

Two recent Federal Tax Court decisions which could positively impact BC's residential care sector

The BC Care Providers Association (BCCPA) would like to inform its members of two recent decisions from the federal tax court (Tax Court of Canada) that could potentially impact BC's residential care sector subject to any appeals by the Canadian Revenue Agency (CRA). In particular, as outlined below in the overview of the decisions:

- If care providers have contracted services for care aides they should not have to pay GST to a contracted provider and may be able to seek a refund from the CRA for the last two years of GST; and
- Not-for-profit care homes providing complex care can qualify to claim an 83% GST rebate rather than a 50% rebate.

Contracted care aides in government-funded care home

In the first case involving contracted care aides in government-funded care home (Cartier House Care Centre Ltd. et al v The Queen) the ruling highlighted that these services, subject to a possible CRA challenge at the Federal Court of Appeal, are GST-exempt. The CRA, however, will require proof that a care home operator meets all of the required conditions for this exemption (see overview below).

Case	Tax Court of Canada - 2011-3419(GST) G ... Cartier House Care Centre Ltd. et al v The Queen
Topic	Exempt supplies; Incidental supplies
Issue	<p>At issue in this case was whether two for-profit operators (the registrants, or CT and CH) of seniors' residences were entitled to refunds for GST paid in error on supplies of homemaker services provided by third-party contractors (the contractors) in the course of operating the residences. The reporting periods covered by the assessments for CT were from August 2, 2007, to October 31, 2007, and from November 1, 2007, to June 30, 2009. The reporting periods covered by the assessments against CH were from August 1, 2007, to October 31, 2007, and from November 1, 2007, to June 30, 2009. Specifically at issue was whether:</p> <ol style="list-style-type: none"> The services performed by the contractors qualified as exempt supplies of homemaker services under the Excise Tax Act (the Act); The contractors supplied personnel services rather than homemaker services; The contractors supplied the services to individuals in their place of residence; The regional health authority (FHA) with whom the registrants entered into agreements to provide services was administering a government program in respect of homemaker services, Amounts paid by FHA to CT and CH were paid for the purpose of acquiring the services supplied by the contractors; and Section 138 of the Act deemed a contractor's supply of activity aide services to CH to form part of a single supply of care aide services. <p>At the hearing, the registrants conceded that claims for a rebate of GST paid in error on amounts paid by CT for security services, heating systems repair services, and for the services of a social and administrative coordinator should not be allowed.</p>
Held	Appeals allowed in part.
Source	Tax Court of Canada - 2011-3419(GST)G ... Cartier House Care Centre Ltd. et al v The Queen (see http://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/126402/index.do)

NPO residential care homes as qualifying facilities eligible for enhanced GST rebate rate as a hospital

In the second case (Tax Court of Canada - 2013-148 (GST) G Elim Housing Society v The Queen), the ruling highlighted that charities along with qualifying non-profit operated (NPO) residential care homes (i.e. care homes eligible for the enhanced GST rebate rate as a hospital) are eligible for a 50% GST rebate.

In particular, this decision subject to potential appeal by the Tax Court of Canada, confirms that some residential care homes provide a comprehensive set of complex care to residents that qualifies for an enhanced GST rebate of 83% of tax paid. Assisted Living residences and other homes that do not provide the level of complex care found in a residential care home are still limited to only a 50% GST rebate for tax paid on expenditures.

Case	Tax Court of Canada - 2013-148 (GST) G Elim Housing Society v The Queen
Topic	Rebates
Issue	<p>At issue was whether a British Columbia non-profit organization (the registrant) that operated a long-term care facility (the facility) was entitled to a public service body rebate as a facility operator for the 2009 and 2011 claim periods. The registrant claimed public service body rebates on the basis that its supplies were encompassed by the term “facility supply,” as defined in subsection 259(1) of the Excise Tax Act.</p> <p>The registrant was reassessed to reduce the amount of eligible rebates on the basis the facility did not make facility supplies. For 2009, the GST was in effect and the minister reduced the rebate for the facility from 83% to 50%. For 2011, the HST was in effect and the rebate was similarly reduced. Prior to the hearing, the parties settled a separate rebate issue with respect to another of the registrant’s residential facilities (the health care facility), which was settled in the registrant’s favour on the basis the health care facility qualified for the 50% rebate for the periods of 2007 and 2011.</p>
Held	Appeal allowed.
Source	Tax Court of Canada - 2013-148(GST) G Elim Housing Society v The Queen - http://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/126520/index.do