
Explanatory Notes Relating to the Excise Tax Act

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The Honourable James M. Flaherty, P.C., M.P.
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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Excise Tax Act

Clause 1

Charity Parking

ETA

Sch. V, Pt. V.1, section 1

Section 1 of Part V.1 of Schedule V to the *Excise Tax Act* (the Act) exempts all supplies of property and services made by a charity that is not a public institution as defined in subsection 123(1) of the Act, except those supplies listed in paragraphs (a) to (n). Public institutions are public colleges, universities, school authorities, hospital authorities and local authorities determined to be a municipality for all purposes of Part IX of the Act that are also a registered charity or registered Canadian amateur athletic association within the meaning of the *Income Tax Act*.

Section 1 is amended by adding new paragraph (o) to exclude from exemption supplies of parking spaces when the three conditions in each of subparagraphs 1(o)(i) to (iii) are met.

New subparagraph 1(o)(i) provides as the first condition for exclusion from exemption that the supply of a parking space be made for consideration, by way of lease, licence or similar arrangement and in the course of a business carried on by the charity that makes the supply. For example, a supply of a parking space by a charity would continue to be exempt under section 1 if it is a supply that is not made in the course of a business of the charity.

New subparagraph 1(o)(ii) provides the second condition for exclusion of a supply of a parking space from exemption, which is based upon the expected use of the specified parking area in relation to the supply of the parking space. The new term “specified parking area” in relation to the supply of a parking space is defined in section 1 of Part VI of Schedule V to the Act. In order for this second condition to be met, it must be reasonable to expect, at the time when the supply of the parking space is made, that the specified parking area in relation to the supply of the parking space will be used, during the calendar year in which the supply is made, primarily by individuals who are accessing property of, or facilities or establishments operated by, persons that are a municipality, a school authority, a hospital authority, a university or a public college. For example, this condition would be met if it is reasonable to expect when a supply of a parking space is made that the specified parking area in relation to the supply of the parking space will be used primarily during the calendar year by students, faculty or other individuals accessing a university campus or either a university or a public college campus.

New subparagraph 1(o)(iii) provides the third condition for exclusion from exemption which can be met in any of the three ways described in new clauses 1(o)(iii)(A) to (C).

Under new clause 1(o)(iii)(A), this third condition can be met if the charity that makes the supply of a parking space is expected under its governing documents to use a significant part of its income or assets for the benefit of any particular municipality, school authority, hospital authority, university or public college, or several of them, in relation to which the reasonable expectation for use of parking spaces condition in new subparagraph 1(o)(ii) is met. For example, this condition would be met if it is reasonable to expect when a supply of a parking space is made by a charity that the specified parking area in relation to the supply of the parking space will be used primarily during the calendar year by

patients, staff or other individuals accessing a public hospital operated by a hospital authority and under the charity's bylaws it can be expected that a significant part of the charity's income or assets will be used for the benefit of the hospital or the hospital authority.

Under new clause 1(o)(iii)(B), the third condition for exclusion from exemption can be met if the charity that makes the supply of a parking space and a particular entity that is a municipality, school authority, hospital authority, university or public college in relation to which the reasonable expectation for use of parking spaces condition in new subparagraph 1(o)(ii) is met have entered into one or more agreements in respect of the use of the parking spaces by the individuals who are accessing a property of, or a facility or establishment operated by, the particular entity. For example, this condition would be met if it is reasonable to expect when a supply of a parking space is made that the specified parking area in relation to the supply of the parking space will be used primarily during the calendar year by students, staff, and other individuals accessing a public college facility and a charity that makes the supply and the public college have entered into an agreement, with each other or other entities, reserving some of the parking spaces for use by employees who work at the public college.

Under new clause 1(o)(iii)(C), this third condition can also be met for a supply of a parking space by a charity if a particular municipality, school authority, hospital authority, university or public college in relation to which the reasonable expectation for use of parking spaces condition in new subparagraph 1(o)(ii) is met performs any function or activity in respect of supplies by the charity of parking spaces in the specified parking area in relation to the supply of the parking space (e.g., snow removal or deduction of fees for parking at the specified parking area from employee wages).

