

DRAFT REGULATIONS

DRAFT CREDIT FOR PROVINCIAL RELIEF (HST) REGULATIONS

INTERPRETATION

Definitions	1. The following definitions apply in these Regulations.
“Act” « Loi »	“Act” means the <i>Excise Tax Act</i> .
“Ontario regulation” « règlement de l’Ontario »	“Ontario regulation” means Ontario Regulation 317/10 (<i>Rebates for First Nations in Ontario</i>), as it read on August 13, 2010, made under the <i>Retail Sales Tax Act</i> , R.S.O. 1990, c. R.31.
“qualifying amount” « montant admissible »	“qualifying amount” means a particular amount, the payment or credit of which is contemplated in a sales tax harmonization agreement between the Government of Canada and the Government of Ontario, that is equal to an amount of tax paid or payable by a person under subsection 165(2) or section 212.1 or 218.1 of the Act or Division IV.1 of Part IX of the Act and that may, under the Ontario regulation, be paid or credited to the person on behalf of, or by, the Crown in right of Ontario.

CREDIT TO SUPPLIER

Credit	2. (1) If a registrant makes a supply in Ontario to a person and credits during a reporting period of the registrant a qualifying amount to the person in respect of the supply, the registrant may apply to the Minister for a credit equal to all or part of the qualifying amount by filing an application, in respect of a return for the reporting period or a subsequent reporting period of the registrant, with the Minister.
Form and filing of application	(2) An application for a credit under subsection (1) shall be made in prescribed form containing prescribed information and shall be filed with the Minister in prescribed manner.
Payment of credit	(3) Where at any time a registrant files a return under Part IX of the Act for a reporting period of the registrant and the registrant files, with the return, an application for a credit under subsection (1) in respect of the return, (a) if the registrant reports, in the return, an amount (in this paragraph referred to as the “remittance amount”) that is required to be remitted under subsection 228(2) or (2.3) of the Act or paid under subsection 228(2.1) or (4) of the Act or Division IV or IV.1 of Part IX of the Act by the registrant, the registrant is deemed to have remitted at that time on account of the registrant’s remittance amount, and the Minister is deemed to have paid at that time on account of the credit, an amount equal to the lesser of the remittance amount and the amount of the credit; and (b) the Minister may pay to the registrant any part of the amount of the credit that is not deemed to have been paid under paragraph (a).
Restriction on credit	(4) For the purposes of sections 263.02 and 263.1 of the Act, an amount of a credit that the Minister may pay to a registrant under paragraph (3)(b) is deemed to be a rebate under Part IX of the Act.

Interest on credit and overpayment (5) For the purposes of subsections 264(1) and 297(4) of the Act, an amount of a credit paid to a registrant under paragraph (3)(b) is deemed to be a rebate under Division VI of Part IX of the Act that is paid to the registrant under subsection 297(3) of the Act and the later of the day on which the return to which the application for the credit relates is filed and the day on which the application for the credit is filed is deemed to be the day on which the application for that rebate is filed.

DISCLOSURE OF TAX

Exception 3. If a registrant makes a supply in Ontario to a person and credits a qualifying amount to the person in respect of the supply, the registrant is not required to include under subsection 223(1) or (1.1) of the Act tax under subsection 165(2) of the Act, or the rate of that tax, in the total tax payable or the total of the rates of tax payable in respect of the supply.

PENALTIES

Penalty for misreporting 4. (1) If a registrant makes a supply in Ontario to a person and credits a qualifying amount to the person in respect of the supply and, in determining the net tax of the registrant for a reporting period of the registrant, the registrant deducts an amount representing all or part of the qualifying amount or fails to add an amount of tax, representing all or part of the qualifying amount, that became collectible from the person in respect of the supply in the reporting period, in addition to any other penalty or interest under Part IX of the Act, the registrant is liable to a penalty equal to the amount determined by the formula

$$A \times [5\% + (1\% \times B)]$$

where

A is the amount (in this subsection referred to as the “misreported amount”) that the registrant deducted or that the registrant failed to add; and

B is the lesser of five and the number of complete months that are included in the period that begins on the day on or before which the return in which the registrant deducts, or fails to add, the misreported amount is required to be filed and ends on the earlier of

(a) the day on which the registrant reports the misreported amount and identifies the reporting period to the Minister in writing or in any other manner satisfactory to the Minister, and

(b) the day on which the Minister sends a notice of assessment that includes an assessment of the net tax of the registrant for the reporting period taking into account the misreported amount.

Penalty for delayed filing (2) If a registrant files an application for a particular credit under subsection 2(1) equal to all or part of a qualifying amount more than four years after the day on which the registrant credited the qualifying amount, the registrant is liable to a penalty equal to the amount of the particular credit.

