and registration packages for the new *Excise Act, 2001* will be mailed out four to six months before the implementation date which is scheduled for July 1, 2003. These packages will be sent to persons licensed under the existing *Excise Act* (except for brewers), as well as wine producers and ferment-on-premises operations. If you require a package and do not receive it in the mail, please contact your regional excise duty office to request one. These offices are listed on the CCRA Web site under the headings: Tax, Technical Publications, Excise and GST/HST.

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Canada Customs  
and Revenue Agency

Agence des douanes  
et du revenu du Canada

Canada

## Sale of passenger and motor vehicles – ITC entitlements

This article is of interest to businesses which accept used vehicles in trade for vehicles they sell or lease, and their customers. Special rules apply to the transaction, depending on whether the customer (from whom the business is accepting the trade-in) is required to charge tax.

### When the customer is required to charge tax

These customers fall into two main categories:

1) Individuals or partnerships who are registered for GST/HST purposes must collect the tax on the value of:

- a) the passenger vehicle traded in, where the vehicle has been used 90% or more in commercial activities; or
- b) the motor vehicle traded in, where the vehicle has been used greater than 50% in commercial activities.

2) Corporations that are registered for GST/HST purposes must collect tax on the value of:

- a) the passenger vehicle traded in, where the vehicle has been used greater than 50% in commercial activities; or
- b) the motor vehicle traded in, where the vehicle has been used greater than 50% in commercial activities.

In both these cases, two separate transactions occur:

- i) the vehicle dealer purchases the trade-in from its customer; and
- ii) makes a sale or lease to the same customer.

As a result, the dealer pays GST/HST on the value of the trade-in, and has to collect GST/HST on the full price charged for the vehicle it sells or leases.

Both the dealer and the customer may claim an input tax credit for the GST/HST they both pay or owe.

### When the customer is not required to charge tax

In this case, the dealer charges GST/HST on the net amount of the sale or lease, that is, the price of the goods it sells or leases minus the amount it allows for the trade-in.

For example, an individual goes to a registered car dealer to trade in his car for a new one. The selling price of the new car is \$25,000, and the dealer allows \$10,000 for the individual's used car. The dealer will charge GST/HST on \$15,000, which is the difference between the selling price and the trade-in value of the used car.

For more information regarding trade-ins please refer to GST/HST Technical Information Bulletin B-084, *Treatment of Used Goods*.

For more information on passenger or motor vehicles, please call Business Enquiries at 1-800-959-5525.

## Charities – reminder for annual filers

Since January 1, 1997, the CCRA has assigned all GST/HST registered charities an annual reporting period, regardless of their revenues. This means that most GST/HST registered charities file annual returns.

A charity may elect to have monthly, quarterly, or annual reporting periods, regardless of its level of taxable supplies. Charities wishing to change the frequency of their reporting periods should contact their local tax services office or complete and send Form GST20, *Election for GST/HST Reporting Period*, to their tax services office.

Charities reporting on an annual basis are required to remit quarterly instalments unless their net tax is less than \$1,500 in the current or previous year. Even if the net tax owing is offset by rebates at the end of the year, failure to remit instalments will incur penalty and interest.

For more information regarding charities please refer to the GST/HST guide RC4082, *GST/HST Information for Charities*.

## Ochapowace court decision

On September 12, 2002, the Provincial Court of Saskatchewan decided against the Ochapowace Band for failing to collect the GST and failing to file GST returns for the Ochapowace Ski Resort which is operated on the Ochapowace reserve.

The Court decision upholds the CCRA's administrative policy for Indians based on the *Excise Tax Act*. The Court found that the requirement to collect and remit tax is not a breach of an aboriginal or treaty right. There is no provision of the *Indian Act* which prevents Indian bands from acting as agents for the Crown to collect the GST/HST.

The Judge noted this was not a precedent-setting case as there is existing case law that supports the decision. Indian businesses are subject to the provisions of the *Excise Tax Act* and are liable for the collection of the GST/HST, and numerous other cases have settled the issues of sovereignty, aboriginal, and treaty rights. Businesses operating on reserves must register for the GST/HST, collect the GST/HST and file GST/HST returns.

For more information on the GST/HST and Indians, please refer to GST/HST Technical Information Bulletin B-039R, *GST Administrative Policy, Application of GST to Indians*.

