



GST/HST Memoranda Series

19.3.6 Rebate on Non-Registrant's Sale of Real Property

August 1998

Overview	Section 257 of the <i>Excise Tax Act</i> (the Act) provides a rebate of uncredited tax where a non-registrant makes a taxable supply of real property.
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Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

Note

This section of Chapter 19, *Special Sectors: Real Property* supersedes paragraphs 62 to 66 of GST Memorandum 500-4-5, *Housing and Other Real Property Rebates*. Side-barring indicates significant changes.

Nature of the rebate

Non-registrant's rebates 257

1. If a person who is not a registrant for the GST/HST makes a taxable sale of real property, the person may be eligible for a rebate of all or part of the tax paid by the person on the last acquisition of the property plus tax paid on improvements. The purpose of the rebate is to prevent double taxation.

Example

For example, a doctor who is not a registrant owns a building that has been used exclusively for the doctor's medical practice. Upon acquiring the property, the doctor paid tax but has not been able to claim input tax credits (ITCs) because the property was acquired for use in making exempt supplies of medical services; there are no commercial activities. The doctor sells the building and the sale is a taxable supply.

In the absence of section 257, the GST/HST would apply twice to the same property: once when the doctor acquired the property and again when the doctor made the taxable supply by way of sale of the property. The doctor would have been unable to recover tax paid or payable on the acquisition of the property. Under the provisions of section 257, the doctor may claim a rebate of the tax paid on the last acquisition of the property and so prevent such cascading of tax.

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Property converted to residential use: self-supply

2. A rebate under this section may be available where a non-registrant converts property from commercial use or exempt use to residential use. For example, if the doctor in the previous example were to convert the building the doctor had used exclusively for a medical practice into a residential complex, subsection 190(1) may deem the doctor to be the builder of a substantially renovated building. If the building is then used in an exempt residential rental business, GST/HST may be payable on the fair market value of the property under the self-supply rules of section 191. In these circumstances, the non-registrant doctor could claim a rebate under section 257. (For more information on the self-supply rules, see Section 19.2.3, *Residential Real Property—Deemed Supplies*.)

Redemption of real property ss 257(3)

3. If a non-registrant owns property and the property is seized by a creditor, the non-registrant is deemed under the provisions of subsection 183(1) to have sold the property to the creditor. The non-registrant is entitled to a rebate under section 257 on this deemed sale where the deemed sale is a taxable supply. Generally, the non-registrant may apply for the rebate at the time of the seizure. However, if the non-registrant has a statutory right or a right under an agreement relating to a debt security to redeem the property, i.e., to regain ownership of the property, the non-registrant must wait to claim the rebate until the time limit for redeeming the property has expired without the non-registrant exercising the right of redemption. In this situation, the application for the rebate must be filed no later than two years from the day that the redemption period expired. This two-year time limit applies only if the supply of the property, i.e., the seizure, took place after June 1996. Otherwise, the time limit is four years from the time the redemption period expired. (For more information on the time limit for claiming the rebate, see paragraphs 9 and 10. For more information on redemptions of real property, see policy statement P-198, *Unpaid Municipal Taxes and Redemption by the Previous Owner*.)

Calculating the rebate

Rebate ss 257(1)

4. For taxable sales of real property that take place on or after April 1, 1997, the rebate is equal to the lesser of:

- the “basic tax content” of the property at the time of the current sale, and
- the tax payable in respect of the current sale, or the tax that would be payable in the absence of section 167¹.

Footnote¹

Under the provisions of section 167, an otherwise taxable sale of a business can generally be made without tax applying if both parties to the transaction so elect (form GST 44). When calculating the basic tax content of a property, even though tax had not applied to the last acquisition of the property because an election had been in effect, an amount of tax is included. This amount is based on the fair market value of the property at the time of determining the basic tax content.

