
November 6, 2019

**RITS 187824 — GST/HST Ruling – November 2019: Public Service Bodies’
Rebate (November 6, 2019)**

Section(s): ETA Part IX, 174, 175, 259

Headquarters Excise and GST/HST Rulings severed letters – November 2019

Date: November 06, 2019
RITS/No: 187824
Subject: GST/HST RULING - Public Service Bodies’ Rebate
ETA Part IX,
Reference: 174,
175,
259

Please note that the following document, although correct at the time of issue, may not represent the current position of the Canada Revenue Agency. / Veuillez prendre note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'Agence du revenu du Canada.

Excise and GST/HST Rulings Directorate
Place de Ville, Tower A, 11th floor
320 Queen Street
Ottawa ON K1A 0L5

[Addressee]

Case Number: 187824

Business Number: [...]

Dear [Client]:

**Subject: GST/HST RULING
Public Service Bodies’ Rebate**

Thank you for your letters of [mm/dd/yyyy], concerning the application of section 174 of the *Excise Tax Act* (ETA) to remuneration paid to chiefs and councillors of [...] (the Band) for the year ended [mm/dd/yyyy].

The HST applies in the participating provinces at the following rates: 13% in Ontario; and 15% in New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island. The GST applies in the rest of Canada at the rate of 5%.

STATEMENT OF FACTS

We understand

1. The Band is a “band” as defined in subsection 2(1) of the Indian Act.
2. The Band has a “reserve” as defined in subsection 2(1) of the Indian Act.
3. The Band is governed by a chief and a [...] person council. The chief and council are elected democratically under band custom pursuant to Section 11 of the Indian Act.

[...]

5. You have provided us with a printout of the Schedule of Remuneration and Expenses for chiefs and councillors for the Band for the year ended [mm/dd/yyyy]. The schedule contains the following information:

[...]

6. You have explained the Band’s entitlement to the public service bodies’ rebate in the following manner:

“Calculation of claimable Public Service Bodies Rebate as Municipality per Guideline on P-097R2, Expense Allowances of Elected Municipal Officers and School Board Members and RC4034, GST/HST Public Service Bodies Rebate.

[...]”

[...]

7. The Band was determined to be a municipality pursuant to paragraph (b) of the definition of “municipality” in subsection 123(1) of the ETA effective [mm/dd/yyyy].
8. The Band is not governed by a municipal Act of a province that deems a proportion of the total amount paid to the chief or a councillor in respect of their position as an elected member of the Band council to be an allowance for expenses.
9. The Band has not entered into a Self-Government Agreement.

RULING REQUESTED

You would like us to confirm the Band is entitled to claim a public service bodies’ rebate in respect of salary and honoraria paid to the chief and councillors of the Band in a manner consistent with the calculation you have provided in Fact # 6.

Further, you would like us to consider extending the qualification for the rebate, to which we refer in the paragraph above, to Indian bands that have not been determined as municipalities for GST/HST purposes. To this end, you argue that municipalities and Indian bands “are structured in an almost identical manner” as municipalities, and that their elected officers “perform virtually identical duties to elected municipal officers.”

RULING GIVEN

Based on the facts set out above, we rule that the Band is not entitled to claim a public service bodies' rebate in respect of salary and honoraria paid to the chief and councillors of the Band in a manner consistent with the calculation you have provided in Fact # 6.

EXPLANATION

A public service body, such as a determined municipality, may be able to recover a percentage of the GST and the federal part of the HST paid or payable on its eligible purchases and expenses by claiming a public service bodies' rebate. A public service body resident in a participating province may also be able to claim a public service bodies' rebate to recover a percentage of the provincial part of the HST paid or payable on its eligible purchases and expenses. The public service bodies' rebate calculation is based on the "non-creditable tax charged" in respect of property or a service for a claim period. Generally, non-creditable tax charged is the GST/HST paid or payable on an eligible purchase or expense that a public service body cannot recover in any other way other than by claiming the public service bodies' rebate. For more information, see GST/HST Memorandum 13.5, Non-creditable Tax Charged.