## Fall 2002 – Edition No. 46

### GST/HST and dietary supplements

The CCRA has issued a policy statement which discusses whether products commonly described as “dietary supplements” are taxable at 7% GST (i.e., or 15% HST, as applicable) or at 0% (zero-rated). The policy statement considers whether such products are zero-rated as food or beverages for human consumption, or as an ingredient to be mixed with or used in the preparation of such food or beverages. If not considered to be a food, beverage or ingredient, the product is not zero-rated.

#### Food, beverage or ingredient

A product is considered a food, beverage or ingredient if an average consumer would recognize and purchase the product in the ordinary course of buying basic groceries, or if it would be consumed by an average consumer when food or beverages are typically consumed, such as at mealtimes or for a snack.

In order to be regarded as an ingredient to a food or beverage, an item must be an integral part of a final product which would be considered to be a food or beverage by the average consumer.

In general, food and beverages or ingredients are consumed to sustain or maintain life, to allay hunger or thirst, or for enjoyment, rather than for therapeutic or preventative effects (e.g., to correct actual or perceived health problems), or to achieve specific beneficial effects related to performance or physique.

If a product is not considered to be a food, beverage, or ingredient, it is not zero-rated.

#### Dietary supplements

A product that is marketed for its beneficial effects, and that is added to a food or beverage simply as a means of consuming it, would not be considered by an average consumer as an ingredient simply because it is ingested in this manner.

Products commonly described as “dietary supplements” are generally made from synthetic or natural ingredients that are ingestible and that may be nutritive. These products are available in a variety of formats: solid, including powders or capsules/pills; gels; liquids, including oil; and tinctures. They may also contain vitamins, minerals, fibre, protein, amino acids, fatty acids, enzymes, or compounds derived from plant or animal products.

#### Criteria

Meal replacement and nutritional supplement products that meet the criteria set out in the *Food and Drugs Act* are not covered by this policy and such products would generally be zero-rated.

The following criteria related to labelling, packaging and marketing help to determine whether or not a product is considered to be a food, beverage or ingredient:

- Identification as a “dietary supplement” or “supplement”;
- Claims or product names or pictorial representations advising that the product:
  - a) has a therapeutic or preventative effect,
  - b) enhances mental or physical performance, or
  - c) enhances physique or weight loss;
- Emphasis on particular nutrient(s) not commonly regarded by a consumer as an ingredient (e.g., whey protein isolate) or statements as to the purity or superior source of

the nutrient. The nutrient is emphasized if the name of the nutrient is prominently displayed on the label. However, this does not include general nutrition information or information that a product is fortified with particular vitamins and minerals, or that it is a source of protein;

- Restrictions related to specific frequencies or quantities of dosage and certain warnings as to who should not consume the product or should only consume it in restricted amounts, or that the product is to be “taken” or “taken as directed by a physician”;
- A Drug Identification Number (DIN). Although not determinative in itself, the presence of a DIN may be an indication that the product is promoted and consumed for its beneficial effects. However, the absence of a DIN does not necessarily mean that a product is considered to be a “food” or a “beverage”;
- A listing of active or medicinal ingredients;
- Comparison to other products that are not considered to be a food, beverage or ingredients; and
- Focus on the benefits of the product, rather than the format. For example, a manufacturer may offer a product in both pill and liquid formats. Although a person may prefer a particular format for ease of consumption, the primary focus continues to be on the expected health benefits of ingesting the product.

For more detailed information on this subject, please refer to Policy Statement P-240, *Application of GST/HST to Products Commonly Described as “Dietary Supplements”*.

## Excise Act, 2001

Bill C-47 received Royal Assent on June 13, 2002 and is now law. It enacts the *Excise Act, 2001*.

The *Excise Act, 2001* provides a modern framework for the taxation of spirits, wine and tobacco, modernizes the legislative provisions governing these products, and introduces an updated administrative and enforcement framework that reflects current industry practices.

This legislation also implements changes to ships' stores provisions and tobacco tax increases. Beer will continue to be subject to the provisions of the existing *Excise Act*.

The *Excise Act, 2001* is expected to be implemented July 1, 2003.

## GST/HST and electronic commerce

Technical Information Bulletin B-090, *GST/HST and Electronic Commerce*, has been published and is available on the CCRA Web site. It discusses in detail the CCRA's interpretation of key provisions of the *Excise Tax Act* which are relevant to electronic commerce (i.e., supplies made over the Internet), and outlines how the CCRA's administrative policies pertain to transactions made by electronic means.

Electronic commerce has fundamentally changed the way business is conducted and raises several interpretative issues concerning the administration of the GST/HST.

The following issues are dealt with in this TIB:

- the characterization of supplies i.e., determining whether a supply is one of property or service;
- place of supply;
- supplies to non-residents; and
- non-resident registration.