This amendment applies to any supply made after March 21, 2013.

A special rule is provided in respect of supplies of parking spaces made after March 21, 2013 (the day on which Economic Action Plan 2013 was tabled) and on or before Announcement Date. In particular, a supply of a parking space made after March 21, 2013 and on or before Announcement Date is only excluded from exemption under section 1 of Part V.1 of Schedule V if the supply is both included under new paragraph 1(o) of Part V.1 and meets the conditions set out in paragraphs (a) and (b) of subclause 1(2) of the legislative proposal. The conditions in those paragraphs (a) and (b) are similar to new subparagraphs 1(o)(ii) and (iii) respectively, but apply on the basis of parking spaces situated at a particular property instead of parking spaces in a specified parking area.

A supply of a parking space that is excluded from exemption under section 1 may still be an exempt supply if the supply meets the conditions for exemption set out in new section 7 of Part V.1 of Schedule V, which provides an exemption for certain supplies of hospital parking made by a charity.

Clause 2

Supplies All or Substantially All for No Consideration

ETA

Sch. V, Pt. V.1, section 5

Section 5 of Part V.1 of Schedule V to the Act exempts supplies by a charity that is not a public institution as defined in subsection 123(1) of the Act of property or services if all or substantially all of the charity's supplies of the property or service are made for no consideration. Such supplies are not considered to be made in the course of a commercial activity. The supply of blood and blood derivatives is excluded from the exemption as these supplies are zero-rated under Part I of Schedule VI to the Act.

Section 5 of Part V.1 of Schedule V is amended to also expressly exclude from exemption supplies of parking spaces if the supply of a parking space is made for consideration, by way of lease, licence or similar arrangement and in the course of a business carried on by the charity.

The amendment clarifies that section 5 of Part V.1 of Schedule V does not apply to supplies of commercial paid parking by a charity even if the charity provides a significant amount of parking at no charge.

This amendment applies to any supply made after March 21, 2013.

Clause 3

Hospital Parking

ETA

Sch. V, Pt. V.1, section 7

New section 7 of Part V.1 of Schedule V to the Act exempts the supply (other than by way of sale) made by a charity of a parking space for hospital parking when the three conditions in each of paragraphs 7(a) to (c) are met. The new definition “specified parking area” in relation to a supply of a parking space in section 1 of Part VI of Schedule V to the Act applies for purposes of references to this term in new section 7.

New paragraph 7(a) provides the first condition for exemption which can be met in either of the two ways described in new subparagraphs 7(a)(i) and (ii).

Under new subparagraph 7(a)(i), this first condition can be met if all of the parking spaces in the specified parking area in relation to the supply of the parking space are reserved for use by individuals who are accessing a public hospital. A supply of a parking space that allows use of any vacant parking space in a parking lot where all of the parking spaces in the parking lot are reserved for individuals accessing a public hospital is an example of a supply that would meet this first condition for exemption by reason of new subparagraph 7(a)(i).

Under new subparagraph 7(a)(ii), the first condition can also be met based upon the expected use of the parking spaces in the specified parking area in relation to the supply of the parking space. In order for the first condition to be met by reason of this subparagraph, it must be reasonable to expect, at the time when the supply of the parking space is made, that these parking spaces will be used, during the calendar year in which the supply is made, primarily by individuals who are accessing a public hospital. For example, this first condition for exemption would be met by reason of new subparagraph 7(a)(ii) for a supply that allows use of any vacant parking space in the parking lot that is the specified parking area in relation to the supply if the parking spaces in that parking lot can, at the time when the supply is made, reasonably be expected to be used, during the calendar year in which the supply is made, primarily by patients, staff and visitors accessing a public hospital.

