
41680 — GST/HST Application Ruling — XXXXXXXXXXX Homeowners Association Fees**Date:** September 17, 2003**Reference:** Ss. 123(1), 240((1), 259(2), Sch. V:Part I:13

41680

11950-1G

Please note that the following documents, although correct at the time of issue, may not represent the current position of the Agency.

Excise and GST/HST Rulings Directorate
Place de Ville, Tower A, 15th floor
320 Queen Street
Ottawa ON K1A 0L5

Subject: GST/HST Application Ruling — XXXXXXXXXXX Homeowners Association Fees

Dear XXXXXXXXXXX

Thank you for your letter XXXXXXXXXXX (with attachments), concerning the application of the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) to the services provided by the XXXXXXXXXXX Homeowners Association (the “Association”) to homeowners in the XXXXXXXXXXX Subdivision (the “Subdivision”). We apologize for the delay in our response.

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

Statement of Facts

From your letter, our telephone discussions, a copy of the By-Law Relating Generally to the Transaction of the Business and Affairs of the XXXXXXXXXXX Homeowners Association and XXXXXXXXXXX XXXXXXXXXXX (the “Agreement”), and the XXXXXXXXXXX, notice to homeowners regarding the XXXXXXXXXXX annual membership fees, our understanding is as follows:

1. The Association is a not-for-profit association incorporated under the *Societies Act* of XXXXXXXXXXX. The purpose and objects of the Association, as set out in its By-laws referred to above, are XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX
2. The Association is the holder of leases, easements and other rights in certain Subdivision lands. These land interests, which are registered on title at the Land Titles Office, include:
 - Easements for perimeter fences on all subdivided lots on the outside perimeter of the Subdivision.

- Easements or leases for Subdivision common elements.
 - Easements and other rights for maintenance of Subdivision Features.
3. The Subdivision includes single-family homes and multi-family homes or condominiums. The Subdivision developers and the Association entered into the Agreement in order to maintain “development control” and to share in the maintenance of the Subdivision Features through the Association.
4. The Agreement is registered on title to each subdivided lot (single-family, semi-detached or multi-family residential lot) within the Subdivision. Each owner in fee simple of a subdivided lot in the Subdivision becomes a member of the Association upon registration of ownership and is bound by the rights and obligations as set out in the Agreement.
5. XXXXXXXXXXXX the Agreement provides that the registered owner in fee simple of each subdivided lot shall pay, by way of a “Rent Charge”, a proportionate annual amount, as assessed and levied by the Association.
6. Pursuant to the Agreement, the Rent Charge is made an encumbrance upon each subdivided lot, and the Association is entitled to enforce such Rent Charge in the same manner as an encumbrance under the *Land Titles Act* of XXXXXXXXXXXX.
7. The notice XXXXXXXXXXXX, to Subdivision homeowners describes the fee as an annual membership fee, XXXXXXXXXXXX
8. The Association is the owner of the XXXXXXXXXXXX, including the land there under. It is also the owner of the entrance gateway (i.e., the physical structure), but not the land. The city is the owner of the land on which the entrance gateway is located.
9. The city is the owner of the land underlying the sidewalks, pathways, lampposts, boulevards, islands, and playground. The city is responsible for providing the standard level of maintenance of these areas as the city does for other city-owned lands outside the Subdivision.
- The Association, however, is responsible for the “special treatment” of these areas over and above the standard level of service/maintenance provided by the city (i.e., patterned sidewalks, decorate street lamps, common area gardens and flowerbeds).
10. The Subdivision homeowners, as members of the Association, have certain rights as per the Agreement to determine the use of land owned by the Association XXXXXXXXXXXX. However, should the Association decide to sell the real property, the proceeds from sale would go back into the Association. As provided in XXXXXXXXXXXX of the Association By-laws, XXXXXXXXXXXX
11. Members of the Association who are condo unit owners pay condominium fees in respect to their condominium complex in addition to their proportionate Association fees under the Agreement. Condominium fees are paid to a separate condominium corporation.

Ruling Requested

Whether the annual fee charged by the Association to Subdivision homeowners is subject to the GST/HST.

Ruling Given

Based on the facts set out above, we rule that the fees charged by the Association to Subdivision homeowners are subject to the GST/HST and are taxable at the rate of 7%.

This ruling is subject to the general limitations and qualifications outlined in section 1-4 of Chapter 1 of the GST/HST Memoranda Series. 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*, or to our interpretative policy; and that you have fully described all necessary facts and transaction(s) for which you requested a ruling.

Explanation

In essence, as described in the letter XXXXXXXXXXXX, the nature of the supply made by the Association is one of property management. Generally, property management fees are subject to GST/HST under the normal rules, unless a specific exemption applies. An exemption may apply under section 13 of Part I of Schedule V where such fees are in relation to supplies made by a condominium corporation to the owner or lessee of a residential condominium unit described in a condominium or strata lot plan or description, and the fees relate to the occupancy or use of the unit. As a result, no tax is payable on most condominium fees charged to owners or lessees of residential condominium units, if the fees relate to the occupancy or use of a residential condominium unit described in the condominium lot plan.