This publication is on the CCRA Web site under Tax, Technical Publications, Excise and GST/HST.

## Other articles published in the Fall 2002 newsletter

These articles were also published in the Fall 2002 edition of the newsletter (No. 46) and can be found on the CCRA Web site.

## Agreement with the Retail Council of Canada

This article announces that the CCRA has reached an agreement with the Retail Council of Canada to publish a small flyer the size of a bank note to reinforce the fact that everyone purchasing goods and services in Canada, except Status Indians, has to pay the GST/HST. Extra copies of the flyer are available through an Internet link in the article.

## GST/HST and electric scooters

This article discusses how GST/HST applies to three- and four-wheeled electrical mobility

vehicles or scooters, their parts, accessories and attachments. These scooters are zero-rated (i.e., taxable at 0%) if they are specially designed for use by an individual with a disability.

## Reducing red tape with our partners

This article announces service enhancements which Service New Brunswick (SNB) and the CCRA have worked out together to make business registrations simpler and easier. During a single session at [www.businessregistration.gc.ca](http://www.businessregistration.gc.ca), businesses can now register for selected CCRA, New Brunswick, Nova Scotia and Ontario business programs and can obtain a Business number at the SNB Web site ([www.snb.ca](http://www.snb.ca)).

## Programs for exporters

This article highlights the CCRA's export-oriented trade incentives programs which offer companies doing business in Canada many of the same duty and tax incentives as those found in free trade zones around the world.

The Duty Deferral Program, the Exporter of Processing Services (EOPS) Program and the Export Distribution Centre Program (EDCP) are discussed. For more detailed information on these programs please see the CCRA Web site under Customs, Business, Importing.



## Summer 2002 – Edition No. 45

### CCRA focuses on small business for R&D tax credits

Small and medium-sized businesses may not be taking full advantage of the tax credits offered through the federal government's Scientific Research & Experimental Development (SR&ED) Program.

The program has been designed by the federal government and administered by the CCRA as a major incentive to encourage research and development (R&D) in Canada.

If your company qualifies, you could recover up to 35% of your SR&ED costs, possibly helping to finance further projects and improve your overall financial position.

You do not have to have a high-tech R&D facility to qualify. If you are a Canadian business that develops new or improved materials, products, or processes in Canada you may be eligible for refunds.

Your claimed work must also meet certain requirements concerning the type of work, involvement of technological advancement, supporting documentation, and expenditures.

The CCRA has set up the following services designed to meet the needs of small and medium-sized businesses:

- The **First Time Claimant Service** puts your business in touch with a representative who will answer your questions about the SR&ED Program.

- The **Account Executive Service** links you with a designated contact person from the SR&ED Program. This makes for effective, two-way communication.
- The **Preclaim Project Review Service** offers you a preliminary opinion on the eligibility of your projects.
- Information seminars are provided on a regular basis in most regions to provide introductory information to first time users.

For more information on the SR&ED Program, visit your tax services office or the CCRA Web site.

### Other articles published in the Summer 2002 newsletter

These articles were also published in the Summer 2002 edition of the newsletter (No. 45) and can be found on the CCRA Web site.

#### Quick Method of Accounting

This article outlines what the Quick Method of Accounting is and who can use it.

#### Air Travellers Security Charge

This article announces that the Air Travellers Security Charge (ATSC) received Royal Assent, when it is effective, and who collects it.

### Government of Canada appeals ruling in *Benoît v the Queen*

This article announces that the Federal Court of Appeal granted a stay of the decision of the Federal Court – Trial Division. The stay will permit the CCRA to continue to apply its programs, policies, and procedures in the usual manner. This minimizes uncertainty for individuals, employers, and merchants while the case is under appeal.

Please refer to the Media Room on the CCRA Web site.

### Update on Yukon First Nations and Yukon Indians

This article announces that the Ta'an Kwach'an First Nation Final Agreement has been confirmed by Order in Council. Effective April 1, 2002, the Ta'an Kwach'an First Nation and its Indian members will no longer be able to acquire goods or services relieved of tax unless the Indian members reside outside the Yukon and they meet the conditions set out in Technical Information Bulletin B039R, *GST Administrative Policy – Application of GST to Indians*.

## Spring 2002 – Edition No. 44

### Press release – student transport services

The Minister of Finance announced a proposed GST/HST amendment to the *Excise Tax Act* on December 21, 2001.