New paragraph 7(b) provides the second condition for exemption which is that none of the circumstances set out in new subparagraphs 7(b)(i) to (iii) apply to the supply. A supply of a parking space would not meet this second condition for exemption by reason of new subparagraph 7(b)(i) if all or substantially all of the parking spaces in the specified parking area in relation to the supply are reserved for use other than by individuals accessing a public hospital otherwise than in professional capacity. For example, a supply of a parking space would not meet this condition for exemption if all or substantially all of the parking spaces in the specified parking area in relation to the supply were reserved for the use of students attending a university or staff of a public hospital.

A supply of a parking space would not meet the second condition for exemption by reason of new subparagraph 7(b)(ii) if the supply of the parking space, or the consideration for the supply, is conditional on the parking space being used by a person other than an individual accessing a public hospital otherwise than in a professional capacity. For example, a supply of a parking space by way of sale of a parking pass that can be obtained only by university students, or that is available at a reduced consideration if for use of hospital employees but at full price if for use of hospital patients, would not meet the second condition for exemption.

A supply of a parking space would not meet the second condition for exemption by reason of new subparagraph 7(b)(iii) if the agreement for the supply is entered into in advance, the period over which parking spaces can be accessed under the supply is more than twenty-four hours and the access to the specified parking area in relation to the supply is to be used by a person other than an individual accessing a public hospital otherwise than in a professional capacity. For example, a supply of a parking pass to allow a family member of a public hospital patient to access a parking lot over a period of one month while visiting the patient would meet the second condition for exemption whereas a supply of the same pass to allow a nurse to access the parking lot while working at the public hospital would not.

New paragraph 7(c) provides the third condition for exemption, which is that no election made by the supplier of the parking space under section 211 of the Act is in effect, in respect of the property on which the parking space is situated, at the time tax would become payable under Part IX of the Act in respect of the supply if it were a taxable supply.

This amendment applies to any supply made after March 21, 2013.

A special transitional relieving measure applies if an amount was collected by a charity as or on account of tax and applicable to a supply of a parking space made after March 21, 2013 and on or before Announcement Date and if the supply is exempt by reason of new section 7 of Part V.1 of Schedule V to the Act. Under the relieving measure, the amount is deemed not to have been collected as or on account of tax for purposes of determining the net tax of the charity. This deeming rule has the effect of relieving the charity from the obligation to remit the amount or, if the amount has been remitted, allowing the charity to recover the amount as a refund under section 261 of the Act.

A further special rule applies if an amount is subject to the deeming rule discussed above and that amount has been taken into account in assessing the net tax of a charity under section 296 of the Act. In these circumstances, the amount could not be refunded to the charity under section 261 of the Act. The special rule allows the charity to request in writing, within one year after the enactment of new section 7 of Part V.1 of Schedule V, that the Minister of National Revenue assess, reassess, or make an additional assessment of, the net tax to take into account the effect of the deeming rule and, if a request is made, provides for an assessment, reassessment or additional assessment to be made.

Clause 4

Definitions

ETA

Sch. V, Pt. VI, section 1

Section 1 of Part VI of Schedule V to the Act sets out definitions of terms used throughout the Part.

“specified parking area”

The definition “specified parking area” in relation to a supply of a parking space is added to section 1 of Part VI of Schedule V. This new definition applies for the purposes of new section 25.1 of Part VI of Schedule V to the Act and new paragraph 1(*o*) and new section 7 of Part V.1 of that Schedule. These provisions require a determination of whether certain conditions are met for the specified parking area in relation to a supply of a parking space.

The specified parking area in relation to a supply of a parking space means all of those parking spaces that could be chosen for use in parking under the agreement for the supply of the parking space if all of those parking spaces were vacant and not reserved for any specific users. For example, if under the supply of a parking space an individual parker can use any of the parking spaces in a parking lot that are vacant, then all of the spaces in that parking lot would be the specified parking area in relation to the supply. If in the previous example, half of the parking spaces in the lot were reserved for use by staff of a public hospital and half for hospital patient parking, all of the parking spaces in the lot would be included in the specified parking area in relation to the supply of the parking space even if the individual parker were a hospital patient and could therefore only use those spaces reserved for patients.