Waiving or cancelling penalties (3) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a registrant, or on application by the registrant on or before that day, waive or cancel all or any portion of any penalty payable by the registrant under subsection (1) in respect of a return for the reporting period.

Waiving or cancelling penalties

(4) The Minister may, on or before the particular day that is 10 calendar years after the day on which a registrant filed an application for a credit under subsection 2(1), or on application by the registrant on or before the particular day, waive or cancel all or any portion of any penalty payable by the registrant under subsection (2) in respect of the credit.

DEDUCTION — IMPORTATIONS, IMPORTED TAXABLE SUPPLIES AND BRINGING IN

Deduction — section 212.1

5. If tax under section 212.1 of the Act is payable by a person and all or part of that tax is an amount equal to a qualifying amount that is credited to the person under the Ontario regulation, in determining the amount required to be paid and collected under section 214 of the Act, the qualifying amount is to be applied as a deduction from that tax.

Deduction — section 218.1 and Division IV.1 of Part IX

6. If tax under section 218.1 of the Act or Division IV.1 of Part IX of the Act is payable by a person and all or part of that tax is an amount equal to a qualifying amount, in determining the amount required to be paid under section 219 or subsection 220.09(1) of the Act, the qualifying amount shall be credited to the person by the Minister and applied as a deduction from that tax if the person files with the Minister in prescribed manner an application made in prescribed form containing prescribed information for the credit with the return in which that tax is required to be reported by the person under section 219 or subsection 220.09(1) of the Act.

RESTRICTIONS

Restriction on input tax credits, etc.

7. No amount of tax under subsection 165(2), section 212.1 or 218.1 of the Act or Division IV.1 of Part IX of the Act shall be included in determining any input tax credit of a person or any rebate, refund or remission that may be paid or granted to a person under the Act or any other Act of Parliament to the extent it can be reasonably regarded that a qualifying amount has been credited to the person, or the person is entitled to be paid or credited a qualifying amount, under the Ontario regulation in relation to that amount of tax.

Additional restriction

8. No amount of an input tax credit, rebate, refund or remission under the Act or any other Act of Parliament, and no amount of a tax benefit (as defined in subsection 274(1) of the Act), shall be credited, paid, granted or allowed to the extent that it can reasonably be regarded that the amount is determined, directly or indirectly, in relation to a qualifying amount that has been credited to a person, or to which a person is entitled to be paid or credited, under the Ontario regulation in relation to that amount of tax.

No adjustment if amount credited

9. If a registrant makes a supply in Ontario to a person and credits a qualifying amount to the person in respect of the supply, the amount of tax under subsection 165(2) of the Act in respect of the supply that is equal to the qualifying amount shall not be included in determining the amount that may be deducted or that is required to be added, as the case may be, under section 231 or 232 of the Act in determining the net tax of the registrant for any reporting period of the registrant.

APPLICATION

10. (1) Sections 1 to 3 and 5 to 9 are deemed to have come into force on September 1, 2010.

(2) Section 4 applies in respect of any reporting period of a person that ends on or after September 1, 2010, except that no person is liable to a penalty the amount of which is determined under these Regulations in respect of a return for that reporting period that is filed

on or after September 1, 2010 and before the day on which these Regulations are published in the *Canada Gazette*.

DRAFT CONSEQUENTIAL AMENDMENTS TO VARIOUS GST/HST
REGULATIONS

AMENDMENTS

New Harmonized Value-added Tax System Regulations, No. 2

1. The *New Harmonized Value-added Tax System Regulations, No. 2* are amended by adding the following before section 8:

Additional
specified item

7.1 For the purposes of this Division, property or a service in respect of which a person has been paid or credited, or is entitled to be paid or credited, a qualifying amount (as defined in section 1 of the *Credit for Provincial Relief (HST) Regulations*) is a specified item in respect of Ontario.

2. The Regulations are amended by adding the following before section 23:

Additional
specified item

22.1 For the purposes of this Division, property in respect of which a person has been paid or credited, or is entitled to be paid or credited, a qualifying amount (as defined in section 1 of the *Credit for Provincial Relief (HST) Regulations*) is a specified item in respect of Ontario.

Deduction for Provincial Rebate (GST/HST) Regulations

3. Paragraph 2.1(a) of the *Deduction for Provincial Rebate (GST/HST) Regulations* is replaced by the following:

(a) the reference to “a supply made in a participating province” in paragraph (a) of the definition “tax fraction” in subsection 181(1) of the Act is to be read as “a supply made in a participating province (other than a supply in respect of which the supplier pays to, or credits in favour of, the recipient of the supply an amount prescribed for the purposes of subsection 234(3) or a supply in respect of which the supplier credits a qualifying amount (as defined in section 1 of the *Credit for Provincial Relief (HST) Regulations*) to a person)”; and

COMING INTO FORCE

4. Sections 1 to 3 are deemed to have come into force on September 1, 2010.