The proposed amendment relates to the treatment of school authorities and their provision of student transportation services. It ensures that the service of transporting elementary or secondary school students to or from a school operated by a school authority is treated as an exempt service where it is supplied by a school authority to a person other than another school authority.

The proposed amendment does not affect users of school bus services. It is intended to ensure that the provision of these services by school authorities continues to be treated as an exempt activity under the GST/HST.

To ensure consistent exempt treatment regardless of how these services may have been funded, the amendment is proposed to be effective from the implementation date of the GST (i.e., January 1, 1991). However, the proposed amendment will not affect any case that has already been decided by the federal courts.

For more detailed information please see the Department of Finance Web site at this address:

<http://www.fin.gc.ca/news01/01-126e.html>

### Other articles published in the Spring 2002 newsletter

These articles were also published in the Spring 2002 edition of the newsletter (No. 44) and can be found on the CCRA Web site.

#### Air Travellers Security Charge

As announced in the Federal Budget of December 10, 2001, the federal government will introduce an Air Travellers Security Charge (ATSC) to fund new air security expenditures. This article discusses who pays the ATSC and when.

#### Time limits for Indians and Indian bands making GST/HST general rebate claims

This article is a reminder that Indian bands and Indians can apply for a GST/HST rebate if the tax was paid for a product and it was acquired on a reserve or delivered to a reserve by the vendor. For band-management activities, GST/HST paid on off-reserve purchases of services, transportation, accommodation, meals, and entertainment is eligible for a rebate. GST/HST rebate claims made by Indians and Indian bands must be filed with the CCRA within two years of when the tax was paid.

#### Tax myth – individual GST/HST exemptions

This article is a reminder that the law does not provide relief from the GST/HST to any individuals except for Indians, as defined in the *Indian Act*, who acquire goods or services on a reserve or have goods delivered to a reserve by a vendor. GST/HST registrants are reminded that they must account for the GST/HST collectible on all taxable transactions.

### Press release – returnable beverage containers

This article announces that on February 8, 2002, a Notice of Ways and Means Motion to amend the *Excise Tax Act* was tabled in the House of Commons. The proposed amendments relate to the treatment of beverage container deposits under the GST/HST. Technical Information Bulletin B-089, *Returnable Containers*, explains these rules in detail.

### Press release – Nova Scotia New Housing Rebate and Speech Therapists' Services

This article announces that the Minister of Finance released draft amendments to the *Excise Tax Act* on December 28, 2001. One of the draft amendments modifies the existing New Housing Rebate for the provincial portion of the HST in Nova Scotia. As announced by the government of Nova Scotia in its 2001 budget, the rebate will be targeted to first-time homebuyers and capped at a new maximum (\$1,500) starting on January 1, 2002.

The purpose of the other draft amendment is to extend the GST/HST exemption for speech therapists' services to the end of 2002.

### Shuswap First Nation Tax (Kinbasket First Nation Taxation)

This article announces that the Council of the Shuswap First Nation passed a by-law that imposes a 7% tax on the supply of tobacco products, fuel, and alcoholic beverages sold on the Shuswap First Nation reserve in British Columbia. The Council of the Shuswap First Nation has approved

this tax as the Kinbasket First Nation Taxation, effective February 1, 2002. The CCRA is administering the tax on behalf of the Shuswap First Nation.

#### **Excise Act, 2001**

Bill C-47, the legislation to implement the *Excise Act, 2001*, was introduced in the House of Commons on December 6, 2001.

### Application of GST/HST to Yukon First Nations and Yukon Indians

This article discusses how CCRA administrative policy has changed as a result of jurisprudence involving the Carcross Tagish Yukon First Nation. The application of the GST/HST to Yukon First Nations and Indians who are members of such First Nations now depends on whether a final land claim agreement is in place.

## What's new in publications

### GST/HST Memoranda Series

Memorandum 7.5 *Electronic Filing and Remitting*

Memorandum 13.4 *Rebates for Printed Books, Audio Recordings of Printed Books, and Printed Versions of Religious Scriptures*

### GST/HST Guides

RC4028	<i>GST/HST New Housing Rebate</i>
RC4031	<i>Tax Refund for Visitors to Canada</i>
RC4033	<i>General Application for GST/HST Rebates</i>
RC4080	<i>GST/HST Information for Freight Carriers</i>
RC4082	<i>GST/HST Information for Charities</i>
RC4091	<i>GST/HST Rebate for Partners</i>
RC4100	<i>Harmonized Sales Tax and the Provincial Motor Vehicle Tax</i>
RC4125	<i>Basic GST/HST Information for Taxi and Limousine Operators</i>
RC4247	<i>The Special Quick Method of Accounting for Public Service Bodies</i>