This amendment is deemed to have come into force on March 21, 2013.

Clause 5

Hospital Parking

ETA

Sch. V, Pt. VI, section 25.1

New section 25.1 of Part VI of Schedule V to the Act exempts the supply (other than by way or sale) made by a public sector body of a parking space for hospital parking when the three conditions in each of paragraphs 25.1(*a*) to (*c*) are met. The new definition “specified parking area” in relation to a supply of a parking space in section 1 of Part VI of Schedule V to the Act applies for purposes of references to this term in new section 25.1.

New paragraph 25.1(*a*) provides the first condition for exemption which can be met in either of the two ways described in new subparagraphs 25.1(*a*)(i) and (ii).

Under new subparagraph 25.1(*a*)(i), this first condition can be met if all of parking spaces in the specified parking area in relation to the supply of the parking space are reserved for use by individuals who are accessing a public hospital. A supply of a parking space that allows use of any vacant parking space in a parking lot where all of the parking spaces in the parking lot are reserved for individuals accessing a public hospital is an example of a supply that would meet this first condition for exemption by reason of new subparagraph 25.1(*a*)(i).

Under new subparagraph 25.1(a)(ii), the way the first condition can be met is based upon the expected use of the parking spaces in the specified parking area in relation to the supply of the parking space. In order for the first condition to be met by reason of this subparagraph, it must be reasonable to expect, at the time when the supply of the parking space is made, that these parking spaces will be used, during the calendar year in which the supply is made, primarily by individuals who are accessing a public hospital. For example, this first condition for exemption would be met by reason of new subparagraph 25.1(a)(ii) for a supply that allows use of any vacant parking space in the parking lot that is the specified parking area in relation to the supply if the parking spaces in that parking lot can, at the time when the supply is made, reasonably be expected to be used, during the calendar year in which the supply is made, primarily by patients, staff and visitors accessing a public hospital.

New paragraph 25.1(b) provides the second condition for exemption which is that none of the circumstances set out in new subparagraphs 25.1(b)(i) to (iii) apply to the supply. A supply of a parking space would not meet this second condition for exemption by reason of new subparagraph 25.1(b)(i) if all or substantially all of the parking spaces in the specified parking area in relation to the supply are reserved for use other than by individuals accessing a public hospital otherwise than in a professional capacity. For example, a supply of a parking space would not meet this condition for exemption if all or substantially all of the parking spaces in the specified parking area in relation to the supply were reserved for the use of students attending a university or staff of a public hospital.

A supply of a parking space would not meet the second condition for exemption by reason of new subparagraph 25.1(b)(ii) if the supply of the parking space, or the consideration for the supply, is conditional on the parking space being used by a person other than an individual accessing a public hospital otherwise than in a professional capacity. For example, a supply of a parking space by way of sale of a parking pass that can be obtained only by university students, or that is available at a reduced consideration if for use of hospital employees but at full price if for use of hospital patients, would not meet the second condition for exemption.

A supply of a parking space would not meet the second condition for exemption by reason of new subparagraph 25.1(b)(iii) if the agreement for the supply is entered into in advance, the period over which parking spaces can be accessed under the supply is more than twenty-four hours and the access to the specified parking area in relation to the supply is to be used by a person other than an individual accessing a public hospital otherwise than in a professional capacity. For example, a supply of a parking pass to allow a family member of a public hospital patient to access a parking lot over a period of one month while visiting the patient would meet the second condition for exemption whereas a supply of the same pass to allow a nurse to access the parking lot while working at the public hospital would not.

New paragraph 25.1(c) provides the third condition for exemption which is that no election made by the supplier of the parking space under section 211 of the Act is in effect, in respect of the property on which the parking space is situated, at the time tax would become payable under Part IX of the Act in respect of the supply if it were a taxable supply.

This amendment applies to any supply made after Announcement Date.