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Headquarters Excise and GST/HST Rulings severed letters – April 2013

Date: April 26, 2013

Document No: 34568

Subject: GST/HST RULING - [...] [Application of the GST/HST to Membership Dues]

Reference: ETA Sch V, 17

Please note that the following document, although correct at the time of issue, may not represent the current position of the Canada Revenue Agency. / Veuillez prendre note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'Agence du revenu du Canada.

Excise and GST/HST Rulings Directorate

Place de Ville, Tower A, 15th floor

320 Queen Street

Ottawa ON K1A 0L5

[Addressee]

Case Number: 34568

Business Number: [...]

April 26, 2013

Dear [Client]:

Subject: GST/HST RULING

[...][Application of the GST/HST to Membership Dues]

Thank you for [...][your letter concerning] the fee for membership in [...]. We apologize for the delay in our response.

The HST applies in the participating provinces at the following rates: 13% in Ontario, New Brunswick and Newfoundland and Labrador, 14% in Prince Edward Island (effective April 1, 2013) and 15% in Nova Scotia. The GST applies in the rest of Canada at the rate of 5%.

Effective April 1, 2013, the 12% HST in British Columbia has been replaced by the 5% GST and a provincial sales tax.

All legislative references are to the Excise Tax Act (ETA) unless otherwise specified.

You will also note that further to your [...] request, we contacted the Department of Finance to confirm whether the Canada Revenue Agency's (the "CRA's") position respecting the tax status of the Corporation's memberships was consistent with the Government of Canada's tax policy.

We understand that on [mm/dd/yyyy] the Minister of Finance wrote to the Corporation. Although the correspondence did not specifically address the tax status of the Corporation's memberships (since, as explained in the Minister's correspondence it is the CRA's responsibility to make such a determination), it did nonetheless indicate that the GST/HST is intended to be a broad-based tax that applies to most goods and services consumed in Canada. The correspondence also indicated that a narrow set of exemptions was provided to the general application of the tax, including exemption for [...] as well as exemption for memberships in non-profit associations and other public sector bodies that provide a limited range of benefits, as stipulated in the ETA, to each member. The correspondence also indicated that the ETA's provisions, as currently enacted, were consistent with the Government of Canada's policy intent respecting these matters. Finally, the correspondence indicated that while the Department of Finance Canada is responsible for developing and evaluating federal tax policy, the general administration of the tax system is the responsibility of the CRA.

STATEMENT OF FACTS

Our understanding of the facts [...] is as follows:

1. The Corporation is a non-profit organization, incorporated under Part II of the Canada Corporations Act.

2. The Corporation is not currently registered for purposes of the GST/HST.

3. According to its letters patent and stated policies and procedures, the purpose of the Corporation is to provide funding for: [...]

4. [...] membership in the Corporation is limited to members [...] who:
 - are eligible to vote [...];
 - are interested in furthering the objects of the Corporation;
 - have received approval [...] of their application for admission as a member; and
 - have paid their annual fees to the Corporation [...].

5. As of [mm/dd/yyyy], [#] have joined the Corporation as members.

6. The Corporation's sources of revenue are:
 - membership fees charged to the members. [...];
 - fees, costs, remuneration, interest or commission earned by or refunded to the Corporation; and,
 - [...].

7. The Corporation's membership application form states that the Corporation can [...] [direct quote]

8. Examples of cases for which funding may be available [...] include: [...]

9. The Corporation is not an insurer, nor does it supply an insurance policy, as those terms are defined in subsection 123(1) of the ETA.

10. Membership in the Corporation is not required to maintain a professional status recognized by statute.

[...][Administration Policies]

[...][Information about Funding]

[...][the Bank] Agreement

23. The Corporation has entered into an agreement with [...] [the Bank] for banking services. This agreement includes a [...] personal financial services package for all [...] employees.

24. The [mm/dd/yyyy] letter from [...] [the Bank] describes the features provided under the [...] [package] as including: [...].

25. [...] [The Bank] letter goes on to state that these offers, and others, are available to all employees [...], whether or not they are members of the Corporation [...]. [...] [The Bank] does not offer a separate program to members of the Corporation that is distinct from or in addition to the services and products offered to all employees [...]. It also states [...]

RULING REQUESTED

You would like to know if membership dues for the Corporation are exempt from GST/HST pursuant to section 17 of Part VI of Schedule V or section 189.

RULING GIVEN

Based on the facts set out above, and after carefully considering the information you presented in your correspondence [...], we confirm that the supply of the Corporation's memberships are not exempt pursuant to section 17 of Part VI to the ETA, nor are they exempt pursuant to section 189. As there is no other provision to exempt the supply of the Corporation's memberships, its supplies of memberships are taxable.