### GST/HST Forms

GST22	<i>Real Property – Election to Make Certain Sales Taxable</i>
GST176	<i>Application for Visitor Tax Refund</i>
GST189	<i>General Application for Rebate of GST/HST</i>
GST190	<i>GST/HST New Housing Rebate Application</i>
GST190WS	<i>Construction Summary Worksheet</i>
GST287	<i>Election or Revocation of the Election by Public Service Bodies to use Special Quick Method of Accounting</i>
GST370	<i>Employee and Partner GST/HST Rebate Application</i>
GST488	<i>Election or Revocation of an Election not to Use the Net Tax Calculation for Charities</i>
GST498	<i>GST/HST Rebate Application for Foreign Representatives, Diplomatic Missions, Consular Posts, International Organizations, or Visiting Forces Units</i>
GST528	<i>Authorization to Use an Export Distribution Centre Certificate</i>

### Technical Information Bulletins

B-089	<i>Returnable Containers</i>
B-090	<i>GST/HST and Electronic Commerce</i>

Current publications can be found on the CCRA Web site at the following address: [www.ccra-adrc.gc.ca/tax/business/gsthst/menu-e.html](http://www.ccra-adrc.gc.ca/tax/business/gsthst/menu-e.html) for guides, pamphlets, forms, and the *GST/HST News*, or at [www.ccra-adrc.gc.ca/menu/EmenuKZW.html](http://www.ccra-adrc.gc.ca/menu/EmenuKZW.html) for GST/HST Memoranda Series, Technical Information Bulletins, Policy Statements and Notices.

## Prescribed rates of interest

GST/HST interest and penalty compound daily. Income tax interest also compounds daily. For excise duty, penalty compounds monthly, and interest compounds daily. For excise tax, penalties and interest are calculated monthly for each month or part-month in which a balance remains. The total amount payable is based on the total tax, penalties, and interest outstanding. Prescribed interest rates are adjusted every calendar quarter.

These rates of interest are also available on the CCRA Web site at:  
<http://www.ccra-adrc.gc.ca/E/pub/gi/prireq/prier-e.html>

	GST/HST, Excise Tax (annualized rates)		Excise Duty (annual rates)		Income Tax (annual rates)	
	Interest*	Penalty	Interest	Penalty	Refund Interest	Arrears and Instalment Interest
<b>2003</b>	%	%	%	%	%	%
January 1 – March 31	2.4333	6.0	5.0	6.0	5.0	7.0
<b>2002</b>						
October 1 – December 31	2.3804	6.0	5.0	6.0	5.0	7.0
July 1 – September 30	2.3804	6.0	5.0	6.0	5.0	7.0
April 1 - June 30	2.4066	6.0	4.0	6.0	4.0	6.0
January 1 - March 31	2.4333	6.0	5.0	6.0	5.0	7.0

\* To calculate interest for GST/HST purposes only, divide the adjusted annual interest rate by 365 and apply it daily.

### GST/HST News electronic mailing list

Receive your *GST/HST News* on time, every quarter, by subscribing to the online mailing list for this newsletter.

We will notify you every quarter when the newsletter is published and provide you with a link to the most current edition.

To join the mailing list, you must provide your e-mail address, and you will be asked to read the CCRA privacy statement before you confirm your request.

To subscribe to the *GST/HST News*, please go to the CCRA Web site at this address: [www.ccra.gc.ca/gsthstnews](http://www.ccra.gc.ca/gsthstnews)

### GST/HST enquiries

To make enquiries regarding your GST/HST account call Business Enquiries at 1-800-959-5525

To make enquiries regarding the status of specific GST/HST domestic rebate claims call 1-800-565-9353

To make enquiries regarding the status of visitor rebate claims call 1-800-668-4748

To obtain copies of forms and publications call, 1-800-959-2221

The *GST/HST News* is published quarterly and highlights recent developments in the administration of the goods and services tax (GST) and harmonized sales tax (HST), as well as excise taxes and duties. This publication is provided for information purposes only and does not replace law, either enacted or proposed. For further information on any of the articles contained in this newsletter, contact your nearest Canada Customs and Revenue Agency (CCRA) tax services office or call Business Enquiries at 1-800-959-5525.

Comments or suggestions about the newsletter should be sent to the Editor, *GST/HST News*, Policy and Legislation Branch, CCRA, Ottawa, Ontario K1A 0L5.