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Basic tax content
ss 123(1)

5. The basic tax content of real property is determined by way of a formula. Simply stated, the basic tax content of a property is arrived at by:
- (a) totalling all amounts of tax payable at the time the property was last acquired or imported²,
 - (b) adding any amounts of tax payable at any time on improvements (goods and services) acquired, imported or brought into a participating province after the last acquisition or importation,
 - (c) deducting all amounts of tax recoverable by way of rebate, refund or remission (other than ITCs), and
 - (d) multiplying the net amount by a factor that takes into account any depreciation in the fair market value of the property since the property was last acquired.
6. For most non-registrants claiming the section 257 rebate, the basic tax content of a property is calculated as follows (Note: this manner of calculating basic tax content does not apply to registrants or selected listed financial institutions):

$$(A - B) \times C$$

where

A = total of:

- i) tax payable in respect of the claimant's last acquisition or importation of the property;
- ii) tax payable in respect of improvements to the property acquired, imported or brought into a participating province after the property was last acquired or imported;
- iii) tax that would have been payable in either of the preceding situations but for section 167 applying;

and

- iv) tax under Division IV (tax payable on imported taxable supplies), and Division IV.1 (tax self-assessed on property brought into a participating province from a non-participating province).

Footnote ²

Importing in this context refers to importing mobile homes or floating homes, or items that will be affixed to real property thus becoming part of it, such as fencing.

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B = total of

- i) any tax referred to in **A** (above) that the claimant was exempt from paying under any other Act or law;
- ii) all amounts of tax referred to in **A(i)** and **A(ii)** above which the claimant was entitled to recover by way of a rebate, refund, or remission, other than amounts referred to in **B(i)**;
- iii) the amounts of tax referred to in **A(iii)** and **A(iv)** above which the claimant was entitled to recover by way of a rebate, refund, remission or otherwise under this or any other Act or law, other than amounts referred to in **B(i)**;

C = the lesser of 1, and

$$\frac{\text{fair market value at the time the basic tax content is being determined}}{\text{consideration payable on the last acquisition} + \text{consideration for improvements}}$$

Example

For example, a Saskatchewan doctor bought a building in 1993 for exclusive use in providing exempt medical services. The doctor paid \$150,000 for the property plus \$10,500 GST. Subsequently, several improvements were made to the property:

	consideration		GST	
paving of parking area	5,000	+	350	= \$5,350
new windows	7,000	+	490	= \$7,490
redecorating offices	<u>4,000</u>	+	<u>280</u>	= \$4,280
	\$16,000		\$1,120	

The doctor decides to move to new premises. The property is appraised at a fair market value of \$200,000. In August 1998, the property is sold for \$200,000 plus \$14,000 GST.

The doctor is entitled to a rebate that is the lesser of:

- the basic tax content of the property at the time of the sale in August 1998, and
- the tax payable in respect of the current sale: \$14,000.

The basic tax content of the property at the time of the sale is:

$$\begin{aligned} & (\mathbf{A} - \mathbf{B}) \times \mathbf{C} \\ & = ((10,500 + 1,120) - 0) \times \left(\text{the lesser of 1 and } \frac{200,000}{150,000 + 16,000} \right) \\ & = 11,620 \times (\text{the lesser of 1 and 1.2}) \\ & = \$11,620. \end{aligned}$$

Accordingly, the doctor may claim a rebate of \$11,620.

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Prior to April 1, 1997

7. For sale agreements that were entered into prior to April 1, 1997, the rebate is based on the lesser of the tax that was previously paid or payable by the vendor and the tax calculated on the consideration for the current supply. The rebate is reduced to the extent that the non-registrant had claimed or was entitled to claim a rebate under section 259 (rebates for charities, qualifying non-profit organizations and selected public service bodies). The formula that is used for such sale agreements is:

$$A \times B$$

where

A = the lesser of

- i) tax payable on the last acquisition of the real property plus tax payable on improvements to the property, and
- ii) the tax payable on the sale, or tax that would be payable in the absence of section 167;

B = 100% less the percent of a rebate claimable under section 259 in respect of the property.

Claiming the rebate

General rebate application

8. The publication, *GST/HST General Rebate Application*, contains the application form, GST189, and instructions on how to apply for the rebate

Time limit

ss 257(2)

9. If an application for a rebate under section 257 is filed with the Department in respect of a qualifying supply, and the consideration for the supply becomes due or is paid without having become due after June 1996, then the application must be filed no later than two years after the day the consideration for the supply became due or was paid without having become due to be eligible for the rebate.

Time limit prior to June 1996

10. If the consideration for the supply becomes due or is paid without having become due before July 1996, the application must be filed no later than four years after the day the consideration for the supply became due or was paid without becoming due to be eligible for the rebate.