

GST/HST Rulings Centre
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Tire Stewardship BC
c/o 200 Argentia Road
Plaza 4, Suite 250
Mississauga, ON L5N 1W1

Case Number: 85209
Business Number: 87727 0900

Attention: Glenn Maidment
Interim Executive Director, TSBC

January 22, 2007

Dear Mr. Maidment:

Subject: GST/HST RULING
Scrap Tire Management and GST

Thank you for your letter of November 13, 2006 concerning the application of the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) to Tire Stewardship B.C. Association (TSBC).

All legislative references are to the *Excise Tax Act* (ETA) and the regulations therein, unless otherwise specified.

STATEMENT OF FACTS

The Financial Incentives for Recycling Scrap Tires (FIRST) program was introduced in June 1991 by the Ministry of Environment (the Ministry) for British Columbia (BC) in response to concerns that scrap tires were posing environmental and human health risks. Funding for the FIRST program was via a \$3 per tire levy on the purchase of new tires.

Under FIRST, a system of financial incentives is paid to eligible processors for the transportation and recycling of scrap tires to ensure scrap tires are collected and recycled in accordance with the Ministry's 5R hierarchy of Reduce, Reuse, Recycle, Recover energy, and Residual management policy.

End Use Assistance is provided to processors to improve the viability of using material derived from scrap tires and to help offset processing costs, where significant, until such time as the industry is well established. End Use Assistance is paid to recyclers based on final sales of eligible merchandise made from tire derived product (TDP), and to energy recovery end users based on purchases of eligible tire derived fuel (TDF).

Transportation Assistance is provided to processors to offset the costs of collecting and transporting scrap tires from generating sites to processing facilities. The assistance is based on

the distance from the generating site to the processing facility, multiplied by the weight in tonnes of scrap tires transported, times a per kilometre per tonne rate.

Only processors that are registered with the FIRST program are eligible to receive Transportation Assistance and End Use Assistance. Transporters must have an arrangement with a processor to accept the tires, as transporters receive payment solely and directly from processors. Although there are currently only three such registered processors in BC, under the program, any person can apply to be registered if the person meets the criteria set out under the FIRST program.

On March 30th, 2006, the *Recycling Regulation to the Environmental Management Act* (the Regulation) was amended to include a tire product category. The Regulation makes the producer (manufacturer, distributor, importer, retailer) responsible for the life-cycle management of their products, including financing the collection and recycling of discarded products.

In accordance with subsection 2(1) of the Regulation, in order to sell, offer for sale or distribute tire products in BC, producers, including all retailers of tire products, must have an approved product stewardship plan in place and comply with the approved plan, or comply with the product management provisions stipulated in Part 3 of the Regulations.

As provided by subsection 2(2) of the Regulation, producers may appoint an agency to undertake their duties and provide an administrative structure for managing the mutual obligations of producers.

Producers must develop and submit a product stewardship plan to the Ministry for approval. The product stewardship plan defines the elements of the producers' program for managing the products. Elements of a plan may include, for example, program objectives and targets, governance and accountability structures, and operational systems for product collection and processing.

Section 5 of the Regulation provides that in order to be granted Ministry approval, the plan must include, among other things, program performance requirements, satisfactory consultation during plan development, provisions for consumer access and awareness, adequate provision for producers collecting and paying the costs of collecting and managing tire products, and reduction of environmental impacts throughout the product's life cycle. However, as stated by the Ministry, the Regulation does not set out the elements of the program, or how it is to be operated; this is the responsibility of the producers of regulated types of tires.

In addition, the Regulation does not specify how producers fund their programs, as long as the principal of no costs borne by local government and general taxpayers is respected. A producer that chooses to use a fee that is charged at the retail level and is shown on the consumer's receipt must submit an independently audited financial statement showing revenues and expenditures based on the fee.

Producers, or their agency, are required to submit an annual report on the performance of the program to the Ministry by July 1 of each year.

The Tire Stewardship BC Association (TSBC) is a not-for-profit society formed by the major tire producers in BC, as the agency to create, operate, manage and administer a tire product stewardship plan for BC. TSBC has been assigned Business Number 87727 0900 and is not registered for GST/HST purposes. The current members of TSBC include the Rubber Association of Canada, the Retail Council of Canada and the Western Canada Tire Dealers Association. It is anticipated that in the future, additional producers and retailers within the tire industry will become members of TSBC in order to ensure effective representation across all major producer organizations.

Pursuant to section 2 of the Regulation, TSBC has developed a scrap tire management program called the Tire Stewardship Plan for British Columbia (the Plan). The Ministry approved the TSBC Plan on September 19, 2006. On December 31, 2006, the government run FIRST program, the current tire recycling program in BC, will be rescinded and, effective January 1, 2007, the TSBC Plan will be implemented.

