

December 21, 2006

**Camps and GST - A Response to Frequently Asked Questions, Further to the December 19, 2006 CCCC Update: *Camp Mini-Yo-We GST Appeal Denied***

This update responds to the following questions and also provides links to further GST/HST resources. **Please note that the answers are not exhaustive and may change depending on an individual camp's facts or the variety of GST/HST rules that may be applied to a particular situation. Consequently camps should consider working with their accountant or other professional advisor to determine how the GST/HST rules apply to their particular situation.**

Q #1. Does the December 18, 2006 Camp Mini-Yo-We Court of Appeal decision mean that all camps must now charge GST/HST on their summer camp fees?

Q # 2a). Are off-season rentals an exempt or taxable supply? For example a weekend rental of facilities?

Q #2b). What if the weekend rentals of facilities are provided with meals under a contract for catering?

Q # 2c). What if rentals of facilities do not include catering, but do include cafeteria services or other means for people to individually order and pay for their own meals as they wish?

Q # 2d). What if off-season rental contracts include a contract for use of property such as audiovisual equipment?

Q # 3. Are tuck shop sales a taxable supply?

Q # 4. What if we have a letter on file from CRA that says our camp does not have to charge GST/HST?

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**Camps & GST - A Response to Frequently Asked Questions**

**Q #1. Does the December 18, 2006 Camp Mini-Yo-We Court of Appeal decision mean that all camps must now charge GST/HST on their summer camp fees?**

A #1. This decision means that summer camp fees for programs that include (i.e. "involve") supervision or instruction in recreation or athletics are to be treated as a taxable supply (unless provided to individuals who are underprivileged or have disabilities etc.). Charities must charge GST/HST on their taxable supplies unless another rule, such as the 'small supplier' rule, applies.

Existing rules such as the ‘small supplier’ rule still apply and have not been changed by the December 18, 2006 decision. So, even though camp fees as described above are now clearly to be treated as a taxable supply, a camp that is a ‘small supplier’ would not charge GST/HST on its taxable supplies while it qualifies as a small supplier. A charity is a ‘small supplier’ if it has taxable supplies in a fiscal year of less than \$50,000 (Excise Tax Act (“ETA”) section 148(1)) or gross revenues in a fiscal year of \$250,000 or less (ETA section 148.1).

**Q # 2a). Are off-season rentals an exempt or taxable supply? For example is a weekend rental of facilities a taxable supply?**

A # 2a). Off-season rentals provided by a charity are generally exempt. If however, the charity supplied instruction or supervision in athletics or recreation as part of the rental contract, the rental would be akin to the summer camp programs and should be treated as taxable.

Prior to the changes to the ETA announced in 1996, rentals under a license or a lease of under a month would have been considered a taxable supply. Since 1996, charities have been excluded from these original rules and a new set of rules, Part V.1, have been created exclusively for charities. Note: under the ETA the word ‘charities’ excludes ‘Public Sector Bodies’ (e.g. universities, and public colleges etc.) which are still under the original rules in Part VI. Under the new Part V.1 rentals by charities are not generally taxable.

By way of background, up to the 1996 changes, rentals by a charity would have been a taxable supply under section 25(f) of Part VI. This section provides that the following supply of real property is not exempt: A supply of *real property (other than short-term*

*accommodation) made by way of*

*(i) lease, where the period throughout which continuous possession or use of the property is provided under the lease is less than one month, [or]*

*(ii) a licence,*

*where the supply is made in the course of a business carried on by the body;*

Prior to the 1996 changes this section would have applied to off-season rentals by camps to make them taxable. However, while many sections in Part VI were copied into the new Part V.1, this section 25(f) was not copied into the new rules for charities in Part V.1, meaning they are now exempt. Supplies made by a charity are exempt unless the ETA expressly states that they are taxable.

**Q #2b). What if the weekend rentals of facilities are provided with meals under a contract for catering?**

A #2b). Meals provided under a contract for catering are generally exempt under Schedule V, Part V.1 section (1)(d) which states:

*(d) tangible personal property that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property and was neither donated to the charity nor used by another person before its acquisition by the charity, or any service supplied by the charity in respect of such property, other than such property or such a*

*service supplied by the charity under a contract for catering;*

It would be prudent for charities to make sure their contract for catering follows the CRA guidelines set out in CRA Policy P-224. The policy sets out the following guidelines to indicate when catering is being provided:

1. The food or beverages are processed or arranged to the customer's specification after the order is placed. When the food or beverages are supplied to the customer it is in a form that can be consumed either immediately or after it is warmed;
2. The consideration paid by the customer is based on a per person or per serving charge;
3. The food or beverages are delivered to or on behalf of the customer;
4. The food or beverages are supplied with some or all of the necessary amenities for either serving or consuming the food or beverages.

The full policy is available at: <http://www.cra-arc.gc.ca/E/pub/gl/p-224/p-224-e.html>

**Q # 2c). What if rentals of facilities do not include catering, but do include cafeteria services or other means for people to individually order and pay for their own meals as they wish?**

A # 2c). Meals provided on this basis would not likely qualify as catering, and would reasonably be captured as a taxable supply under Schedule V, Part V.1 section (1)(d).

**Q # 2d). What if off-season rental contracts include a contract for use of property such as audiovisual equipment?**

A # 2d). Under the proposed amendment to Schedule V, Part V.1 section (1)(d) this would be exempt as well. The amendment was introduced in October 2003 and has not yet been passed into law. However, the Department of Finance stated in 2003 that it is intended that this amendment be applied retroactively to 2003 once it is actually passed into law. Consequently, charities are not expected to collect GST/HST for such services provided since 2003.

The proposed amendment reads as follows:

*(d) tangible personal property (other than property supplied by way of lease, licence or similar arrangement in conjunction with an exempt supply by way of lease, licence or similar arrangement by the charity of real property) that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property and was neither donated to the charity nor used by another person before its acquisition by the charity, or any service supplied by the charity in respect of such property, other than such property or such a service supplied by the charity under a contract for catering;*

**Q # 3. Are tuck shop sales a taxable supply?**

A # 3. Generally tuck shop sales would be a taxable supply under Schedule V, Part V.1 section (1)(d). Remember however, that a supply may be exempt if another rule applies to the particular facts. For example the rules in Part V.1, section 3 (Non-recurring fund-raising) or section 5.1 (Supplies for charge not exceeding direct cost) may apply to make the tuck shop sales an exempt supply. (Direct cost means the amount charged by the supplier without any other costs such as overhead and labour added.)

**Q # 4. What if we have a letter on file from CRA that says our camp does not have to charge GST/HST?**

A #4. Great caution should be exercised in continuing to rely on such a letter. In light of the December 18, 2006 decision these letters are probably of limited or no value, depending on which rule(s) CRA based the letter. For example, you may rely on such a letter if it is based on the fact that your taxable supplies in a fiscal year are less than \$50,000, or your gross revenue from all sources in a fiscal year is less than \$250,000 (See Q & A #1).

**Resources**

- The *Excise Tax Act* at <http://laws.justice.gc.ca/en/E-15/index.html>
- CRA Guide RC4082 called: *GST/HST Information for Charities* at <http://www.cra-arc.gc.ca/E/pub/gp/rc4082/README.html>
- CCCC members can also go to the CCCC web-site for its document *Charities and GST/HST - A High-level Summary* at <http://www.cccc.org/contents.php?area=z&id=9110&nid=22>