

December 19, 2006 News Release: Re GST Reassessments on Camp Fees Charged by Christian camps. (Update further to the September 23, 2005 CCCC Email)

This update is structured as follows:

1. Camp Mini-Yo-We Appeal to Federal Court of Appeal Denied & Future Action
 2. The Decision - A High-Level Overview
 3. The Decision - What Does this Mean for Camps Going Forward?
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1. Camp Mini-Yo-We Appeal to Federal Court of Appeal Denied & Future Action

Since 2003, the CCCC Legal Defence fund has been involved in appealing GST reassessments on camp fees charged by Christian camps.

The lead case, Camp Mini-Yo-We, went to trial in the Tax Court of Canada on May 9th, 2005. A decision was issued on September 9, 2005. As you may recall, our combined efforts were not successful in reversing Canada Revenue Agency's ("CRA") re-assessment for GST on camper fees.

This decision was appealed to and heard by the Federal Court of Appeal on November 29, 2006. The panel of three judges issued a decision on December 18, 2006. Unfortunately, the appeal of the Tax Court's decision was also unsuccessful.

The CCCC Legal Defence fund does not anticipate taking any further legal action at this time. It will however support and participate as appropriate in taking steps to request a Remission Order under the *Financial Administration Act* to forgo taxes owing to the Government. The request would specifically ask that on the basis of fairness and an honest reliance on existing case law, the government to forgo any taxes owing by Camp Mini-Yo-We and other similar camps for the period of time following the Camp Kahquah decision up to the September 2005 Camp Mini-Yo-We decision.

2. The Decision - A High-Level Overview

By way of background, all supplies of goods or services made by a charity are exempt from GST unless there is a specific exception to this rule that makes it taxable. This case dealt with a dispute over the interpretation of an exception to the general rule: the supply by a charity of a service involving supervision or instruction in any recreational or athletic activity.

In 1998 the Tax Court of Canada decided that the exception in question did not apply to Camp Kahquah, meaning that they were not to charge GST on camp fees. In 2005 the same Tax Court of Canada decided that the exception in question did apply to Camp Mini-Yo-We, meaning that they were to charge GST on camp fees. This meant that there were now two decisions based on similarly structured camps that had opposite decisions. As of December 18, 2006, this confusion no longer exists. The Federal Court of Appeal has now ruled that Camp Kahquah was wrongly

decided, Camp Mini-Yo-We was correctly decided, and that consequently GST is to be charged on the camp fees in question. For more detail on the Court of Appeal decision please see Appendix A.

3. The Decision - What Does this Mean for Camps Going Forward?

1) Going forward this decision means that as a general rule charitable camps that provide services involving supervision or instruction in any recreational or athletic activity must collect GST/HST on the fees for those services.

Section 1(f) sets out two exceptions to this general rule: where

(I) the programs involving supervision or instruction in a recreational or athletic activity are provided to children 14 years and under and where the program does not involve overnight supervision for a substantial part of the program. CRA interprets this to mean no more than 1 night a week; and

(ii) the programs involving supervision or instruction in a recreational or athletic activity are “intended to be provided primarily to individuals who are underprivileged or who have a disability.”

2) Going forward this decision means that, unless the Federal Government issues a broadly worded Remission Order, camps can expect to be assessed for GST on past years’ fees if GST was not collected.

As mentioned above, the CCCC Legal Defence fund will support and participate as appropriate in taking steps to request a Remission Order from the Federal Government’s cabinet asking that the government forgo any taxes owing by camps as a result of this decision for the period of time following the Camp Kahquah decision up to the September 2005 Camp Mini-Yo-We decision, on the basis of fairness and an honest reliance on existing law.

If you have any questions, please do not hesitate to contact us.

In Christ's service,



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Appendix A: The Decision in More Detail

In the Camp Mini-Yo-We Tax Court decision the judge decided that GST must be collected on fees charged by the camp to attend the summer camp programs. In considering the appeal of this decision, the Federal Court of Appeal reviewed the law, the facts, the September 2005 Tax Court Reasons, the legal standard that would be used to review that decision, and answered these three questions as follows:

1) Did the Judge commit a reversible error in his interpretation and application of paragraph 1(f)?

