

Refunds of Overpayments of Tax

Social Service Tax Act, Hotel Room Tax Act, Motor Fuel Tax Act, Tobacco Tax Act

This bulletin outlines the provisions of the *Social Service Tax Act, Hotel Room Tax Act, Motor Fuel Tax Act,* and *Tobacco Tax Act* for refunding tax paid in error.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Social Service Tax Act, Hotel Room Tax Act, Motor Fuel Tax Act, Tobacco Tax Act* and Regulations can be found on the web at www.gov.bc.ca/sbr

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REFUNDS OF TAX PAID IN ERROR

Minimum Refundable Amount

Claims for amounts of less than \$10 are not eligible for refund.

A Mistake of Fact

Tax is considered to have been paid in error by mistake of fact under the following circumstances.

- A taxpayer, through misinterpretation or lack of knowledge of the taxation statute, voluntarily pays tax on a purchase that the ministry, at the time of payment, would have considered not subject to the tax if the branch had been aware of all the relevant facts.
- The taxpayer makes an error in calculating the amount of tax due, resulting in an overpayment of tax.

Taxes paid in error by mistake of fact are eligible for a refund, provided the refund is claimed within **six years** from the date the taxes were paid. For example, if tax was mistakenly paid on November 12, 1992, a claim for a refund of the tax paid must be submitted to the ministry by November 11, 1998.

A Mistake of Law

Mistake of law is defined to include any error other than an error that is solely a mistake of fact. For example, tax is paid in error by mistake of law when both the taxpayer and the ministry believe that the taxation statute imposes tax in a particular circumstance, the tax has been paid accordingly, and a court subsequently determines that the statute does not impose tax in that circumstance.

Claims for refunds of tax paid under a mistake of law, received by the ministry on or after the following dates, are eligible for a refund, subject to the refund claim being made within the applicable limitation period.

<i>Social Service Tax Act</i>	July 24, 1990
<i>Hotel Room Tax Act</i>	June 5, 1992
<i>Motor Fuel Tax Act</i>	June 5, 1992
<i>Tobacco Tax Act</i>	June 5, 1992

Refunds of tax paid under a mistake of law are subject to the following limitations.

- Tax paid by an individual on the purchase of tangible personal property, accommodation, motor fuel products, or tobacco products for the sole, personal consumption or use of that individual, will be refunded provided that the refund is claimed within **six years** from the date the tax was paid.
- In any other case (e.g., corporations, organizations, businesses), refunds of tax paid on purchases must be claimed within **six months** from the date the tax was paid.

Lump Sum Contract (Social Service Tax)

Under a lump sum or fixed price contract for the improvement of real property, the contractor is

required to pay social service tax on the purchase of materials used or consumed in carrying out the terms of the contract. Social service tax does not apply to the charge to the customer for a lump sum contract to improve real property.

Contractors who are unfamiliar with the legislation may incorrectly charge the purchaser tax on the full amount of the contract. When this occurs, the purchaser may be eligible for a refund of all or a portion of the tax paid.

If the contractor paid tax on the purchase of materials, and satisfactory evidence of payment of the tax by the contractor is provided with the refund claim, the full amount of tax paid by the purchaser on the lump sum amount will be refunded.

If there is no evidence that the contractor has paid tax on the purchase price of materials, the purchaser is only eligible for a refund of the difference between the amount of tax paid on the lump sum and the amount of tax that should have been paid by the contractor on the purchase price of the materials. The legislation deems the non-refundable amount to be paid by the purchaser on behalf of the contractor in respect of the tangible personal property supplied under the contract.

Refunds of tax paid in error on a lump sum contract must be claimed within **six years** from the date the tax was paid.

More Info: [Bulletin SST 072](#), *Contractors and Subcontractors: Improvements to Realty*

APPLYING FOR A REFUND

Completing the Application Form

Refund application forms are available from the ministry and Service BC-Government Agents offices.

All refund applications must be in writing and must be signed by the person who paid the tax in error. Where the person who paid the tax is a corporation, the refund application must be signed by a director or authorized employee of the corporation.

All refund applications must include satisfactory documentation verifying payment of the tax and the date the tax was paid. Refund claims for tax paid on lump sum contracts must also include a copy of the contract and, when possible, documentation showing the contractor's purchase price of materials consumed in carrying out the contract.

Please note: If it is subsequently determined that the basis for a refund was inaccurate or incomplete and the claimant thus received a tax refund in excess of the amount due, the claimant may be assessed for the excess amount plus interest.

Completed refund applications should be forwarded to:

Consumer Taxation Branch
PO Box 9443 Stn Prov Govt
Victoria BC V8W 9V4

APPEALING A DISALLOWED OR REDUCED REFUND CLAIM

Appeal Procedures

If a refund claim is disallowed by the ministry or if the ministry reduces the amount refunded or assesses the refund recipient for an overpayment, the taxpayer may appeal the disallowance, reduction, or assessment to the Minister of Small Business and Revenue.

An appeal to the minister must be made within 90 days of receiving notice of the disallowance or reduction of the refund claim, or of the assessment of an overpayment. The appeal must be in writing and addressed to:

Minister of Small Business and Revenue
PO Box 9629 Stn Prov Govt
Victoria BC V8W 9N6

The notice must clearly state the reasons for appeal and all relevant facts.

More Info: [Bulletin GEN 003](#), *Appeals of Tax Assessments or Disallowed Refunds*

NEED MORE INFO?

This bulletin is provided for convenience and guidance. If you still have questions call us at 604 660-4524 in Vancouver or toll-free at 1 877 388-4440 elsewhere in Canada or refer to the legislation.

Information is also on the web at www.gov.bc.ca/sbr While there, you can subscribe to our free electronic update service.

References: *Social Service Tax Act*, Sections 80, 81, 82, 83; *Hotel Room Tax Act*, Sections 10, 11, 12, 13; *Motor Fuel Tax Act*, Sections 120, 25, 26, 27; *Tobacco Tax Act*, Sections 17, 18, 19, 20