The Plan provides for an Advanced Disposal Fee (ADF) to replace the current government levy. The ADF will be charged by retailers to purchasers of new tires as part of the purchase price, and will vary by tire type. You confirm that the ADF will attract the GST at the retail level. The ADF amount is to be paid by retailers to TSBC. All funds remitted respecting the ADF will be used solely and completely to support tire collection and recycling in BC.

One of the guiding principals of the TSBC Plan is to continue to encourage by way of financial incentives or other means, environmentally efficient and economically viable industries to collect, process and manufacture value-added products from scrap tires discarded in British Columbia.

Under the TSBC Plan, Transportation Incentives and Processor Incentives are paid only to qualifying processors, not to transporters. The rates of such financial incentives paid to processors for both scrap tire transportation and processing, as well as existing FIRST program policies, registration and application for assistance will be transferred “as-is” to the TSBC Plan. After a transition period, TSBC may undertake an analysis of the transportation and end-use incentive rates to ensure a fair and equitable rate system.

In accordance with the Regulation, and the terms of the Plan, TSBC is accountable only for overall program goals and is not directly accountable to provide collection or processing activities. TSBC takes no ownership interest or rights in the end products recycled under the Plan. TSBC does not enter into a contract for services with the processors to collect and process scrap tires.

Under the Plan, only those retailers with a valid TSBC registration number receive scrap tire pick up eligible for financial assistance. Tire retailers will be asked to register with TSBC and agree to terms and conditions to participate in the Plan. Registration is required no later than December 31, 2006 to ensure the retailer is in compliance with the Regulation and to maintain scrap tire collection services. Tire retailers involved in ADF-applicable tire sales are not permitted to opt out of the Plan unless they submit and receive Ministry approval to implement their own stewardship plan to deal with scrap tires.

RULING REQUESTED

1. Does GST apply to the ADF remitted by retailers to TSBC?
2. Will TSBC be entitled to claim input tax credits (ITCs)?
3. Does GST apply to Transportation and Processor Incentive payments?

RULING GIVEN

Based on the facts set out above, we rule that:

1. The ADF paid by retailers to TSBC is consideration for the taxable supply of operating, managing and administering a tire product stewardship plan on the retailer's behalf. As such, if registered, or required to be registered for GST/HST purposes, TSBC must collect GST at the rate of 6% on the consideration for this taxable supply (i.e., the ADF).
2. If registered for GST/HST purposes, TSBC can claim ITCs to the extent that GST is paid or payable on expenses incurred in respect of their GST taxable activity.
3. The Transportation and Processor Incentives paid by TSBC are not viewed as consideration for a supply. As such, GST does not apply to such payments.

This ruling is subject to the qualifications in GST/HST Memorandum 1.4, *Goods and Services Tax Rulings*. We are bound by this ruling provided that none of the above issues is 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

The ETA generally requires every recipient of a taxable supply (other than a zero-rated supply) made in Canada to pay GST in respect of the supply calculated at the rate of 6% on the value of the consideration for the supply (in the participating provinces of Nova Scotia, New Brunswick and Newfoundland and Labrador, HST applies at the rate of 14%). In addition, the ETA requires the person making the supply to collect the tax payable by the recipient in respect of the supply.

As GST is only applicable when the payment is consideration for a taxable supply, it must first be determined if ADF payments made by retailers to TSBC and Transportation and Processor Incentives paid by TSBC to processors are viewed as consideration for a supply.

In general, transfer payments made in the public interest or for charitable purposes will not be regarded as consideration for a supply. However, if there is a direct link between a transfer payment received by a person and a supply provided by that person, either to the grantor of the transfer payment or to third parties, the transfer payment will be regarded as consideration for the supply. If a transfer payment is consideration for a supply, then it must be determined whether or

not the supply is taxable. The CRA position respecting whether a payment is viewed as directly linked to a supply is discussed in Technical Information Bulletin B-067, *Goods and Services Tax Treatment of Grants and Subsidies*.

Rulings 1 and 2 – Payments made by retailers to TSBC

In order to sell, offer for sale or distribute tire products in BC the Regulation requires retailers to have an approved Product Stewardship Plan and comply with the approved plan, or manage the tire product through its end-use under Part 3 of the Regulations. Pursuant to the Regulation, an agency may be appointed in order to establish, manage, operate and administer the Stewardship Plan on behalf of the producers and retailers. TSBC is such an agency. Under the Ministry approved TSBC Plan, retailers that have agreed to register with TSBC are required to pay an amount in respect of the ADF to TSBC. The payments made by a retailer to TSBC are not grants. The retailers are private sector organizations that do not have a public purpose for entering into agreements with TSBC but do so for the purpose of fulfilling their obligations under the Regulation. There is therefore, a direct link between the payment and a supply being provided by TSBC to the retailers. The payments are consideration for the supply of operating, managing and administering a tire product stewardship plan on the retailer's behalf. As there are no provisions in the ETA to either exempt or zero-rate such a supply provided by TSBC to retailers, GST is applicable to this supply.