Answer In Summary: The Court of Appeal stated that the Tax Court Judge was correct to focus on the nature of the activity rather than the purpose. That notwithstanding the discrepancy in the language and breadth of the French and English versions of section 1(f), the differences did not need to be reconciled and did not render the appellant exempt from GST. The fact that the camps's actual out of pocket expenses for athletic and recreational activities made up only 5 - 10% of the camp fee was irrelevant. "The text does not require that the recreational and athletic activity constitute the major component [par 24]."

The specific exemption disputed is as follows. In the Excise Tax Act, Schedule V, Part V.1, section 1(f) it states:

1. A supply made by a charity of any property or service [is exempt], but not including a supply of...

(f) **a service involving**, or a membership or other right entitling a person to, **supervision or instruction in any recreational or athletic activity except where**

(I) it could be reasonably expected, given the nature of the activity or the degree of relevant skill or ability required for participation in it, that **such services**, memberships or rights supplied by the charity would be **provided primarily to children 14 years of age or under and the services are not supplied as part of**, the membership is not in, or the right is not in respect of, **a program involving overnight supervision** throughout a substantial portion of the program, **or**

(ii) such **services**, memberships or rights supplied by the charity **are intended** to be provided **primarily to individuals who are underprivileged or who have a disability**;

2) Did the Judge err in determining that the incidental supplies rules in section 138 did not apply?

Background Information:

The rule in section 138 deals with situations where two supplies are offered as a package for one price. If the package were unbundled and one of the supplies would be nontaxable and the other would be taxable, the character of the taxable part helps determine whether the whole package should be taxable. The rule provides that if the part that would be taxable when offered on its own is only an incidental part of the overall package, then the package as a whole should be treated as not taxable.

On its own instruction in athletics/recreation would be a taxable supply and religious instruction would not. It was argued by the camp in September 2005 that the athletic/recreation part of the camp package was an incidental part of the camp package and therefore the fee for the camp package should not be taxable. The Tax Court Judge in the September 2005 decision found that the supply of religious teaching and programs and the supply of recreation/athletics were one intertwined supply for one price, and not two supplies offered together as a package for one price. He did not accept that section 138 was applicable.

Answer In Summary: The Federal Court of Appeal found that the “activities were too closely integrated”. Thus, they said the Tax Court Judge correctly found that section 138 was inapplicable to the present case.

3) Should the Judge have followed the earlier Tax Court’s decision in *Camp Kahquah*?

Answer in summary: The Court of Appeal recognized the principle of judicial comity (meaning a judge should follow decisions made by their own court unless there is a basis to distinguish the two cases) but stated that the failure to follow *Camp Kahquah* was not itself a ground of appeal. Given the conflicting decisions the Court of Appeal agreed that its function was to decide which of the decisions, if either, was correct. In agreeing with the September 2005 decision it stated in paragraphs 32 and 33:

[32] With respect, I do not think that the Camp Kahquah reasons should have been followed. In that case, in determining whether the supply was exempt the judge accepted evidence that was led regarding the purpose of the camp, instead of the nature of the services it supplied...

[33] The central flaw in this reasoning is that the analysis is based on the underlying purpose of the camp. As I have already determined, it is not the purpose but the nature of the supply that must be examined. It should not matter that the taxpayer’s underlying purpose was charitable. It also should not matter that recreational activity is necessary in order to make the camp more attractive to children. The fact is that both Camp Kahquah and Camp Mini-Yo-We involved supervision or instruction in the context of various recreational or athletic activities, which is enough to remove it from the general exemption afforded to charities.

Finally, in the appeal the Federal Court was asked for relief from assessments for GST during the period of time between the *Camp Kahquah* decision and the September 2005 Camp Mini-Yo-We decision. The Court rejected this request on the basis that the facts and evidence related to this relief were being raised for the first time. Unfortunately, there was no other opportunity to have possibly raised these facts and evidence, particularly as the joint CCCC and Christian Sunday School Missions’ application to intervene on this appeal in early 2006 was denied. The relevant facts and evidence supporting the impact of retroactive assessments on camps would have been introduced in the intervention.