Section 174 of the ETA enables a public service body to claim a public service bodies' rebate in respect of allowances paid to an employee (Footnote 4) for certain expenses to the same extent as would have been the case had the public service body incurred the expense directly. When the conditions under section 174 of the ETA are met, the public service body is deemed to have paid the GST/HST in respect of the supply acquired by the employee and any consumption or use of the property or services is deemed to be consumption or use by the public service body and not by the employee.

Section 174 will apply where the following conditions are met:

1. The public service body pays an allowance to an employee of the public service body;
2. The allowance is paid to the employee for:
 - supplies of property or services all or substantially all (90% or more) of which are taxable supplies (other than zero-rated supplies) acquired in Canada by the employee in relation to the public service body's activities; or
 - the use of a motor vehicle in Canada in relation to the public service body's activities;
3. An amount in respect of the allowance is deductible by the public service body for income tax purposes, or would be deductible if the public service body were a taxpayer under the *Income Tax Act* and the activity were a business; and
4. In the case of certain travel and motor vehicle allowances, the public service body must ensure that
 - the allowance is reasonable for income tax purposes; and
 - at the time the allowance was paid, the person considered it to be a reasonable allowance, and it was reasonable for the person to have considered it to be a reasonable allowance for income tax purposes.

In this case, the amounts paid are salary (generally defined as the agreed compensation for services) or honoraria (generally defined as a fee for services) and are not an allowance paid by the Band to the chief and councillors of the Band. As the first condition for the application of section 174 of the ETA is not met, section 174 of the ETA will not apply to deem the Band to have paid the GST/HST in respect of a given supply acquired by the chief or councillors of the Band. Therefore the Band is not entitled to claim a public service bodies' rebate in respect of salary and honoraria paid to the chief and councillors of the Band.

Your argument relies on P-097R2. However, P-097R2 does not expand a municipality's public service bodies' rebate entitlement beyond that provided in section 174 of the ETA and the basic rules of the public service bodies' rebate found in section 259 of the ETA. P-097R2 merely explains the application of section 174 of the ETA to allowances that fall under former subsection 81(3) of the *Income Tax Act*. If the conditions of section 174 of the ETA are not met, no public service bodies' rebate is available.

ADDITIONAL INFORMATION

As a result of the Ruling Given we will not be addressing your request for the Canada Revenue Agency (CRA) to consider extending the qualification for the public service bodies' rebate to Indian bands that have not been determined as municipalities for GST/HST purposes. Our only comment on the matter is that in order to claim the public service bodies' rebate an entity has to be one of the following:

- a charity;
- a qualifying non-profit organization
- a school authority, a university, or a public college that is established and operated otherwise than for profit;
- a hospital authority;
- a municipality;
- a facility operator; or
- an external supplier.

For more information, see Guide RC4034.

In accordance with the qualifications and guidelines set out in GST/HST Memorandum 1.4, Excise and GST/HST Rulings and Interpretations Service, the CRA is bound by the ruling given in this letter provided that: none of the issues discussed in the ruling are currently under audit, objection, or appeal; no future changes to the ETA, regulations or the CRA's interpretative policy affect its validity; and all relevant facts and transactions have been fully and accurately disclosed.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at 613-670-7941. 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.

Yours truly,

Trent MacDonald
Charities and Non-Profit Organizations Unit
Public Service Bodies and Governments Division
Excise and GST/HST Rulings Directorate

FOOTNOTES

1 The number of months during the fiscal year that the individual was a chief or councillor.

2 As per the First Nations Financial Transparency Act:

“remuneration” means any salaries, wages, commissions, bonuses, fees, honoraria and dividends and any other monetary benefits – other than the reimbursement of expenses – and non-monetary benefits.

3 As per the First Nations Financial Transparency Act:

“expenses” includes the costs of transportation, accommodation, meals, hospitality and incidental expenses.

4 The definition of employee in subsection 123(1) of the ETA includes an officer.