“Residential condominium unit” is defined under subsection 123(1) to mean “... a residential complex that is, or is intended to be, a bounded space in a building designated or described as a separate unit on a registered condominium or strata lot plan or description, or a similar plan or description registered under the laws of a province, and includes any interest in land pertaining to ownership of the unit;”

In order for a supply of property or service to be exempt under section 13 of Part I of Schedule V, certain conditions must be met. The requirements of section 13 are threefold:

1. The supply of property or service must be made by a condominium corporation established upon the registration, under the laws of a province, of a condominium or strata lot plan or description, or similar plan or description;
2. The supply of property or service must be made to an owner or lessee of a residential condominium unit described by that plan or description; and
3. The property or service must relate to the occupancy or use of the unit.

In the subject case, these requirements are not satisfied.

The Association is not a condominium corporation established upon the registration of a condominium or strata lot plan or description or similar plan or description under the laws of a

province. Rather, it is a non-profit society incorporated under the *Societies Act* of XXXXXXXXXXXX, the purpose and objects which are to carry out the duties and functions under the Agreement and generally to provide for the care and maintenance of the Subdivision Features.

The rights and obligations of members of the Association apply equally to all registered owners of single-family, semi-detached and multi-family residential lots (including condo unit owners). The Association provides services to, and represents all members, not only condo unit owners. In addition, Association fees are over and above condo fees payable by condo unit owners to a separate condominium corporation.

The supply of services provided by the Association are not in relation to units in a condominium or strata lot plan, but relate in general to the common elements in the Subdivision as a whole.

Finally, unlike a condominium corporation where the unit owners hold an undivided interest as tenants-in-common in the common areas of the condominium complex or strata lot plan, homeowners, or members of the Association, do not hold such an interest. Rather the Association holds the land interests with respect to the common amenities by way of easements and leases registered at the Land Titles Office. With respect to the XXXXXXXXXXXX, which are owned by the Association, the Association By-laws specifically provide that in no event shall any member become entitled to any of the assets of the Association.

Additional Information

To address the following questions raised in your letter, we would like to provide an explanation of some general provisions of the ETA that relate to your particular circumstances.

1. Can the Association be exempt from collecting GST?
2. Can the Association reverse/revoke its current GST registration?
3. If the Association reverses/revokes its GST registration, can it still claim a rebate of the GST paid to suppliers?

Subsection **240(1)** states, in part, that 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.

A taxable supply is a supply which is made in the course of a commercial activity. Commercial activity of a person means, in part, a business carried on by the person, except to the extent to which the business involves the making of exempt supplies. Exempt supplies are those referred to in Schedule V of the ETA. As provided in the above ruling, the supplies made by the Association do not fall within the exempt provisions of Schedule V. As a result, the Association will be required to register, collect and remit GST/HST on its taxable supplies, unless the Association is a small supplier.

One exception to the registration requirement is for a person who is a small supplier. A person is a small supplier during any particular calendar quarter and the following month if the total value of the consideration for taxable supplies, including zero-rated supplies, made by the person (or an associate of the person) that became due, or was paid without becoming due, in the previous four

calendar quarters does not exceed \$30,000, or in the case of a public service body, \$50,000. The calculation should not include consideration attributable to the sale of goodwill of a business or supplies of financial services and supplies by way of sale of capital property.

Subsection **123(1)** defines “public service body” (PSB) to include a non-profit organization. A “non-profit organization” is defined under subsection **123(1)** as:

a person (other than an individual, an estate, a trust, a charity, a public institution, a municipality or government) that was organized and is operated solely for the purpose other than profit, no part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder is a club, a society or an association the primary purpose and function of which is the promotion of amateur athletics in Canada;

The enclosed Policy Paper P-215, “Determination of Whether an Entity is a ‘Non-Profit Organization’ for purposes of *The Excise Tax Act*”, provides further explanation of the term “non-profit organization”.

A non-profit organization may be eligible for a PSB rebate if it is a qualifying non-profit organization. Under subsection **259(2)**, a person is a qualifying non-profit organization at any time in a fiscal year if their percentage of government funding for the year is at least 40%. This includes government funding from all three levels of government.

With respect to whether the Association can revoke its current GST registration, I have included a copy of GST/HST Memoranda Series **2-7** Cancellation of Registration for your information. As noted at paragraph 6 therein, the CCRA will cancel the registration of a person (other than a taxi operator) on the request of the person if the person is a small supplier and the person has been registered for not less than one year. The enclosed GST/HST Memoranda Series **2-2** Small Suppliers provides further explanation of the term “small supplier”.

In summary, a person who is registered, or is required to be registered, is required to collect and remit GST/HST. An exception to this is a non-registered small supplier. A small supplier who is registered may request the cancellation of registration (Form GST11, Request for Cancellation of Registration) provided the person has been registered for at least one year. Finally, to be eligible to receive a PSB rebate, a non-profit organization must be a qualifying non-profit organization. Whether or not an NPO is registered does not impact on its entitlement to a PSB rebate.

Should you have any further questions or require clarification on the above matter, please do not hesitate to contact me at 613-952-9212.

Yours truly,

Carmela Antonelli

Real Property Unit

Financial Institutions and Real Property Division

Excise and GST/HST Rulings Directorate

Encl.: (3)