This ruling is subject to the qualifications in GST/HST Memorandum 1.4, Excise and GST/HST Rulings and Interpretations Service. We are bound by this ruling provided that none of the above issues are currently under audit, objection, or appeal, that no future changes to the ETA, regulations or our interpretative policy affect its validity, and all relevant facts and transactions have been fully disclosed.

EXPLANATION

As indicated in the additional information sent to us concerning the banking services offered by [...][the Bank], the package is offered to all [...] employees and [...]. It is not limited to the Corporation's members. It cannot therefore be said that the offer of the package is a result of membership in the Corporation. Hence, we agree with your opinion that, in relation to the bank services offered, no direct benefits accrue to the members.

However, the supplies of the Corporation's memberships are not exempt under section 17 of Part VI of Schedule V. This section provides that the supply of a membership in a public sector body (which includes a non-profit organization) is exempt where each member does not receive a benefit, by reason of the membership, other than those listed in that section. Paragraph 17(a) allows an indirect benefit that is intended to accrue to all members collectively. [...] the fact that a benefit is available to all members does not necessarily signify that the benefit is "indirect". If, by reason of membership, a member receives a direct benefit (other than any listed in paragraphs (b) to (f)), the supply of the membership is taxable. In addition, the fact that a direct benefit provided to an individual member may also result in an indirect benefit to other members and possibly even to non-members does not negate the direct benefit provided to that individual member. It is not only the actual benefit provided to the member but also the potential for benefits that determines the tax status of the supply of the membership.

According to its letters patent, one of the Corporation's stated purposes is to provide funding for [...]. When a member receives funding [...], this constitutes a direct benefit for that member. The individual has received a direct benefit, regardless of whether other members or non-members might also have received benefits as a result of [...]. Indeed, other members may also receive a direct benefit as a result [...].

The argument has been presented that members are not automatically entitled to [...] or funding, that since [...] exists there is no benefit. While members must submit their requests for [...] or funding to a committee of the Corporation that will determine whether or not to support the request, only members are eligible to apply for such assistance. A non-member is not eligible to [...] or financial assistance.

[...]

In conclusion, [...] [we are] of the opinion that the Corporation's members receive a direct benefit when the Corporation provides [...] or funding. The Corporation's supplies of membership are therefore excluded from the exemption allowed under section 17 of Part VI of Schedule V.

[...]

If the Corporation is making taxable supplies it will generally be required to register pursuant to subsection 240(1). In general, every person who makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to be registered for GST/HST purposes.

A "commercial activity" of a person, as defined in subsection 123(1), includes a business carried on by the person, or an adventure or concern of the person in the nature of trade, except to the extent it involves the making of exempt supplies by the person. It also includes making a supply (other than an exempt supply) of real property, including anything done by the person in the course of or in connection with the making of the supply.

One exception to the registration requirement is for a person who is a small supplier. A non-profit organization is a small supplier during any particular calendar quarter and the following month if the total value of the consideration for world-wide taxable supplies, including zero-rated supplies, made by the person (or an associate of the person at the beginning of the particular calendar quarter) that became due, or was paid without becoming due, in the previous four calendar quarters does not exceed \$50,000. The calculation excludes consideration attributable to the sale of goodwill of a business, supplies of financial services, and supplies by way of sale of capital property.

However, a non-profit organization ceases to be a small supplier at any time in a calendar quarter if the total value of the consideration that becomes due, or is paid without becoming due, in that quarter for world-wide taxable supplies made by the person, or an associate of the person at the beginning of the calendar quarter, exceeds \$50,000. The person ceases to be a small supplier immediately before the consideration becomes due or is paid for the particular taxable supply that puts the person over the \$50,000 small supplier threshold.

In the case of a person who is required to be registered under subsection 240(1), the person is considered a "registrant" under the ETA whether or not the person actually registers. Therefore, in the case of mandatory registration, the person's effective date of registration will correspond to the date from which the person became a "registrant" under the ETA. The person's effective date of registration will be the day that the person first makes a taxable supply in "Canada" otherwise than as a small supplier. As a registrant, the person is subject to the requirements and entitlements under the ETA.

Given all of the preceding, we must confirm that, absent a change to the Corporation's letters patent and objects therein, a legislative amendment to the ETA or a judicial decision respecting the tax status of the Corporation's memberships that is contrary to the CRA's position, the CRA considers this matter to be closed.

If you require clarification with respect to any of the issues discussed in this letter, please call Carol A. Gaudet, A/Manager – Charities and Non-profit organizations Unit, directly at 613-954-4206. Should you have additional questions on the interpretation and application of GST/HST, please contact a GST/HST Rulings officer at 1-800-959-8287.

Yours truly,

Philippe Nault

Director

Public Service Bodies and Governments Division

Excise and GST/HST Rulings Directorate