In general, subsection 240(1) of the ETA provides that every person who makes a taxable supply in Canada, other than a small supplier, is required to register for purposes of the GST/HST and charge the applicable tax. A non-profit organization (NPO) is a small supplier if the total value of consideration from their world-wide taxable supplies, including zero-rated supplies (as well as taxable supplies made by their associates), in the previous four calendar quarters, or in a single calendar quarter, does not exceed \$50,000. Please refer to GST/HST Memoranda Series 2.2, *Small Suppliers* and GST/HST Memoranda Series 2.1 *Required Registration* for additional information.

A person that should be registered for GST purposes, but is not in fact registered, is still subject to the requirement to collect the tax when making taxable supplies. Should you wish to register TSBC for GST/HST purposes, please call the Business Window at their toll free telephone number 1-800-959-5525.

A GST/HST registrant is entitled to claim ITCs in respect of the tax paid or payable on the purchase of goods and services, to the extent that the property or service was acquired for use in their GST taxable activities. No ITCs may be claimed on purchases directly attributable to the making of exempt supplies. Where the property or service is used in making both taxable and exempt supplies, the input must be allocated between each of these activities. Information respecting allocating and calculating ITC claims of NPOs is provided on pages 10 through 12 of the guide RC4081 *GST/HST Information for Non-Profit Organizations*.

Generally, in order to be eligible as an ITC deduction, GST must have been paid at a time when the person is a registrant. However, there is a special provision respecting ITC claims when a person first becomes a registrant. A new registrant can claim an ITC for the GST paid or due on

goods such as capital property, real property, and inventory that they have on hand for use in their commercial activities at the time they became a registrant. We consider the person to have bought the property at that time and to have paid GST equal to the basic tax content of the property. Simply put, the basic tax content of a property is the lesser of the GST paid or payable when the property was acquired, and that same amount adjusted to take into account the fair market value of the property at the time of GST registration.

In general, an ITC claim cannot be made respecting GST paid on services purchased prior to registration. Other than pre-paid expenses and certain services that are considered to form part of the cost of a particular property, services are considered as consumed when they are purchased.

ITC claims are subject to review, and are also subject to the normal rules and restrictions respecting such claims, including the requirement to maintain adequate documentation to support the claim.

Where an ITC claim cannot be made, certain qualifying NPOs may be entitled to a public service body rebate of 50% of the GST/HST paid on purchases that is not recoverable as an ITC. An organization is considered to be a qualifying NPO in the case where “government funding” equals or exceeds 40% of its annual revenue. Government funding may come from federal, provincial or municipal levels or from an Indian band. For information respecting the rebate, as well as the determination of a “qualifying” NPO, please refer to the guide RC4034 *GST/HST Public Service Bodies' Rebate*.

Please note that special rules apply to the GST/HST in circumstances where a person acts as agent in making supplies on behalf of a principal. GST/HST Policy Statement P-182R *Agency* provides additional information respecting agency relationships.

Ruling 3 – Payments made by SSTC to processors

In our view, there are several indications that the payments made by TSBC to processors are made for a public purpose and therefore, are not directly linked to a supply. TSBC runs a program that provides funding to support the collection, transportation and processing of scrap tires by eligible organizations, rather than purchases such services as inputs to a supply of recycling activities. Although TSBC has a mandate to administer the Plan and provide for the management of scrap tires, it is not responsible for the actual collection or recycling of scrap tires and cannot be considered to be purchasing the services of transporters or processors as inputs to their own activities. The incentive payments can reasonably be considered an on-going program of financial support. They are not used to purchase an input or a supply for TSBC's use. Rather, they are meant to subsidize the operations of the processors on a continuing basis.

After examining the facts in the case, we conclude the payments made by TSBC respecting the Transportation and Processor Incentives paid by TSBC to processors fall within our policy respecting grants and subsidies, detailed in Technical Information Bulletin B-067, *Goods and Services Tax Treatment of Grants and Subsidies*. In our view such payments are not consideration for a supply; therefore, they are not subject to GST/HST.

Please be aware that should the conditions applicable to the TSBC Plan change, in particular to the payment of Transportation and Processor Incentives, you may wish to request a new GST/HST ruling.

You can find section 1.4 of Chapter 1 of the GST/HST Memoranda Series, as well as other GST/HST publications at our Internet address, www.cra.gc.ca.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at (604) 691-4970. 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. We also provide free seminars on the GST/HST to address your business information needs. For more information about this service, please contact us at the above 1-800 number.

Yours truly,

Robert Brekelmans
GST/HST Rulings Centre